



THE BORDER'S LONG SHADOW

HOW BORDER PATROL USES RACIAL PROFILING AND LOCAL AND STATE POLICE TO TARGET AND INSTILL FEAR IN MICHIGAN'S IMMIGRANT COMMUNITIES

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Introduction

Arnulfo Gomez was driving in Traverse City with his wife and brother-in-law on July 5, 2018, when a Michigan State Police (MSP) officer pulled his car over. Mr. Gomez is a lawful permanent resident and has lived in the United States for three decades. Mr. Gomez was told he was pulled over allegedly for a loud exhaust, although he was never ticketed for that. After being stopped, he handed over his valid Michigan driver's license, registration and proof of insurance when the officer asked for them. Mr. Gomez's wife and brother-in-law cooperated as well when asked for their IDs, even though they were simply passengers in the car. All three are Latino.

After about 10 minutes, as Mr. Gomez and his family sat helplessly by the side of the road, unsure why they were being detained when they had done nothing wrong, another MSP officer arrived. While showing the second officer Mr. Gomez's identification, the officer who initiated the stop can be heard saying on a dash camera recording, "This guy here is good to go. He has a Michigan driver's license." Then, after remarking on the difficulty all three people in the car had speaking English, he mentions that a third MSP officer is patrolling nearby with a U.S. Border Patrol agent riding along. "If he didn't have Border Patrol there with him," says the officer who initiated the stop, "I'd be like, eh, whatever."

Even though the traffic stop had been resolved, the MSP officer did not send them on their way. Instead, the officer summoned Border Patrol, by calling the third MSP officer and accompanying Border Patrol agent to the scene. By the time they finally arrived, Mr. Gomez and his family had been forced to sit at the side of the road for more than a half hour because the MSP officer would not let them leave even though the officer had no reason to believe Mr. Gomez or his passengers had been involved in any wrongdoing.

And just like that, what started as a routine traffic stop turned into a potentially life-altering event that could have torn Mr. Gomez's family apart. The Border Patrol agent began questioning Mr. Gomez's wife, who was simply a passenger, and threatened to arrest her. Mr. Gomez watched nervously as the questioning of his wife continued, thinking about their son and daughter — both of whom are U.S. citizens — and the turmoil and heartache that would result if the agent carried through on his threat. Instead of such a nightmarish conclusion, this time, all three were eventually allowed to go. MSP never provided any explanation or justification for the family's detention by the side of the road and did not issue any kind of ticket.

"There was no reason for him to pull us over," says Mr. Gomez. "As soon as he saw we are brown, he was after us. Then they called Border Patrol right away. Everything that happened to us was wrong. We were being targeted just because we are brown."

Unfortunately, this family's experience is not unique.

Mr. Gomez filed a complaint with the Michigan Department of Civil Rights alleging national origin discrimination on September 19, 2018. The complaint remains pending.

"The family's detention reflects a common law enforcement practice that terrorizes whole communities and undermines their sense of safety and trust in the very people who are supposed to serve and protect them. In fact, thousands of Michigan residents, citizens and noncitizens alike, have faced the same unwarranted harassment. The American Civil Liberties Union of Michigan obtained thousands of documents spanning seven years, including more than 13,000 Border Patrol daily apprehension log records. Our analysis indicates that Mr. Gomez's story is unusual only in that, in his case, the traffic stop did not end with a family being torn apart.

This report documents the Michigan operations of the Border Patrol, an agency within U.S. Customs and Border Protection (CBP) that is supposed to patrol the U.S. border between land ports of entry. In actuality, however, the Border Patrol is engaged in racial profiling and the overpolicing of communities of color throughout our state.

In May 2015, the American Civil Liberties Union of Michigan, the Michigan Immigrant Rights Center and two researchers, Dr. Geoffrey Alan Boyce and Dr. Elizabeth Oglesby, submitted a Freedom of Information Act (FOIA) request to CBP to obtain records related to Border Patrol's interior enforcement operations in Michigan.

CBP, a division of the U.S. Department of Homeland Security (DHS), the largest law enforcement agency in the United States and one of the most secretive agencies in the federal government, refused to provide the information. It took years of litigation, culminating in numerous federal court orders, to compel CBP to produce the sought-after documents and data. CBP finished producing all documents in March 2020.

A sweeping analysis of those records, spanning the years 2012 to 2019, reveals that the agency produces few tangible results related to its officially mandated mission in Michigan: apprehending people attempting to cross into the United States from Canada without authorization. Instead, the data show that Border Patrol agents routinely spend their time and resources targeting people of Latin American origin who are long-term Michigan residents.

Moreover, because of Border Patrol's expansive view of what has been dubbed the "100-mile zone" (described in greater detail later), the agency claims it has the authority to conduct certain warrantless searches anywhere and everywhere in Michigan — every city and every county, every road and every highway.

As a result, people of Latin American origin throughout the state are subjected to the constant fear that Border Patrol will single them out for harassment and arrest based on their appearance. Border Patrol agents are, in this way, terrorizing Michigan communities.

The data strongly suggests that federal law enforcement agencies involved in immigration enforcement routinely engage in racial profiling. Similarly, when local, county or state police initiate arrests, Border Patrol's own records document questionable traffic stops, as well as the casual and commonplace prolonging of other routine interactions, including with victims of crime and witnesses, solely to allow a Border Patrol agent to arrive and initiate an immigration investigation — thereby illegally extending a person's detention.

This report also reveals, for the first time, how deeply intertwined Michigan state, county and local law enforcement agencies are with Border Patrol, how this entanglement both encourages racial profiling and causes immigrant communities to distrust the police and how much time and how many resources these state, county and local law enforcement agencies are diverting away from the needs of the communities they serve.

This report set out Border Patrol's devastating impact on Michigan's immigrant communities, drawing a detailed picture based on the data, and it provides recommendations to reduce the tremendous harm of current practices. The report begins by summarizing the key findings and setting out the recommendations, followed by a discussion of Border Patrol's history, an explanation of the methodology used here and a detailed analysis of the data.

Key Findings

WHO THE BORDER PATROL TARGETS IN MICHIGAN:

Border Patrol engages in blatant racial profiling:

The agency uses “complexion codes” to describe people apprehended. Tellingly, more than 96% of those apprehended are recorded as being “Black,” “Dark Brown,” “Dark,” “Light Brown,” “Medium Brown,” “Medium,” or “Yellow.”¹

People of Latin American origin are the primary target:

Although people of Latin American origin comprise just 16.8% of the state's foreign-born population, 85% of noncitizens apprehended by Border Patrol were from Latin America. This troubling statistic is even more striking given the fact that the vast majority of people Border Patrol arrested entering without authorization or attempting to enter without authorization to the United States from Canada (more than 70%) were either citizens of Canada or originally from a European nation.

One-third of those stopped are U.S. citizens:

In the Border Patrol's daily apprehension logs we analyzed, more than 33% of individuals are U.S. citizens. An additional 12.88% of all noncitizens apprehended were found to have some kind of lawful status in the United States.

Long-term residents are being hurt:

Instead of following its mandate to patrol the Canadian border, Border Patrol is arresting people who, overwhelmingly, are established, long-term residents of Michigan. More than 81% of arrested noncitizens report a permanent residential address in the state of Michigan. The average length of residency since the last recorded date of entry was 7.36. The longest period of residency since the date of last entry reported was 26 years.

WHERE IT HAPPENS:

Border Patrol claims the authority to conduct warrantless searches anywhere in the state of Michigan:

Relying on outdated regulations, Border Patrol agents claim the authority to conduct warrantless vehicle searches within 100 miles of any international border or waterway. CBP claims that the entire state of Michigan falls within this 100-mile zone. CBP defines each of the Great Lakes as an international waterway, thus asserting the right to measure its 100-mile jurisdiction beginning at each lakeshore. For CBP, this includes Lake Michigan, even though it does not share a shoreline with Canada. As a result of its expansive interpretation of what constitutes the 100-mile zone, CBP claims that no place in Michigan is beyond its reach. In CBP's view, the entire state is open for Border Patrol agents to, as they write in their reports, go “[hunting](#).”

Border Patrol is not focused on the border: Although Border Patrol’s mandated mission is to patrol the border, the agency arrested only a miniscule number of people as they attempted to enter the United States from Canada. Only 1.3% of cases in the Border Patrol’s records involved people attempting to enter the United States without authorization from Canada. And two-thirds (66%) of arrests took place in municipalities and townships that do not share a shoreline with any international waterway.

WHAT LEADS TO ARREST:

Whatever people of color do when driving near a Border Patrol vehicle is used as a pretext to pull them over: In 76.9% of roving patrol arrests, an agent cites a person’s alleged reaction to seeing a marked Border Patrol agent or vehicle as a basis for suspicion. A close evaluation of narratives in the records shows that no matter how drivers of color react — whether they look at and acknowledge an agent, or do not look at or acknowledge an agent, or whether they speed up or slow down — that action is recorded as “suspicious” and is used to justify an investigatory vehicle stop.

Use of the Spanish language, and even a person’s “Hispanic” appearance, leads to investigation and arrest: In 19.2% of roving patrol and transit check arrests, the fact that a person is speaking Spanish or some other foreign language is used as the basis for establishing reasonable suspicion. An additional small but alarming 4.2% of records describe either a citizen complaint or a roving patrol stop that explicitly cites a person’s or a group of people’s appearance as “Hispanic” to be a basis for suspicion. In 26% of arrests initiated by another law enforcement agency, it was an officer’s perception that a person required “translation assistance” from Spanish into English that was cited as a basis for summoning Border Patrol.

WHO IS INVOLVED:

State and local law enforcement agencies play a key role in helping Border Patrol target people of color: Nearly half (48.6%) of Border Patrol apprehensions began with a state or local law enforcement agency initiating a traffic stop. Michigan State Police is, by far, responsible for initiating more contact with Border Patrol than any other police agency that results in people being detained and turned over to the federal agency’s custody. In fact, MSP contacts with Border Patrol make up 37.6% of all arrests that resulted from Border Patrol being contacted by another law enforcement agency. The next most prominent actor is the Macomb County Sheriff’s Office, which is responsible for 11.4% of what Border Patrol categorizes as “Other Agency” arrests, followed by the Detroit Police Department, which has 7.4% of such arrests.

The legitimacy of many state and local police traffic stops where people are handed over to Border Patrol is highly questionable: In a large number of cases involving local, county or state police agencies, no information is recorded to indicate whether the initial purpose of a stop (such as an alleged traffic violation) was actually followed up on — raising questions about why people were really being pulled over in the first place.

State and local police officers often detain passengers for Border Patrol, even though passengers aren’t violating traffic laws:

In 9.4% of traffic stops initiated by non-federal agencies, it was not the driver of a vehicle who was ultimately alleged to have violated U.S. immigration laws, but rather a passenger. This strongly suggests that state and local police officers are detaining drivers solely to allow Border Patrol to arrive and investigate the immigration status of passengers, and not for legitimate law enforcement purposes related to the driver’s alleged traffic violations.

WHEN THIS HAPPENED AND HOW IT HAS CHANGED OVER TIME:

The first years of the Trump administration brought a clear increase in the number of Border Patrol apprehensions: Although apprehensions first began ramping up in fiscal year 2015 and continued to increase through President Barack Obama’s final two years in office, the Trump administration accelerated the trend, with the annual number of apprehensions increasing 61% between fiscal years 2016 and 2018.

When comparing the Trump and Obama administrations, the most striking shift was the increasing proportion of arrests initiated directly by Border Patrol: Under President Donald Trump, there was a significant increase in the number and proportion of Border Patrol arrests initiated directly by the agency itself, rather than via a third-party law enforcement agency. Most significant were increases in arrests targeting specific individuals based on a previous encounter with Border Patrol, a citizen complaint or some other law enforcement intelligence — with these categories increasing from 22% of all Border Patrol-initiated arrests during the Obama administration to 45% under Trump.

The pace and proportion of people arrested entering the United States without authorization from Canada has fallen drastically: Already miniscule under the Obama administration, the percentage of people apprehended entering the country from Canada dropped from 1.9% of arrests under the Obama administration to only 0.6% under Trump.

The number of people apprehended at entry or within 72 hours of entry into the United States has dropped sharply: Under Obama, 2.9% of those apprehended were taken into custody within 72 hours of entering the United States. That figure fell to just 0.6% during the Trump era.

The percentage of noncitizens of Latin American origin apprehended increased under the Trump administration: During the Obama era, 81.9% of noncitizens apprehended by Border Patrol were from Latin America. Under the Trump administration, that number increased to 86.9%.

WHAT IT COSTS:

Families are being ripped apart: The records make clear that at least 33% of people identified as deportable have minor children who are U.S. citizens. The actual proportion is very likely higher, given that in 12% of cases the Border Patrol failed to note whether an arrested individual is a parent. Agents furthermore only record the official nationality of a minor child, not whether that child is a resident of the state of Michigan. With the help of state and local law enforcement agencies, Border Patrol targets long-standing residents for immigration enforcement, causing thousands of young Michiganders to grow up without one or both of their parents.

Detention and deportation carry significant financial burdens for targeted people and families: A Border Patrol arrest imposes significant financial burdens on individuals and their families, resulting from employment disruptions and the price of paying an immigration bond. These losses cause significant hardship for impacted families and result in less money circulating in the local economy.

Practices of racial profiling and pretextual stops undermine community trust and erode the legitimacy of both immigration enforcement and local policing: Border Patrol strays far from the border and targets long-term U.S. residents engaged in perfectly lawful activity. Similarly, local and state police undermine community trust by becoming entangled in federal immigration enforcement, particularly given their discriminatory targeting of people of Latin American origin.

Recommendations

As these findings make clear, and as set out in more detail in this report, Border Patrol's operations in Michigan are far removed from the border, result in widescale racial profiling and target long-term Michigan residents. Local and state law enforcement are complicit because they have become deeply entangled with Border Patrol.

Comprehensive reform on the federal, state and local level is necessary to: (1) fundamentally reform CBP and restrict Border Patrol enforcement to the immediate border; (2) dramatically reduce state and local entanglement with federal immigration officials, which leads to further racial profiling and the prolonged roadside detention of Michiganders; (3) end discriminatory policing practices; (4) restore access to driver's licenses for noncitizens; and (5) create and promote transparency and establish comprehensive data collection practices.

1. REFORM CUSTOMS AND BORDER PROTECTION OPERATIONS

Administrative, policy and staffing reforms: The Biden administration should commit to an immediate 50% reduction in the number of Border Patrol agents in the Detroit Sector to a total maximum of 200, and to working toward a further reduction in agents.

Set the reasonable distance from the border as a distance that is actually reasonable:

DHS should issue regulations to do the following:

Revise 8 C.F.R. § 287.1(a)(2) to limit the term “reasonable distance” in 8 U.S.C § 1357(a)(3) for Border Patrol agents to a specific, short distance from the border that considers factors such as population density, topography and other relevant factors when setting the “reasonable distance.”

Amend 8 C.F. R. § 287.1(a)(1) to define the term “external boundary” in 8 U.S.C § 1357(a)(3) to refer strictly to international land boundaries and to international land or ocean borders.

DHS should hold public meetings to obtain public input on what distance is reasonable, given population density, topography and other relevant factors, and thereafter to publicly announce what distances have been determined to be reasonable and why each sector and city within each sector.

Ensure any regulatory or policy changes addressing CBP jurisdiction considers the impact on residents living in northern and southern border states.

Fourth Amendment protections: DHS should ensure that all CBP officials uniformly comply with full Fourth Amendment standards, including within any delineated border zone, and including requiring reasonable suspicion for all searches or seizures of any railway car, aircraft, conveyance, or vehicle. Recognizing the unconstitutional nature of CBP’s claimed authority to ignore constitutional protections within the border zone, the new administration and DHS should also pursue statutory reform to clarify and limit CBP’s authority.

2. END STATE AND LOCAL ENTANGLEMENT WITH IMMIGRATION ENFORCEMENT

Prohibit entanglement:

State and local law enforcement agencies should adopt policies explicitly prohibiting employees from assisting, cooperating with or facilitating any federal agency in an immigration enforcement operation, except where legally required to do so by state or federal law or court order. Additionally, state and local law enforcement should reserve their resources for state and local needs by declining to provide federal immigration enforcement with access to those resources, including databases, property or equipment, and prohibiting the use of these resources, equipment or personnel to investigate suspected immigration law violations.

Translation services:

Ensure state and local law enforcement have access to internal or independent translation services and bar them, except in emergency circumstances when those services are not available, from contacting or utilizing federal immigration officers to provide translation services.

Status inquiries:

Foster community trust in state and local law enforcement by committing to “don’t ask policies” that prohibit requesting information about citizenship and immigration status, national origin or place of birth, except where the inquiry relates to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law or where required by state or federal law.

3. END DISCRIMINATORY POLICING PRACTICES

Fair and impartial federal policing: The U.S. Department of Justice should revise its guidance on the use of racial profiling by federal law enforcement to eliminate existing border and national security loopholes and prohibit profiling based on actual or perceived race, religion, national origin, sexual orientation or gender including gender identity and expression, and English proficiency, and instruct DHS to issue parallel guidance.

Fair and impartial state and local policing: State and local governments should pass anti-racial profiling legislation and state and local law enforcement agencies should adopt policies that explicitly prohibit the interrogation, arrest, detention or other law enforcement action against an individual based upon that individual's actual or perceived race, religion, national origin, sexual orientation or gender (including gender identity and expression), and English proficiency — unless such personal characteristics have been included in timely, relevant, credible information from a reliable source and are necessary to link a specific individual to a particular criminal event or activity. State and local law enforcement authorities should similarly prohibit interrogation, arrest, detention or other law enforcement action against an individual based upon that individual's perceived immigration status.

Anti-bias training: Federal, state and local law enforcement agencies should provide anti-bias trainings and adopt internal administrative protocols to ensure equal enforcement of the law and equal service to the public regardless of individual's actual or perceived race, religion, national origin, sexual orientation or gender (including gender identity and expression), and English proficiency.

4. RESTORE ACCESS TO DRIVER'S LICENSES

Driver's licenses for all:

Pass state legislation to provide eligibility for a state driver's license to all residents, regardless of citizenship or immigration status.

Training on foreign driver's licenses and identification:

Require law enforcement officers to complete training on legally acceptable forms of identification, including foreign driver's licenses and other identity documents.

5. CREATE AND PROMOTE TRANSPARENCY AND COMPREHENSIVE DATA COLLECTION

Expand documentation of federal immigration stops:

Require written documentation of all Border Patrol stops, including those that do not result in arrests, to include the basis for the stop and the citizenship, race, national origin, gender and age of each person stopped. Publish monthly incident data on all Border Patrol stops.

Expand data collection and require annual reporting by local and state law enforcement: Require comprehensive data collection by local and state law enforcement about the purpose of stops, the reason for any prolonged stop and the length of the stop. Make that data, and analysis of that data, available annually. Require annual reports documenting any state or local law enforcement collaboration, cooperation or assistance with federal immigration enforcement. Reports should, for each incident, identify where immigration officials were present and include information about the reason for the law enforcement officer's presence at the scene; the reason for the federal immigration official's presence at the scene; the initial reason for the stop; the date, time, length and location of the stop; the actions taken by the state or local law enforcement officer and by federal immigration officers; and the disposition of the stop.

History and Background

The U.S. Border Patrol has existed since 1924 and was historically a small agency charged with policing the United States' borders between designated ports of entry. However, the growth of the Border Patrol workforce over the past 26 years has been dramatic, from 4,287 agents in fiscal year 1994 to 19,648 active-duty agents deployed full time during fiscal year 2019. This growth is largely related to the 1994 launch of “prevention through deterrence,” a failed enforcement strategy along the United States' southwest border that has directly contributed to the death and disappearance of thousands of border crossers in remote desert areas.² Additionally, after Sept. 11, 2001, a significant portion of border agents were diverted to patrol the United States' border with Canada, whose status as the “world's longest undefended border” began to be imagined for the first time as a serious security vulnerability. As a result, since 2000 the number of agents in the Border Patrol's Detroit Sector has seen even more dramatic growth than that observed nationally, increasing from 35 agents in fiscal year 2000 to 404 agents in fiscal year 2019 — a 1,054% increase, which is by far the fastest rate of growth of any Border Patrol Sector in the country.³

On March 1, 2003, Border Patrol was folded into CBP as a component of the newly established Department of Homeland Security. Since its creation, appropriations for CBP have also grown massively, with the agency's annual budget ballooning from \$5.9 billion to nearly \$17 billion in less than two decades.⁴ As a result, CBP is now the largest federal law enforcement agency in the United States.⁵ In addition to the 20,000-some agents within its Border Patrol division, CBP employs nearly 25,000 officers who focus on the enforcement of customs and immigration laws at designated ports of entry.⁶

CBP claims authority under a federal statute — 8 U.S.C. §1357 — to conduct warrantless searches within a “reasonable distance” of the border.⁷ This policy originated in a statutory change to the Immigration and Nationality Act (INA) passed in 1946⁸ and a federal regulation interpreting that change issued in 1953 with little deliberation or review.⁹ Those outdated regulations define “reasonable distance” to be “100 air miles”¹⁰ from any external boundary, including coastal boundaries, unless an agency official sets a shorter distance.¹¹ The agency is supposed to determine the “reasonable distance” by considering local factors, such as “topography, confluence of arteries of transportation leading from external boundaries, density of population, possible inconvenience to the traveling public, types of conveyances used, and reliable information as to movements of persons effecting illegal entry into the United States.”¹² In practice, the agency uses 100 miles as a default and has failed to consider whether 100 miles is reasonable in places such as Detroit, where a major city is adjacent to an international border.

As a result, two-thirds of the U.S. population, or approximately 200 million people, are potentially subject to investigatory detention and warrantless searches by CBP.¹³ Most of the 10 largest U.S. cities fall within the 100-mile zone, and several states lie entirely within this area, including Connecticut, Delaware, Florida, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island and Vermont.¹⁴ A map obtained by the ACLU of Michigan from Border Patrol (see Figure 2) shows that CBP considers the entire state of Michigan to be within the 100-mile zone.

Relying on CBP's expansive interpretations of the statute and regulations, Border Patrol conducts operations far removed from the border. As this report shows, Border Patrol now routinely stops, searches and arrests people in Michigan, including U.S. citizens and permanent residents, in encounters that are unrelated to border enforcement.

Border Patrol's abuses are not new.¹⁵ For example, in January 2013, following extensive FOIA litigation, Families for Freedom and New York University issued a report disclosing a “bonus program” for U.S. Border Patrol (USBP) agents and the widespread practice of arresting lawfully present individuals.¹⁶ The report notes:

The documents show that USBP agents act on the assumption that no matter where they operate within the United States, they may arrest any noncitizen — whether a tourist or a long-term legal resident with a driver's license — whenever that person is not carrying detailed documentation that provided proof of status. But USBP's records also show that the agents are not genuinely interested in what documents the law might require noncitizens to carry. Instead, USBP's demand for “papers” is universal, resulting in an enforcement culture that maximizes arrest rates.¹⁷

A prior report, *Justice Derailed*, issued in 2011 by the New York Civil Liberties Union and based on the same FOIA request, examined thousands of Border Patrol stops aboard public transportation in upstate New York.¹⁸ The vast majority of those stops did not target individuals who recently crossed the border and, in fact, occurred far from the border, with only 1% of stops resulting in initiation of removal proceedings. Many stops involved clear violations of agency arrest guidelines, including improper reliance on race as a basis for questioning passengers and arrests of lawfully present individuals.¹⁹

The analysis in this report expands on this previous research. But this report also, for the first time, reveals in detail how far Border Patrol has strayed from its official mission along the northern U.S. border and how police agencies across Michigan feed long-term Michigan residents into Border Patrol's deportation machine.

The report also outlines the threats to civil liberties that have resulted and the extent to which people of Latin American origin are targeted through racial profiling by Border Patrol and state and local police.

U.S. border communities fear contact with Border Patrol not only because it can lead to deportation and separation of families, but also because Border Patrol is one of the most abusive federal agencies in the United States.²⁰ The rapid growth of the agency has contributed to the problem. In order to facilitate a hiring surge that began in 2006, when the agency again undertook to nearly double the number of agents it employed, Border Patrol lowered its admission and training standards. This included eliminating the need for a high school diploma and deploying agents to the field without first completing a background check.²¹

Border Patrol has a well-documented record of abuse, including cases involving physical, sexual and verbal abuse. In the last decade, at least 102 people have died as a result of encounters with Border Patrol, including six deaths that were caused by Border Patrol agents shooting across the border into Mexico.²² Since its inception, no Border Patrol agent has ever been convicted for this kind of criminal misconduct while on duty, despite deaths in custody and uses of excessive, deadly force.²³

Obtaining the Data and Methodology

The ACLU of Michigan, in concert with the Michigan Immigrant Rights Center and two scholars, Dr. Geoffrey Alan Boyce (Earlham College) and Dr. Elizabeth Oglesby (University of Arizona), filed a FOIA request on May 21, 2015, in order to learn more about Border Patrol's operations in the Detroit Sector. That sector includes the entire state of Michigan, as well as northeast Ohio proximate to Lake Erie. Agents in the Detroit Sector deploy from five separate stations: three in southeast Michigan (Marysville, Detroit and Gibraltar), one in the Upper Peninsula (Sault Ste. Marie) and one in Port Clinton, Ohio.

Despite FOIA's requirement that federal agencies respond to proper records requests within 20 days, more than 18 months later CBP had produced only four spreadsheets. As a result, the legal team filed a federal lawsuit in the Eastern District of Michigan on November Nov. 30, 2016.²⁴ After exhaustive litigation resulting in numerous court orders, the team finally succeeded in prying documents out of the agency. The legal team also successfully challenged impermissible redactions and withholding of key information that CBP initially claimed was exempt under FOIA. The last documents were finally provided in March 2020, almost five years after the FOIA request was made.

Several categories of records were analyzed:

Apprehension logs.

First, the documents obtained include a total of 13,239 daily apprehension log records for the Detroit Sector as a whole, which are comprehensive for fiscal years 2012 to 2018 and continue through June 30 of fiscal year 2019.²⁵ They include basic demographic data about the individuals apprehended, including their age, nationality, the amount of time they have resided in the United States, their most recent manner of entry into the country and the method by which they were arrested. The daily apprehension logs also include a field of data marked "complexion." These records span the entirety of Obama's second term in office and the first two and a half years of the Trump administration.

I-213s and I-44s.

The second category of data obtained from CBP and analyzed for this report involves a random sample of 738 Form I-213 "Records of Deportable/ Inadmissible Alien"²⁶ and 67 Form I-44 "Reports of Apprehension or Seizure." The Form I-213 is a document that individual Border Patrol agents complete when they arrest a noncitizen based on an alleged immigration violation. Form I-44 is a document that is used when an agent processes a U.S. citizen or nondeportable noncitizen for some other violation of the law, or when an agent seizes a person's property (for example, if a U.S. citizen is found in possession of controlled substances). The sample of I-213 records

corresponds to 16.5% of the 4,451 deportable noncitizens arrested from the beginning of fiscal year 2012 to July 31 of fiscal year 2017.²⁷ Because of the small sample size, I-44 records are analyzed principally to obtain insight into the circumstances surrounding the arrest of U.S. citizens. Together, these records provide a much greater range and detail of information than that found in the Border Patrol's daily apprehension logs. However, they provide just an individual Border Patrol agent's version of an encounter, and there are documented reports of agents including erroneous information in I-213s in order to undermine individuals' immigration cases.²⁸

Nevertheless, these records can begin to provide a picture of Border Patrol's activities because they include additional demographic information about a person's location of residency and history of employment in the United States, the timing and location of the most recent entry into the country (when applicable) and additional information about the location and manner of apprehension or arrest, including the law enforcement agencies throughout Michigan that may have been involved in initially detaining a person and then contacting or transferring custody to Border Patrol for the purpose of an immigration investigation. In addition, both I-213 and I-44 records provide a narrative description about the circumstances of each enforcement incident, including the nature of an initial stop, the evidentiary basis for this stop, when local or state police initiated a detention, the reason provided to Border Patrol for seeking the agency's assistance, the number of people arrested (with a single incident often resulting in multiple arrests) and the evidentiary basis for then undertaking this arrest. In short, I-213 records provide an account including the who, what, when, where, why and how for every person Border Patrol arrests and who is subsequently accused of violating U.S. immigration law; I-44 records provide a similar narrative account whenever Border Patrol seizes property or processes a U.S. citizen or a nondeportable noncitizen.

The analysis in this report is primarily based on data drawn from the daily apprehension logs and I-213 documents. Information included in the daily apprehension logs does not make it possible to differentiate apprehensions that took place in the state of Michigan from those that took place in Ohio. I-213 records were each coded according to a set of criteria of interest, and this information was then entered into a spreadsheet by which these criteria could be tracked and measured. For our analysis, we focused on a subsample of 469 I-213 records documenting arrests that took place in Michigan (the other 269 I-213 records pertain to arrests in Ohio).

Policy documents:

The third category of records analyzed involve internal policy documents used to define the Border Patrol's jurisdiction and to provide guidance to rank-and-file agents in the field. These documents, some of which are included throughout the report, help shed light on the internal workings of the Border Patrol's activity in Michigan.

Collectively, the records provide the most comprehensive public insight yet into how the Border Patrol operates in communities throughout the United States that fall within its 100-mile jurisdiction, but that are geographically distant from the much more closely scrutinized southwest border with Mexico. The enforcement practices revealed in the records raise significant concerns about Border Patrol's treatment of U.S. citizens and noncitizens alike.

The documents obtained through the Michigan Immigrant Rights Center v. DHS litigation, which are the basis of this report, are available online at www.aclumich.org/en/publications/borders-long-shadow

Border Patrol's Failure To Be Transparent or Accountable

The conclusions in this report are necessarily limited by Border Patrol's failure to follow basic law enforcement record-keeping practices around documenting stops and its refusal to make those records that do exist available to the public.

Important information is missing because Border Patrol fails to document many of its activities. For example, while the apprehension logs show that 33% of those apprehended are U.S. citizens, Border Patrol does not complete I-213 forms for U.S. citizens, and it has systematically failed to track the complexion data for most U.S. citizens in its apprehension logs. What's more, the agency does not complete an I-44 for any U.S. citizen it apprehends, where the agency then declines to arrest, transfer to the custody of another law enforcement agency or to take additional enforcement action against that citizen. A great deal of information about those U.S. citizens apprehended by Border Patrol is therefore missing from the documents provided. For example, it was not possible to analyze the extent to which those U.S. citizens targeted by Border Patrol are people of color or people of Latin American origin.

Although CBP is the nation's largest law enforcement agency, it fails to publish basic data about stops and encounters.²⁹ As seen in Table 1, public reporting by the Border Patrol's Detroit Sector of its aggregate annual apprehension data is partial and incomplete, recording only those apprehensions of noncitizens that the agency ultimately determines to be deportable.³⁰ Timely access to accurate and complete information about the agency's actions is critical for accountability and reform, which is why such information should be made available to the public as a matter of course.

Unfortunately, it took years of litigation to obtain the documents underlying this report. And even then, the ACLU of Michigan was only able to obtain a portion of the total I-213 records. The limited sample makes it more difficult to draw conclusions about interactions between Border Patrol and smaller local law enforcement agencies. And of course, the fact that it took years to obtain the records through FOIA litigation means that some of the records are now several years old. Through the Freedom of Information Act and the federal courts, it was possible to obtain the documents that allowed this report to be written. But that is no substitute for basic agency information disclosures that should be taking place as a matter of course.

Fiscal Year	Publicly Reported Number of Apprehensions	Internal Numbers from Daily Apprehension Logs	Unreported Apprehensions of Nondeportable Individuals
2012	950	1,525	575
2013	650	1,104	454
2014	647	1,120	473
2015	637	1,476	839
2016	716	1,728	1,012
2017	1,070	2,103	1,033
2018	1,930	2,784	854
TOTAL	6,600	11,840	5,240

Table 1: Discrepancy between the number of publicly reported apprehensions and those recorded in the Detroit Sector's daily apprehension logs. Numbers for fiscal year 2019 are not included because only partial daily apprehension log records were released to the ACLU for that year.

CBP’s lack of transparency leads to a related problem — lack of accountability. Concerns about the Border Patrol’s parent agency, CBP, were recently highlighted in a letter by a coalition that included the ACLU. The letter sent to the National Archives and Records Administration, objecting to a CBP request for permission to begin destroying certain records. In part, that letter asserted that:

Despite its relatively recent creation, CBP has already amassed a disturbing record of abuse and misconduct, as well as a deep-rooted culture of impunity. Compounding the problem, accountability mechanisms have utterly failed to keep pace with CBP’s rapid expansion and massive workforce.

Indeed, a volume of evidence shows that CBP’s devised accountability mechanisms have not, in fact, held it accountable for abuse and misconduct. The accountability mechanisms are also shrouded in secrecy. Though a Cato Institute study found strong evidence of CBP’s misconduct and disciplinary infractions between 2006 to 2016, it was ‘virtually impossible to assess the extent of corruption or misconduct in U.S. Customs and Border Protection ... because most publicly available information [was] incomplete or inconsistent.’³¹

CBP has implemented few accountability measures, seemingly by design, as there has never been significant oversight or review of its daily activities. Border Patrol abuses are exacerbated by a persistent lack of transparency within DHS, as well as by the inadequacy of existing training, oversight and accountability mechanisms. Of the data that has been available for review, a 2017 report found that CBP took no action in over 95% of complaints of abuse against its agents.³² Despite specific recommendations by an independent advisory panel that CBP implement significant changes, the agency has largely ignored the recommendations.³³

The Untold Story of Border Patrol in Michigan

WHO: BORDER PATROL IS TARGETING LATINOS, ENGAGING IN RACIAL PROFILING AND APPREHENDING U.S. CITIZENS

The evidence shows that Border Patrol agents routinely target people based on the color of their skin. In fact, Border Patrol made it easy to quantify how commonly it targets people of color. As noted previously, and as the chart below indicates, agents record the skin tone of people who are not citizens in their reports. The results, though not surprising given the anecdotal stories immigrant communities have shared for decades, provide statistical proof that Border Patrol overwhelmingly targets people of color.

Complexion Codes

Complexion as of 12/23/15

Complexion	Description
ALB	ALBINO
BLK	BLACK
DBR	DARK BROWN
DRK	DARK
FAR	FAIR
LBR	LIGHT BROWN
LGT	LIGHT
MBR	MEDIUM BROWN
MED	MEDIUM
OLV	OLIVE
RUD	RUDDY
SAL	SALLOW
YEL	YELLOW

Figure 1: *Chart used by Border Patrol to document the skin tone of people agents apprehend.*

Our analysis of the complexion field shows that 96.2% of individuals arrested by Detroit Sector personnel have a complexion recorded as being “Black,” “Dark Brown,” “Dark,” “Light Brown,” “Medium Brown,” “Medium,” or “Yellow.” Only 3.7% of those arrested have a complexion recorded as “Fair” or “Light.” However, among roving patrol and transit check stops (stops that result from agents monitoring the general public along roadways or in transit centers), the proportion is smaller still — with only 1.5% of cases (or 2 out of 130 relevant I-213 records) involving a person recorded as having a “Light” complexion, while the other 98% of records involved people recorded as having a “Medium” or “Medium Brown” complexion.

PEOPLE OF LATIN AMERICAN ORIGIN ARE THE PRIMARY TARGET

I-213 records reveal that arrests initiated directly by Border Patrol overwhelmingly concentrate on people of Latin American origin. Although people who describe themselves as being of Hispanic ethnicity comprise just 5.3% of Michigan’s overall population, and people of Latin American origin comprise just 16.8% of the state’s foreign-born population,³⁴ 83.8% of all noncitizens initially arrested by Border Patrol in the state of Michigan are originally from Latin America. This reveals that Border Patrol is disproportionately focused on one particular ethnic community.

Border Patrol’s mission in Michigan is to police the United States’ border with Canada. Yet daily apprehension log data shows that only 1.3% of those the agency arrested initially entered the United States without authorization from Canada. Moreover, among those arrested while entering the United States without authorization from Canada, 50.2% were Canadian citizens, 20.5% were nationals of a European country and 2.2% were citizens of the United States; only 19.4% were individuals of Latin American origin. In other words, although the vast majority of people trying to enter Michigan without authorization are from either Canada, the United States or a European country, Border Patrol targets its enforcement efforts on people of color who did not enter the United States from Canada. As will be discussed, when Border Patrol initially encounters these latter individuals, an overwhelming majority are engaged in perfectly routine and lawful activity.

The Lives Behind the Data **Broken English and Furtive Glances**

While getting breakfast at a McDonald’s in Brownstown Township in March 2014, a uniformed U.S. Border Patrol agent whose shift had just ended watched as five men speaking “broken English” placed their orders. While they sat and ate, the men reportedly cast “furtive glances” in the agent’s direction. Based on that and their limited English, the agent — whose job is supposed to be patrolling the U.S.-Canadian border — approached the men as they left the restaurant and began to question them, first in English and then in Spanish. When they could not produce documents showing they were allowed to be in the United States, the agent called for backup, and all five men were arrested.

Source:
[*Border Patrol apprehension report, March 19, 2014*](#)

LONG-TERM RESIDENTS ARE BEING HURT

Rather than focus on recent Canadian border crossers, the data shows that most of the people Border Patrol arrests are long-term residents of the state of Michigan. Indeed, more than 81% of people arrested who are not U.S. citizens report a permanent residential address in Michigan, while 13.4% report a permanent residential location elsewhere in the United States — meaning that only 5.6% lack a permanent U.S. residence. For 1,029 daily apprehension log records involving noncitizens, the data field for time in the United States is left blank. Of the 7,785 remaining records, 83.4% individuals are recorded as having lived in the United States for longer than one year, while an additional 11.5% are recorded as having been in the country from one month to one year. Only 1.9% of those apprehended are reported to have first been detained “at entry” or “within 72 hours” of entry to the United States.³⁵ The average length of residency in the United States since the last recorded date of entry for all arrested noncitizens was 7.36 years, while the longest period of residency since the date of last entry was reported as 26 years. This means that a large majority of the noncitizens that Border Patrol arrested have been in the United States long enough to plant roots here, become a part of their local communities, get married and raise a family.

The Lives Behind the Data **Tearing Families Apart**

On a February morning in 2017, a Michigan State Police trooper conducting a traffic stop in Monroe requested assistance from U.S. Border Patrol, saying neither the driver nor his passenger spoke English. Two Border Patrol agents, driving separate vehicles, were dispatched to the scene. It took about 30 minutes for them to arrive. After being questioned, one of the men, described as a 49-year-old laborer, said he’d been living in the United States for the nearly 15 years doing drywall and factory work. He lived in Detroit with his son, a U.S. citizen. He was taken into custody. As his deportation process began, he faced the very real fear he’d be permanently torn from his son’s life.

Source:
[*Border Patrol apprehension report, Feb. 8, 2017*](#)

ONE-THIRD OF THOSE STOPPED ARE U.S. CITIZENS

More than 33% of individuals included in the daily apprehension logs are U.S. citizens (involving a total of 4,425 people). 78% of the U.S. citizens apprehended were recorded as being male, while the other 21% were recorded as female. Only 0.2% of the U.S. citizens apprehended are recorded as having any criminal record. Almost three-quarters (73%) of these apprehensions were initiated by the Border Patrol, while the other 27% were initiated by another law enforcement agency.

Unfortunately, more detailed information about the race, ethnicity or birthplace of U.S. citizens apprehended by Detroit Sector personnel is not available, due to CBP's systemic lack of transparency to adequately document its apprehension and arrest of U.S. citizens. For example, CBP does not complete an I-213 record when it apprehends a U.S. citizen. Meanwhile, cases involving U.S. citizens account for only 11 of the 67 I-44 records released by CBP, and this sample of I-44 records is too small to arrive at any robust statistical conclusions about broader patterns of enforcement. In addition, I-44s are completed for a U.S. citizen only if Border Patrol chooses to arrest that individual, to transfer the person to the custody of another local or state law enforcement agency, or to seize property. This means that an I-44 is not completed if people are apprehended, determined to be U.S. citizens and then allowed to continue on their way. Given the small number and proportion of I-44s involving a U.S. citizen (especially when compared to the much more significant representation of U.S. citizens in the Border Patrol's daily apprehension logs), we can confidently assume that this latter circumstance describes a large majority of the cases involving the Border Patrol's apprehension of a U.S. citizen.

The fact that one-third of those whom Border Patrol apprehends are citizens of the United States strongly suggests that agents frequently stop people without any substantive reason to believe they are violating either U.S. immigration or customs law. The high rate of U.S. citizen apprehensions, coupled with the data on the hugely disproportionate number of noncitizens arrested who are of Latin American origin, strongly suggests that many Border Patrol stops are based on race and ethnicity — not any evidence of unlawful presence or activity.

The evidence suggests a similar conclusion about state and local law enforcement's entanglement with Border Patrol and reveals the dangers of these kinds of enforcement practices and relationships. For example, state and local law enforcement officers are not trained to understand immigration law, which can be complex and lead law enforcement officers to make erroneous assumptions and/or conclusions about a person's citizenship status.

The fact that state and local law enforcement called Border Patrol agents to investigate more than 1,100 U.S. citizens suggests that these referrals were made based on assumptions about a person's citizenship that were based on that person's race, ethnicity or language abilities, rather than on any evidence that the person was in violation of immigration law.

ACLU of Michigan client TB was driving his employer's van through Livonia on Feb. 8, 2011, when he was pulled over by an MSP officer for allegedly running a red light. Mr. TB presented a valid chauffeur's license to the MSP officer. The officer began asking Mr. TB questions about his immigration status. Mr. TB explained that he was a U.S. citizen and the MSP officer threatened to "kick [Mr. TB's] butt" if he was lying. The officer then laughed, said he would check Mr. TB's status and left to his vehicle. After some time, the officer returned and ordered Mr. TB to get out of the car, told him he was getting deported and placed him in handcuffs. The officer called a towing company and had Mr. TB's vehicle towed. The officer drove Mr. TB to another location and continued to interrogate him about his immigration status. Time and time again, Mr. TB reiterated that he was a U.S. citizen and even offered to provide more documentation. Shortly after the MSP officer brought Mr. TB to the second location, an agent from Border Patrol arrived. The MSP officer left and did not issue a traffic ticket. The Border Patrol agent determined that Mr. TB was, in fact, a U.S. citizen and then drove him to the towing company, where Mr. TB had to pay \$105 to retrieve the company van.

WHERE DOES THIS HAPPEN: BORDER PATROL IS OPERATING FAR FROM THE BORDER

Given the demographic profile of those arrested, one of the most urgent questions begging analysis is: To what degree do Border Patrol's practices actually correspond to its stated mandate of policing the border? The data shows clearly that they do not.

CBP defines each of the Great Lakes as an international waterway, thus asserting the right to measure its 100-air mile jurisdiction beginning at each lakeshore. Border Patrol therefore claims that the entire state of Michigan falls within the 100-mile zone. For CBP, this includes Lake Michigan, even though this lake does not share a shoreline with Canada.

Reflecting this view, arrests by the agency are not limited to the border itself (or to the shoreline of those waterways that throughout the state of Michigan mark the international border), but instead are distributed throughout the state as a whole, including places such as Evergreen Township, Gaylord, Mt. Pleasant, Shelby, Traverse City or Escanaba, each of which is more than 100 miles from any international border crossing.

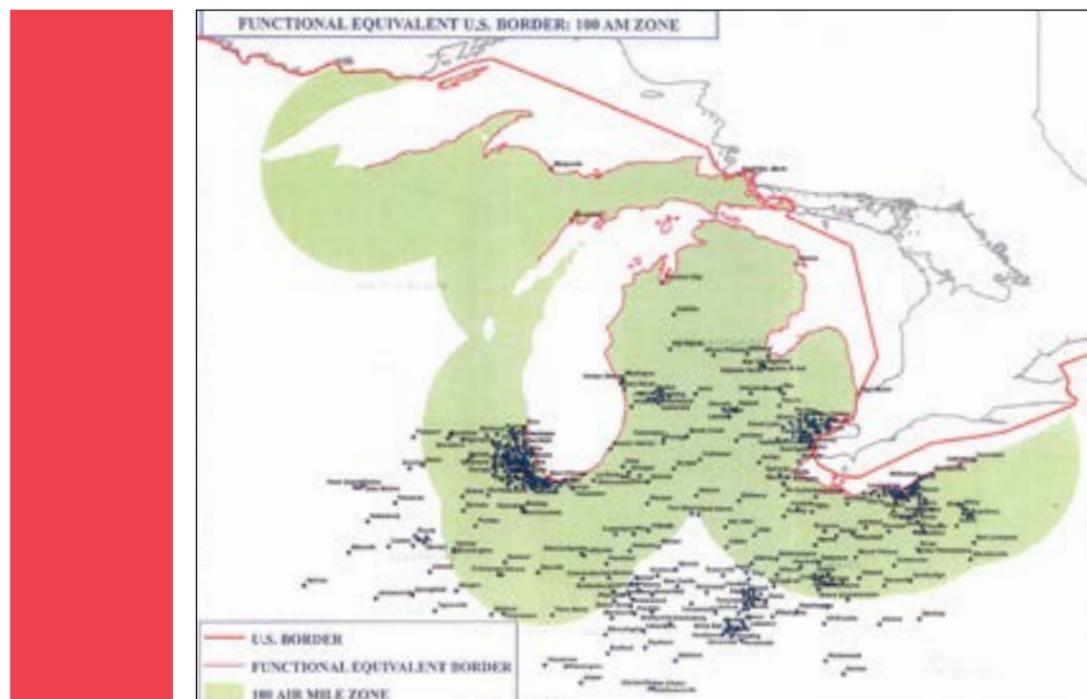


Figure 2:
U.S. Border Patrol's representation of its perceived jurisdiction within the agency's Detroit Sector.

To understand how Border Patrol's activities have become so divorced from the agency's stated mission requires knowing where enforcement activities concentrate. Yet the location of enforcement activity became one of the major sticking points in our FOIA efforts. Initially, CBP categorized this information as "law enforcement sensitive" and redacted all locational information in the records provided. Eventually, through litigation, the government agreed to reveal the names of cities and townships where enforcement activity occurred but would not provide any more specific details (such as cross streets or addresses).

Based on our analysis of the agency's I-213 records, we found that two-thirds (66%) of Michigan arrests took place in municipalities and townships that do not share a shoreline with any international waterway. In fact, the average distance from an international waterway per arrest incident is **10.86 miles**, whereas if we take an even more conservative approach and focus only on those waterways that serve as a natural border crossing point (Lake Nicolet, the St. Marys River, Munuscong Lake, the St. Clair River, Lake St. Clair and the Detroit River), the average distance per arrest incident grows to **15.77 miles**.³⁶ Figure 3 shows the distribution and concentration of Border Patrol's arrests across the state of Michigan, represented according to municipal location.

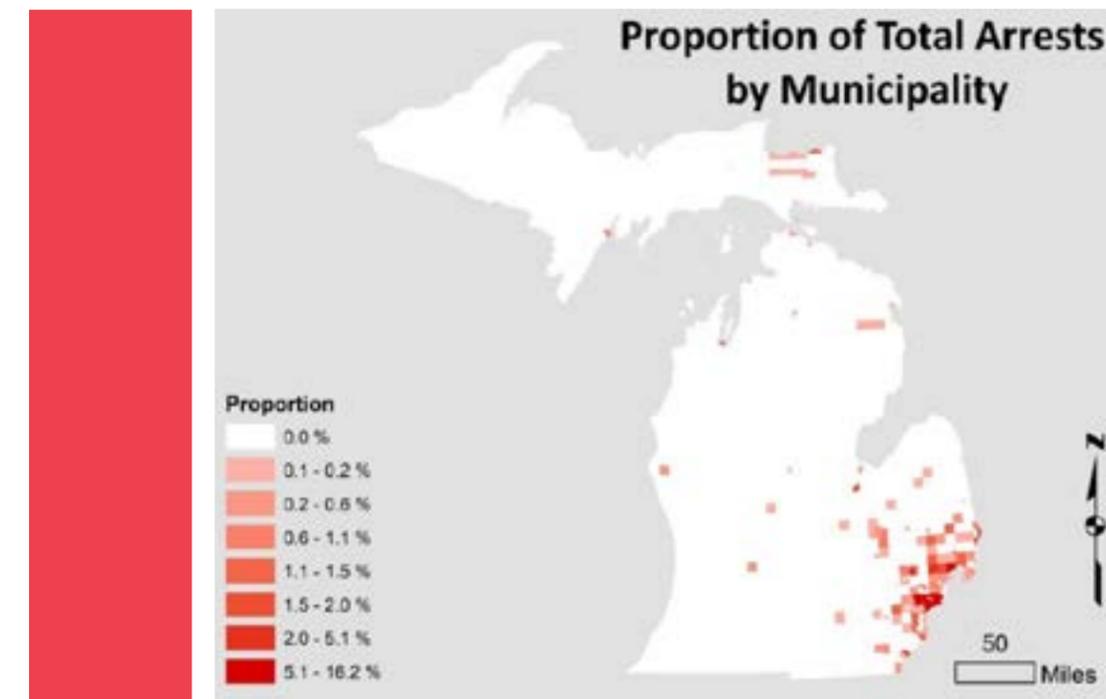


Figure 3:
Border Patrol arrests by municipality across the state of Michigan. The data reflects a sample of only 16.5% of all I-213 arrest records from 2011 to 2017.

To put these findings into perspective, consider that some 2.76 million Michiganders live within 10 miles of an international waterway—or 27.8% of the state’s entire population, according to geospatial analysis of census block group data generated by the U.S. Census Bureau. The area of highest population density in Michigan is the Detroit metropolitan area, comprised of Wayne, Macomb and Oakland counties. This metro area has a population of 3.8 million people and shares a southern and eastern border with Canada. The distance between the Detroit River (the closest international waterway) and cities such as Ferndale or Hazel Park (in the southeast corner of Oakland County) is about 10 miles. About 60% of Border Patrol arrest incidents fall in the metro area, meaning that Border Patrol arrests largely follow overall population trends in the state of Michigan (see Figure 3). But even in the metro area, most arrests still are not immediately proximate to any international waterway; on average, they are about as distant from any international waterway as is Oakland County.

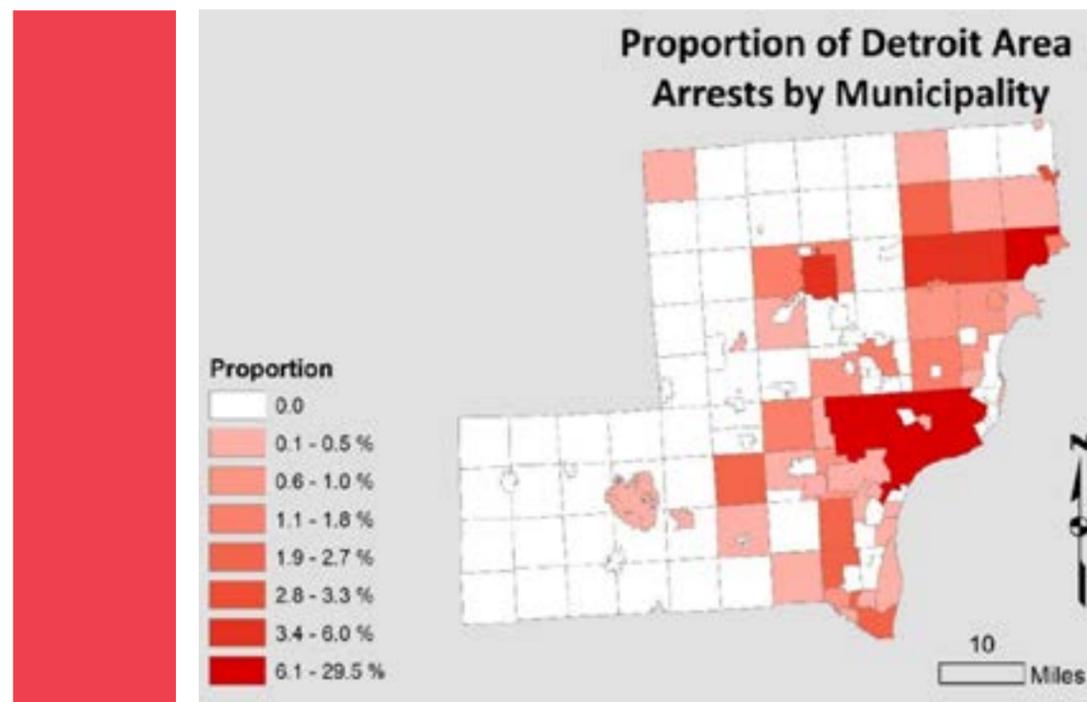


Figure 4: Border Patrol arrests by municipality across the Detroit metropolitan area, including Macomb, Oakland, Washtenaw and Wayne counties.

Table 2 places this issue in sharper relief, showing how far municipalities with at least one Border Patrol arrest incident are from an international waterway.

Municipal Location of Arrest	County	Miles from International Waterway	Miles from Closest Natural Lake/River Crossing	Miles from Closest Port of Entry
Shelby	Oceana	119.71	187.58	186.62
Traverse City	Grand Traverse	82.73	117.76	135.05
Evergreen Township	Montcalm	62.20	117.85	117.13
Grass Lake	Jackson	50.58	54.31	56.96
Escanaba	Delta	49.95	133.05	140.12
Fenton	Genesee	47.48	48.04	49.03
Grand Blanc Township	Genesee	45.47	45.94	50.84
Grand Blanc	Genesee	44.64	45.12	49.05
Gaylord	Otsego	43.20	76.76	103.88
Holly	Oakland	42.89	43.40	45.32
Charlevoix	Charlevoix	42.79	78.46	94.26
Mt. Pleasant	Isabella	42.32	119.04	123.21
Burton	Genesee	42.15	47.61	54.63
Flint Township	Genesee	41.48	54.90	59.47
Flint	Genesee	40.13	51.82	58.14
Lapeer	Lapeer	38.01	37.93	45.38
Mt. Morris	Genesee	35.42	57.26	64.07
Mt. Morris Township	Genesee	33.58	55.60	63.91
Clarkston	Oakland	32.20	32.56	32.17
Petoskey	Emmet	30.31	65.72	83.93
Ann Arbor	Washtenaw	30.22	30.97	32.81
Clio	Genesee	29.49	59.54	66.88
Imlay City	Lapeer	29.04	28.75	32.81
Waterford	Oakland	27.64	27.76	28.69
Dryden	Lapeer	26.75	26.58	37.50
Walled Lake	Oakland	25.29	25.96	25.68
Millington	Tuscola	25.01	55.84	57.92
Kingston	Tuscola	24.39	49.39	48.77
Capac	St. Clair	23.68	25.10	25.40
Almont	Lapeer	23.47	23.08	31.53
Ypsilanti	Washtenaw	23.40	25.11	28.22
Pontiac	Oakland	22.81	22.76	25.59
West Bloomfield Twp	Oakland	22.51	22.86	22.48
Auburn Hills	Oakland	21.11	20.90	25.65

Table 2. Locations with recorded border enforcement activity more than 20 miles from the border.

Meanwhile, Figure 5 offers a visual breakdown of the proportion of Border Patrol arrests, according to their distance from any international waterway.

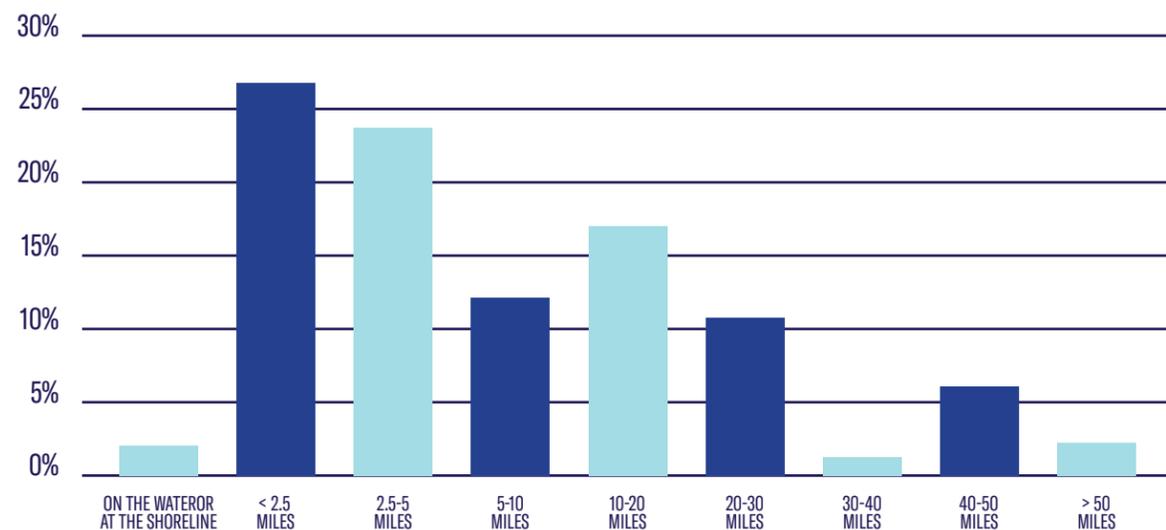


Figure 5: Proportion of Border Patrol arrests according to distance from international shoreline.

If the Border Patrol is not arresting people who are actively entering the United States without authorization from Canada — and if much of the agency’s border enforcement activity does not focus on areas adjacent to an international waterway — how do agents make decisions about whom to detain, investigate and/or arrest? Data on the method of arrest, the nationality and complexion of arrestees and the articulated basis for initiating an investigatory stop and/or a subsequent immigration arrest all shed light on this question. We will begin our discussion with an examination of apprehensions and arrests directly initiated by a Border Patrol agent, before then examining the impact of local and state law enforcement toward driving additional, identifiable patterns of arrest.

WHAT LEADS TO ARREST: WHATEVER PEOPLE OF COLOR DO WHEN NEAR A BORDER PATROL VEHICLE IS USED AS A PRETEXT TO PULL THEM OVER

For a Border Patrol agent to detain somebody for the purpose of undertaking an immigration investigation, the agent must establish “reasonable suspicion” that a person may be in the United States unlawfully. The reasons recorded in I-213 records for establishing this reasonable suspicion suggest routine and widespread racial profiling. In 19.2% of roving patrol and transit check arrests, the fact that a person is speaking Spanish or some other foreign language is used as the basis for establishing reasonable suspicion. An additional small but alarming 4.2% of records describe either a citizen complaint or a roving patrol stop that explicitly cites a person’s or a group of people’s appearance as “Hispanic” to be a basis for suspicion.³⁷

The Lives Behind the Data Don’t Look to the Side, Don’t Look Straight Ahead

In May 2016, two people in a white van being driven in the Detroit area caught the attention of a pair of U.S. Border Patrol agents in a marked patrol vehicle. A third person, unseen by the agents, was in the rear of the van. In their report, the agents noted that “both subjects were sitting rigid in their seats, staring straight ahead through the windshield.” That boilerplate explanation, along with their claim that it “is a well-known fact amongst agents ... that there is a large population of illegal aliens in Detroit,” was enough to prompt the agents to “take a closer look.” As the agents caught up to the vehicle, it “slowed drastically.” When the agents pulled alongside the van, the driver, a U.S. citizen, “appeared to be gripping the wheel tightly.” Neither the driver nor the front-seat passenger “looked at the agents.” Based on those reactions, Border Patrol agents pulled the van over and began asking questions. The front-seat passenger, a 25-year-old native of Mexico, came to the United States at the age of 9 and had been living in the country for the previous 16 years. Both the driver and the person riding in the back of the van were U.S. citizens heading to a construction job. They were allowed to continue on their way. Their friend was taken into custody.

Source:
Border Patrol apprehension report, May 13, 2016

In 76.9% of records, a Border Patrol agent cites a person’s alleged reaction to seeing a marked Border Patrol agent or vehicle as a basis for suspicion. The records often use boilerplate language to describe these reactions; for example, 40% of I-213 roving patrol records describe Border Patrol

establishing reasonable suspicion by using identical language that describes a subject or subjects looking at the road while driving (e.g., “staring straight ahead” and/or “sitting rigid”) upon passing a uniformed Border Patrol agent; other records cite a person having looked at or acknowledged an agent as a basis of suspicion.³⁸ In other words, either looking at an agent or not looking at an agent can be viewed as suspicious. In 37% of records, a vehicle traveling below the posted speed limit or a driver either measurably speeding up or reducing speed upon passing a marked Border Patrol vehicle is seen as a basis for suspicion.³⁹

The message this data sends is disturbingly clear: If you are a person of color, any reaction to the sight of a Border Patrol vehicle can be deemed “suspicious” and used to justify a traffic stop.

In an additional 33% of roving patrol stops, Border Patrol agents cite some fact about a vehicle as a basis for suspicion. Most often this involves the residential area associated with a vehicle registration. Sometimes the issue flagged as suspicious is simply that the registration is out-of-state. Other times, when the vehicle has in-state registration, Border Patrol agents state that “it is a well-known fact among agents at the [redacted] Station that there is a large population of illegal aliens in [City].” This appears to be templated language, as the exact language is used repeatedly in records, with the “City” being listed at various times as “Detroit,” “Pontiac,” “Auburn Hills,” “Imlay City” or just the catch-all “the Detroit area.” In other instances, agents establish suspicion simply by citing the fact that a vehicle is registered to a woman.

It is common practice for undocumented immigrants in the State of Michigan to register their work vehicles under female names as they are harder to identify as being undocumented because of marital name changes.

Agent [REDACTED] also found this to be of interest as he knew that it was common practice for undocumented immigrants in Michigan to register their work vehicles in their female counterparts names as it is more difficult to [REDACTED] on females due to name changes.

Detroit, MI and that it was not reported stolen. It is common knowledge to Border Patrol Agents that there is a large population of illegal aliens in Detroit. BPA [REDACTED] has

It is common knowledge amongst agents at the [REDACTED] Station that there is a large population of illegal aliens in the Auburn Hills and Pontiac area.

At approximately 10:45 am a grey Chevrolet pickup truck passed the agents location. As the vehicle passed, the agents noticed that the driver appeared and front seat passenger were sitting rigid in their seats, staring straight ahead through the windshield. The vehicle

At approximately 3:10 PM a white van with [REDACTED] marked on the side passed the agents' location. As the van passed, the agents noticed that the occupants appeared to be somewhat nervous at the site of the marked unit sitting in the median. The driver and passenger both sat rigid in their seats staring straight ahead as they passed the agents.

At approximately 9:15 a.m., a red dump truck passed agent [REDACTED] location. As the dump truck passed, BPA [REDACTED] noted that the driver and front seat passengers were sitting rigid in their seats, staring straight ahead through the windshield. They did not seem as relaxed as most people passing by on this particular morning.

WHO IS INVOLVED: RACIAL PROFILING AND PRETEXTUAL STOPS INVOLVING LOCAL, COUNTY AND STATE LAW ENFORCEMENT AGENCIES

The data shows that state, county and local law enforcement agencies are deeply entangled with Border Patrol and are responsible for many of the arrests that result in deportations. Within the data field “Arrest Method,” Border Patrol categorizes enforcement actions initiated by one of these law enforcement agencies as an “Other Agency” arrest. These Border Patrol arrests initiated by other law enforcement agencies comprise 48.6% of all arrests in the state of Michigan during the period analyzed.

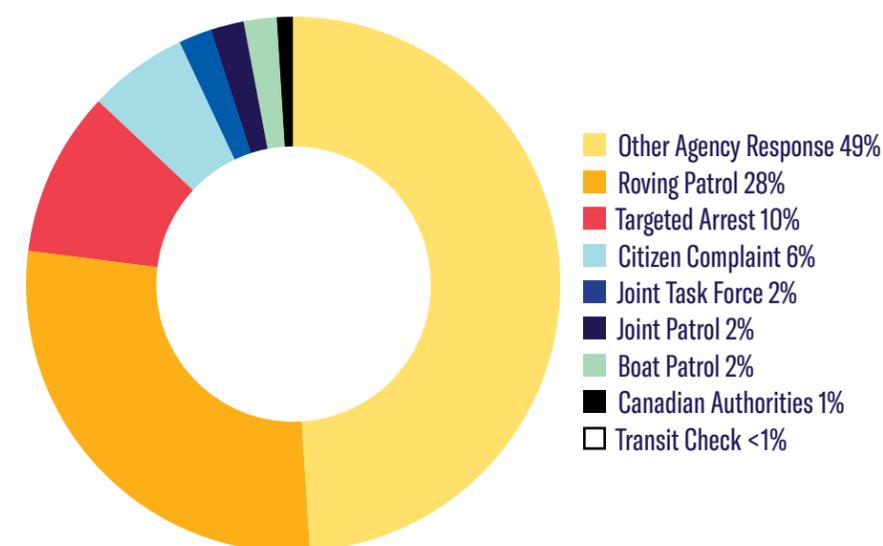


Figure 6: Distribution of Michigan Border Patrol arrests by method for fiscal years 2012 to 2017.

These arrests involve at least 60 separate law enforcement jurisdictions distributed across the state, each with its own distinct policies governing interaction with federal immigration authorities. However, among these law enforcement interactions, important patterns can be observed.

Michigan State Police is by far the law enforcement agency responsible for initiating the detention of the most people who are transferred into Border Patrol custody, comprising 37.6% of all such arrests. The next most prominent actor is the Macomb County Sheriff's Office, which is responsible for 11.4% of such arrests, followed by the Detroit Police Department, which has 7.4% of such Other Agency arrests. A breakdown of Other Agency arrests by law enforcement agency as recorded in the I-213 files can be seen in Figure 7.

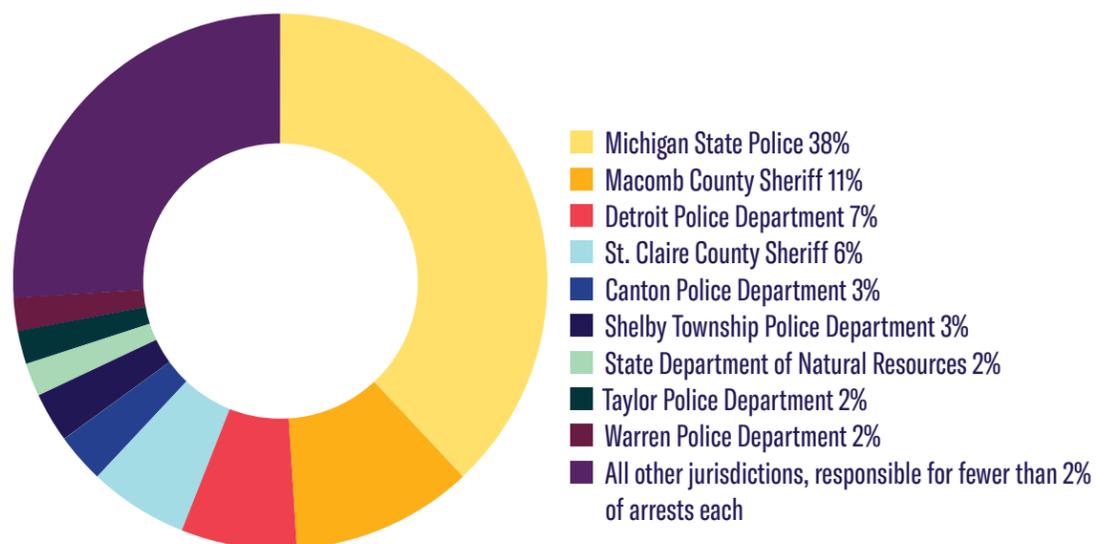


Figure 7:

Local, state and county law enforcement agencies involved in detention and custody transfer to Border Patrol. Jurisdictions responsible for fewer than 2% of arrests are as follows: Almont Police Department, Ann Arbor Police Department, Bad Axe Police Department, Capac Police Department, Cheboygan Police Department, Chesterfield Police Department, Clio Police Department, Clinton Township Police Department, Dearborn Police Department, Dearborn Heights Police Department, Escanaba Police Department, Flat Rock Police Department, Gaylord Police Department, Genesee County Sheriff's Office, Grand Traverse County Sheriff's Office, Grosse Ile Police Department, Grosse Pointe Police Department, Grosse Pointe Woods Police Department, Highland Park Police Department, Huron Township Police Department, Imlay City Police Department, Inkster Police Department, Livonia Police Department, Mackinac County Sheriff's Office, Melvindale Police Department, Monroe County Sheriff's Office, Monroe Police Department, Port Huron Police Department, Roseville Police Department, Royal Oak Police Department, Sanilac County Sheriff's Office, South Rockwood Police Department, St. Clair Shores Police Department, Sterling Heights Police Department, Troy Police Department, Ubyly Police Department, Wayne County Sheriff's Office, Wayne State University Police Department, Westland Police Department and Wyandotte Police Department.

PEOPLE OF LATIN AMERICAN ORIGIN ARE THE PRIMARY TARGET WHEN STATE AND LOCAL LAW ENFORCEMENT CALL BORDER PATROL, AND MANY STOPS APPEAR PRETEXTUAL

The demographic profile of those arrests initiated by state, county and local law enforcement agencies also strongly suggests racial profiling. People of Latin American origin make up 88.3% of all Other Agency arrests, even though, as noted above, people claiming Hispanic ethnicity represent just 5.3% of Michigan's population and people of Latin American origin comprise only 16.8% of the state's foreign-born population. This disproportionate representation of people of Latin American origin among those detained for an immigration inspection, and subsequently transferred to Border Patrol custody, is consistent across various Michigan law enforcement agencies. As seen in Table 3, 97% of those arrests initiated by Michigan State Police were people of Latin American origin, and nearly 82% of arrests initiated by the Detroit Police Department involved people of Latin American origin. All of those first detained by the Canton Police Department, the Shelby Township Police Department and the St. Clair Shores Police Department, among others, were of Latin American origin. However, due to the small sample size, it is unclear how representative these patterns are for each of the three named agencies. Data recorded for "complexion" display similar patterns, with individuals recorded as having "Dark," "Dark Brown," "Medium Brown," "Black," "Medium," "Light Brown" complexion accounting for 96.51% of all Other Agency arrests, while only 3.49% of those arrested are recorded as having "Light" or "Fair" complexion.

Law Enforcement Agency	Proportion of Arrested Individuals of Latin American Origin	Proportion of Arrested Individuals Who Have a Darker Complexion
Michigan State Police	97.12%	98.56%
Macomb County Sheriff	94.12%	97.06%
Detroit Police Department	81.82%	95.45%
St. Clair County Sheriff	95%	90%
Canton Police Department	100%	100%
Shelby Township Police Department	100%	100%
St. Clair Shores Police Department	100%	100%
Clinton Township Police Department	100%	100%
Chesterfield Police Department	100%	100%
Total Other Agency Initiated Arrests	89.5%	96.51%

Table 3: People of Latin American origin and darker complexion among the largest number of people arrested by Michigan law enforcement agencies.

Additional questions are raised by the nature of the initial law enforcement interaction that led to a custody transfer and the reasons that were recorded as being communicated to Border Patrol for summoning their assistance. As seen in Table 4, most common were routine traffic stops, which accounted for 63.5% of Other Agency arrests. Only 15.8% of arrests resulted from some kind of alleged criminal activity (this figure includes alleged criminal traffic violations for offenses such as Operating While Intoxicated). In a large number of cases, no information is recorded to indicate whether the initial purpose of a stop was actually followed-up on, such as via issuance of a traffic ticket or a warning. However, among those records that do provide this information, in 11.4% of cases involving a traffic stop, the initial agency that contacted Border Patrol ultimately decided not to issue a traffic ticket. In 13% of those cases initially based on an allegation of a criminal violation, the initiating agency ultimately declined to make a criminal arrest. The fact that state and local police so frequently fail to take any action on the alleged basis of an initial stop suggests that many of these stops are pretextual.

Nature of Initial Stop	Proportion	Initial Purpose of Stop Was Followed-up on (Citation or Arrest)	No Information Recorded on Whether Initial Purpose of Stop Was followed-up on
Traffic stop	63.8%	37.2%	57.9%
Criminal Arrest (Includes DUI)	15.8%	74%	14.8%
Traffic Accident	3.5%	50%	37.5%
Report of a "Suspicious person"	3%	28.5	57.1%

Table 4: Recorded basis for an initial Other Agency law enforcement interaction and recorded evidence on whether that basis was officially followed-up on by that law enforcement agency.

In addition to Border Patrol arrests that began via a routine traffic stop or a criminal arrest undertaken by local or state police, questions are raised by a small but troubling number of cases in which local police summoned Border Patrol to undertake an immigration inspection after stopping to help with a disabled vehicle and in which Border Patrol was summoned to investigate individuals who were witnesses to an alleged crime but who refused to cooperate with police investigators (each category respectively accounted for 0.8% of arrests). Finally, one alarming [I-213 report](#) dated Aug. 5, 2015, narrates the Border Patrol arrest of a 16-year-old boy who appears to have been the victim of assault, after agents were summoned by Capac police to provide “backup assistance” in response to an altercation.

An agent writes, “The subject was advised to make a complaint with the Capac Police Department if desired upon his release. Subject was also advised by Border Patrol Agent (EMT) that he should seek medical attention to make sure he does not have any injuries from the earlier altercation.” After arriving at the Border Patrol station to collect him, the boy’s mother was also arrested.

BECAUSE UNDOCUMENTED PEOPLE CANNOT GET MANY FORMS OF ID AND BECAUSE STATE AND LOCAL LAW ENFORCEMENT ARE INADEQUATELY TRAINED, “IDENTIFICATION ASSISTANCE” IS A COMMON REASON BORDER PATROL IS CONTACTED

Border Patrol often records multiple reasons given by local, county and state law enforcement for summoning their assistance. The most common reason appears to be “identification assistance,” meaning that the agency summoned Border Patrol ostensibly for the purpose of reviewing a person’s identity documents. This relates directly to the fact that, in Michigan, many noncitizens are ineligible for Michigan driver’s licenses or ID cards. Before 2008, Michigan was one of the states that issued driver’s licenses regardless of immigration status. However, in February 2008, the state legislature changed who was eligible to obtain a state ID or driver’s license.⁴⁰ As a result, many noncitizens in Michigan risk arrest every time they undertake simple daily activities, such as driving to work, taking their children to school or going to the doctor.

In more than 30% of cases involving “identification assistance,” the individual presented some valid form of identification. Yet, Border Patrol was called anyway. In 19.2% of cases, this involved a legitimate but expired Michigan driver’s license — a document local and state officers should be able to recognize. In 7.6% of the cases involving “identification assistance,” an individual had presented a lawful foreign or out-of-state driver’s license, while in 3.8% of cases they presented another legitimate form of foreign ID (such as a passport). Moreover, under Michigan law, noncitizens can drive with appropriate foreign documentation.⁴¹ Unfortunately, many state and local law enforcement agencies are not trained to recognize these documents.

In 70% of cases where Border Patrol was called for “identification assistance,” the individual lacked documentation, reflecting the fact that driver’s licenses and state ID cards are not available to undocumented people in Michigan. Both the denial of licenses for undocumented individuals and the lack of training of local law enforcement agencies are factors in local law enforcement calling Border Patrol during routine traffic stops.

STATE AND LOCAL POLICE FREQUENTLY SUMMON BORDER PATROL FOR “TRANSLATION ASSISTANCE”

The second-most common reason that state and local law enforcement summoned Border Patrol was for “translation assistance.” In 2012, after One America and the University of Washington Center for Human Rights⁴² highlighted the issue in a report, and the Northwest Immigrant Rights Project filed a formal complaint with the Justice and Homeland Security departments, then-CBP Commissioner David Aguilar issued a nationwide policy banning the practice of allowing Border Patrol agents to provide translation assistance to local police.⁴³ This policy decision was reversed in 2016. However, our analysis of Michigan I-213 records (which cover periods both when the ban was and was not in effect) shows that, regardless of the agency’s written and established policies, the practice of providing translation assistance to local law enforcement in Michigan continued uninterrupted.

Among the 26% of arrests resulting from a Border Patrol agent being summoned to provide translation assistance, not a single case involved people who spoke any language other than Spanish. The fact that Border Patrol agents are so frequently summoned by local, county or state law enforcement to provide translation assistance for Spanish-speaking subjects in their custody therefore lends further credibility to the possibility that these officers are purposefully detaining Spanish-speaking people of Latin American heritage and ethnicity for the sole purpose of initiating an immigration investigation.

To provide just one example, an I-213 record dated April 18, 2013, describes a Border Patrol agent arriving on-scene to a traffic stop after a Michigan State Police trooper requested assistance for an individual the trooper claimed was “unable to communicate in the English language.” Once the agent arrived, he confirmed that the subject in question was, in fact, fluent in Spanish, but the agent also recorded that the subject “was able to communicate in the English language without difficulty,” revealing that there has been no actual need for “translation assistance.” Nevertheless, once Border Patrol was on the scene, this individual (who turned out to be a citizen of Costa Rica) was arrested and placed into removal proceedings.

Law Enforcement Agency	Identification	Foreign or Out-of-State Driver’s License	Expired License	Translation	Only Passenger Arrested
Michigan State Police	54.3%	3.7%	12.3%	27.2%	17.3%
Macomb County Sheriff	55.6%	3.7%	14.8%	25.9%	7.4%
Detroit Police Department	36.4%	4.5%	0.0%	22.7%	0.0%
St. Clair County Sheriff	16.7%	16.7%	33.3%	33.3%	0.0%
Canton Police Department	33.3%	0.0%	0.0%	16.7%	0.0%
Shelby Township Police Department	16.7%	0.0%	0.0%	50.0%	0.0%
St. Clair Shores Police Department	16.7%	16.7%	0.0%	50.0%	16.7%
Clinton Township Police Department	50.0%	0.0%	25.0%	0.0%	0.0%
Chesterfield Police Department	50.0%	0.0%	25.0%	50.0%	0.0%
All Other Law Enforcement Agencies	44.3%	1.6%	3.3%	21.3%	6.6%
TOTAL	46.2%	3.6%	9.0%	26.0%	9.4%

Table 5: Third-party law enforcement recorded justification for requesting Border Patrol assistance.

PASSENGERS ARE ENSNARED IN IMMIGRATION ENFORCEMENT DURING TRAFFIC STOPS

In 9.4% of traffic stops initiated by state and local law enforcement, it was not the driver of a vehicle who was ultimately alleged to have violated U.S. immigration laws, but a passenger. Passengers, of course, are not necessarily required to carry identification and are not responsible for whatever traffic violation allegedly occurred. For this reason, state and local law enforcement officers have no reason to detain them once the traffic stop has been resolved. When only a passenger is arrested by Border Patrol agent following a traffic stop, this indicates that this stop was likely prolonged not for any legitimate law enforcement purpose but purely to allow for the arrival of Border Patrol to conduct an immigration investigation.

HOW LONG DO STOPS LAST: STATE AND LOCAL LAW ENFORCEMENT UNLAWFULLY PROLONG STOPS TO CALL IN BORDER PATROL

In *Arizona v. United States*, a case challenging Arizona’s anti-immigration legislation, the U.S. Supreme Court expressed concern that local, county and state law enforcement officials would prolong the detention of individuals they might otherwise release, purely to allow federal authorities to arrive to undertake an immigration inspection.⁴⁴ The court was unambiguous on this point, stating that “[d]etaining individuals solely to verify their immigration status would raise constitutional concerns.”⁴⁵

The Border Patrol’s I-213 records indicate that such unconstitutional practices are widespread in Michigan. Agents frequently document the time they were initially contacted and the time they actually arrived on-scene at a detention initiated by a third-party law enforcement agency. Figure 8 displays the proportion of prolonged stops among the two agencies most frequently responsible for this practice. Seventeen other law enforcement agencies are recorded as engaging in similarly prolonged traffic stops, but due to a smaller sample size among these agencies, we are unable to draw firm conclusions about the frequency of this practice. In addition, I-213 records document at least 14 encounters where a third-party law enforcement officer arrested and transported an individual to a Border Patrol station or to another location to await the arrival of a Border Patrol agent, absent any allegation of any criminal wrongdoing. This practice can have no legitimate law enforcement purpose and clearly represents unlawful detention.

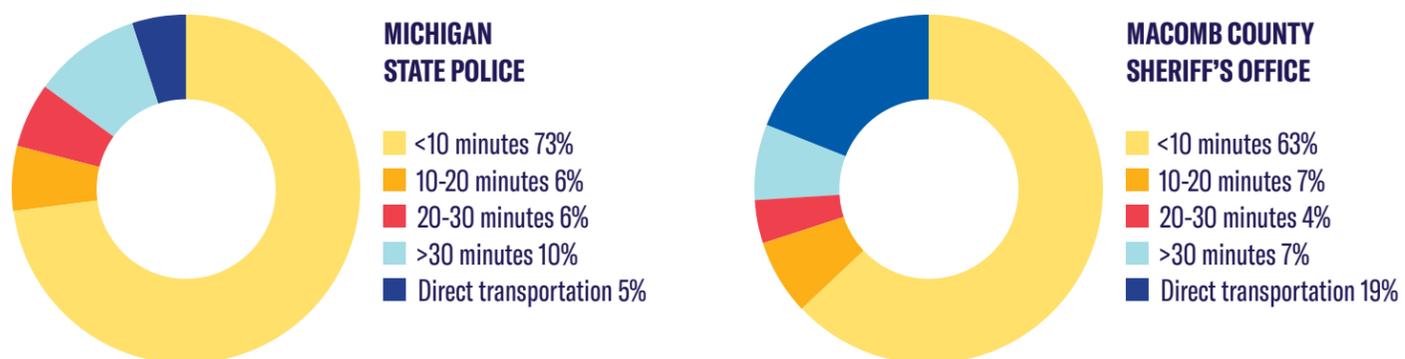


Figure 8: Unconstitutionally prolonged traffic stops by Michigan State Police and the Macomb County Sheriff’s Office.

The Lives Behind the Data Border Patrol’s Shadow Force: Local and State Police

When a police officer in Clio, a town of 2,500 people in a largely rural part of Genesee County, called U.S. Border Patrol for translation assistance at a traffic stop in March 2016, he wasn’t really worried about traffic infractions. Speaking by phone, he told a Border Patrol agent he had no intention of issuing a ticket for the broken taillight used as a reason to pull over a white Ford van, which held two passengers along with the driver. The Clio officer said he contacted Border Patrol because the driver spoke broken English and the two passengers spoke only Spanish. Also, none of them had U.S. identification. The officer then told a Border Patrol agent he could detain the three men until the agent arrived at the scene. The Border Patrol agent informed him there could be “liability issues” for both agencies if the men were detained under those circumstances. The officer apparently handed his phone over to the vehicle’s driver so that the Border Patrol agent could talk to him briefly. The agent learned that all three men — who were in Michigan delivering phone books for a New Jersey-based company paying them \$9 an hour — were staying at a motel in the area. Afterward, the Clio police officer provided Border Patrol with a description of the vehicle and its license plate number. Early the next morning, three Border Patrol agents showed up at the motel. All three of the men who had been in the van were taken into custody.

Source:
[Border Patrol apprehension report, March 17, 2016](#)

Border Patrol appears to be aware that these kinds of practices run afoul of the Constitution. As noted above in the description of the traffic stop involving Clio police, the Border Patrol agent advised the Clio police officer, who had offered to detain the people until Border Patrol arrived, “that there could be liability issues for both agencies” if the officer did not release the subjects immediately. In at least this one instance, the Border Patrol appears to have understood that having local police hold an individual detained in a traffic stop purely so that an agent can arrive to conduct an immigration inspection would be a constitutional violation. Agents appropriately instructed local police that the individuals should be released — raising the question as to why the agency hasn’t followed the same practice to hold itself and cooperating third-party law enforcement agencies within constitutional boundaries in the many similar cases of unlawful detention documented in the agency’s own records.

**WHEN HAS THIS HAPPENED AND HAS IT CHANGED OVER TIME:
INCREASING ENFORCEMENT OVER TIME**

The records reveal that the number of apprehensions made in the Border Patrol's Detroit Sector continued to increase during the Trump administration, although this increase began in 2015 under the Obama presidency and the excessive practices documented in this report are not uniquely constrained to one administration or political party in office. In total, 7,086 of the apprehensions analyzed took place between Oct. 1, 2011, and Jan. 20, 2017, a period that begins before but contains the entire second term of the Obama administration. After January 20, 2017, when Trump became president of the United States, 6,153 apprehensions occurred.

As seen in Figure 9, there is a clear increase in the number of apprehensions made by Detroit Sector Border Patrol personnel during the first years of the Trump administration. However, this increase actually began in fiscal year 2015 and continued through Obama's final two years in office.

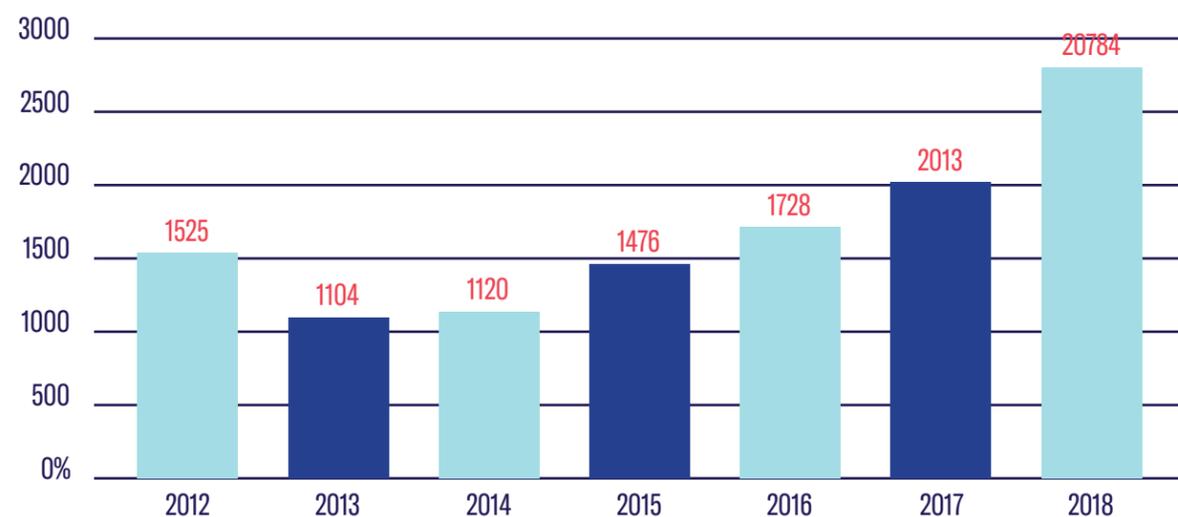


Figure 9: Detroit Sector arrests by fiscal year.
Note: 2018 was the final full fiscal year for which data was made available.

Figures 10 and 11 display a proportional breakdown of the method of arrest for each of the administrations. When comparing the two, the most striking shift is the increasing proportion of arrests the Border Patrol initiated directly under the Trump administration and an increase in the practice of targeting specific individuals based on a previous encounter with Border Patrol, a citizen complaint or some other law enforcement intelligence. We also see a modest but meaningful increase in arrests resulting from a transit check involving the boarding of airplanes, trains and buses, and an increase in arrests resulting from Border Patrol's participation in various interagency task forces.

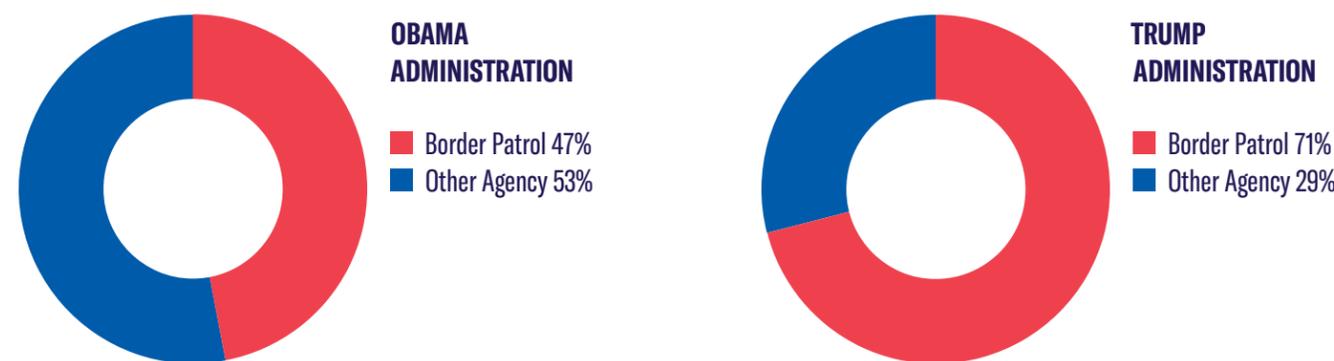


Figure 10: Proportion of Detroit Sector apprehensions initiated by Border Patrol and by other agencies during the Obama and Trump administrations.

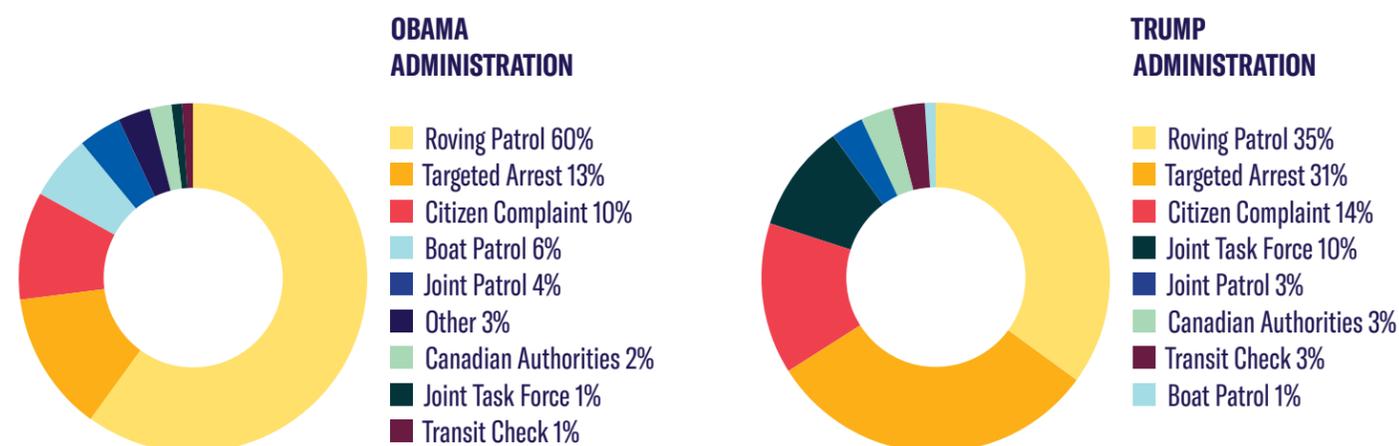


Figure 11: Proportion of Detroit Sector arrests of deportable noncitizens that are initiated directly by Border Patrol, by arrest method, during the Obama and Trump administrations.

Several other differences between the Obama and Trump administrations are worth mentioning, including a decline in the pace and proportion of people arrested entering the United States without authorization from Canada — from 1.9% to only 0.6% of arrests (with 136 individuals falling under this category during the 5.28 years’ worth of data under the Obama administration, and 39 people falling under this category during the 2.37 years under the Trump administration) — and a decline in the pace and proportion of people apprehended at entry or within 72 hours of entry to the United States, from 2.9% of those apprehended during the Obama years to only 0.6% during the Trump era (with an absolute numerical decline from 211 to 41 people). Also noteworthy is an increase in the proportion of noncitizens of Latin American origin who are arrested, from 81.9% under Obama to 86.9% under Trump.

One of the most significant changes to federal immigration enforcement policy implemented under Trump was an end to the use of prosecutorial discretion to release individuals who were previously considered to be a low priority for removal due to their strong ties to the United States. Less than a week after his inauguration in January 2017, Trump issued an executive order that essentially redefined the operational meaning of an enforcement “priority” to include any and all removable noncitizens.⁴⁶ This shift is evident in the I-213 data field marked “Disposition,” which documents the next administrative step pursued by DHS for each person arrested by Border Patrol.

Case Outcome	Obama	Trump
Notice to Appear — No Bond	37.7%	73.6%
Notice to Appear — Bond	11.9%	0%
Immediate Removal	24.2%	18.7%
Release Under Prosecutorial Discretion	26%	7.7%

Table 6: Comparison of immediate case outcomes under the Obama and Trump administrations.

The numbers are starker than the chart above suggests because the 7.7% of cases under the Trump administration that resulted in administrative release under prosecutorial discretion represent a holdover from the Obama administration — after March 2017, not a single person is recorded as being released in this manner. Meanwhile, I-213 records reveal at least five cases in 2017 in which Border Patrol agents specifically and purposefully tracked down an individual who had previously been arrested and then released under the Obama-era policy. The decision under the Trump administration to all but eliminate the use of prosecutorial discretion highlights a need to examine the implications of the patterns, practices and outcomes of enforcement documented above for Michigan families and communities.

WHAT IS THE COST: IMPLICATIONS FOR MICHIGAN FAMILIES AND COMMUNITIES

We have already highlighted that one-third (33.4%) of people apprehended in the Border Patrol’s Detroit Sector, which includes the entire state of Michigan, were U.S. citizens. Of the remaining 8,668 noncitizens arrested during this 7.75-year period, 12.8% were immediately found to be nondeportable — meaning they had a lawful status in the United States and they had neither been accused nor convicted of a deportable criminal offense.⁴⁷ Thus, almost half (46%) of those apprehended by Border Patrol were either United States citizens or noncitizens who are lawfully present in the country. The high rate at which Border Patrol stops individuals who are not committing immigration violations, coupled with the fact that 85% of noncitizens arrested are of Latin American origin, strongly suggests racial profiling.

The Lives Behind the Data **Border Patrol on the Hunt Across All of Michigan**

No one would consider the city of Royal Oak a border town. However, because of its expansive interpretation of where its authority extends, U.S. Border Patrol considers the Oakland County city — like the entire state of Michigan — open territory for its agents to go “hunting,” often with local or state police assistance. That was the case at about 8:30 p.m. on Aug. 24, 2016, when a Michigan State Police officer contacted Border Patrol for “identification assistance” at a traffic stop in Royal Oak. A 22-year-old native of El Salvador was a passenger in the front seat of a white Toyota that was pulled over for having a missing headlight. In fact, the man — who, as a passenger, wasn’t suspected of any traffic infraction — had shown the police officer his identification, including a Salvadoran ID card with his name and photo. The man had been living in the United States for more than six years and had just married a U.S. citizen the previous month. He lived in Madison Heights, attended church regularly and worked as a chef (he proudly told the agent that he’d recently played a key role in creating a new menu for the restaurant that employed him). The driver of the Toyota, after being forced to wait for Border Patrol to arrive and deal with his friend, was eventually allowed to drive off after receiving a traffic ticket. His newlywed friend was taken away by Border Patrol.

Source:
[Border Patrol apprehension report, Aug. 24, 2016](#)

Among those noncitizens identified as being deportable, one-third (33.1%) report having minor children who are U.S. citizens. This finding is not surprising, given the proportion of individuals arrested by the Border Patrol who are long-term residents and have established, significant community ties in the state of Michigan. It is also very likely an undercount, for two reasons. First, in more than 12% of cases the Border Patrol failed to record whether an arrested individual is a parent. Second, the Border Patrol records only the official nationality of a minor child — not whether that child is a resident of the state of Michigan. However, this figure does highlight the fact that one important consequence of the intensification of unrestrained Border Patrol activity — and of routine widespread cooperation between the Border Patrol and state, county and local law enforcement — is that of family separation, leading to thousands of young Michiganders growing up without one or both of their parents.

Research elsewhere has shown that detention, deportation and even just the cost of fighting a removal case in immigration court carries significant financial burdens for families and communities in the United States, resulting in average losses of more than \$24,000 as an outcome of disruptions to income and employment, the cost of an immigration bond, the cost of hiring an attorney and related expenses.⁴⁸ It is important to note that many of these losses accumulate regardless of whether individuals win their removal case and are allowed to remain in the United States, or whether they lose and are ultimately deported. We see an indication of these financial losses in Border Patrol I-213 records, reflected in the cost of immigration bond reported in these records averaging \$5,000, as well as in the 9.5% of Border Patrol arrests that resulted in the seizure of a personal vehicle after its driver was taken into federal custody. As a result of these patterns, families are saddled with significant financial losses, as well as with the loss of other material assets, causing additional hardships that must be absorbed by the U.S. citizens and communities left behind.

Finally, it is important to consider the kind of message broadcast to a community when local law enforcement agencies engage in widespread cooperation with Border Patrol, particularly when this cooperation so disproportionately targets Latin American communities. A host of research has found that these kinds of practices drive a wedge between local communities and law enforcement, rendering U.S. residents much more vulnerable to criminal abuse and predation, while eliminating tools and relationships with law enforcement that are important for public safety.⁴⁹

Conclusion

The data is clear: Border Patrol, operating far from the border, has normalized racial profiling, promoted otherization and separated families. State and local police are deeply entangled in, and complicit with, these discriminatory practices. Fundamental reforms are needed. As initial steps, we must: (1) reduce excessive Border Patrol staffing and restrict Border Patrol's operations to reasonable geographic boundaries around the immediate border; (2) end state and local entanglement with immigration enforcement; (3) require both federal and local law enforcement agents to end discriminatory practices and mandate anti-bias protocols; (4) restore access to driver's licenses to undocumented people; and (5) promote transparency by requiring comprehensive written documentation, data collection practices and publication of this information. Michigan's communities deserve no less.

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Endnotes

¹ Throughout this report we refer to both “apprehensions” and “arrests.” These are two slightly different enforcement categories. As used in this report, an “arrest” is a detention that ultimately results in the Border Patrol assuming custody of an individual because they are suspected of some federal immigration or criminal violation. An “apprehension,” on the other hand, is a broader category that describes an enforcement event that involves Border Patrol stopping and detaining an individual for a period of time. Such apprehensions may result in the person being placed into Border Patrol custody, but they can also result in that person simply being released. For example, when Border Patrol apprehends a U.S. citizen, that will not typically lead to arrest, but the Border Patrol records will show that the citizen was apprehended. In some cases, apprehensions can also result in a person being placed into local, county, or state custody, because this individual is suspected of some non-federal violation of the law. Given the above, every record of a Border Patrol “arrest” is also therefore a record of a Border Patrol “apprehension.” However, not every “apprehension” is an “arrest.” The need to distinguish between these two categories of enforcement is based on CBP’s own internal record-keeping, and how information was organized in the categories of records released to the ACLU.

² Daniel E. Martínez et al., Structural Violence and Migrant Deaths in Southern Arizona: Data from the Pima County Office of the Medical Examiner, 1990-2013, 2 J. on Migration & Human Sec., 257 (2014); Chambers, S.N., Boyce, G A., Launius, S., Dinsmore, A. 2019. [Mortality, Surveillance and the Tertiary “Funnel Effect” on the U.S.-Mexico Border: A Geospatial Modeling of the Geography of Deterrence](#), J. Borderlands Stud. (forthcoming).

³ United States Border Patrol, [Border Patrol Nationwide Staffing by Fiscal Year](#), (last visited Feb. 18, 2021).

⁴ American Immigration Council, [The Cost of Immigration Enforcement and order Security](#) (Jan. 20, 2021).

⁵ Shaw Drake & Andrea Flores, [Border Patrol Violently Assaults Civil Rights and Liberties](#), ACLU (July 24, 2020).

⁶ U.S. Customs and Border Protection, [Executive Assistant Commissioners’ Offices](#), (Jan. 5, 2021).

⁷ 8 U.S.C. § 1357(a)(3).

⁸ See H.R. 386, 79th Cong. (1946).

⁹ See H.R. Rep. No. 79-186 (1945); S. Rep. No. 79-632 (1945).

¹⁰ 8 C.F.R. § 287.1(b) (2020). The Justice Department published regulations defining “reasonable distance” as 100 miles in the Federal Register in 1957. See Field Officers: Powers and Duties, 22 Fed. Reg. 9,808 (Dec. 6, 1957) (codified at 8 C.F.R. § 287.1).

¹¹ See 8 C.F.R. § 287.1(a)(2) (2020) (defining “reasonable distance” as “within 100 air miles from any external boundary of the United States or any shorter distance which may be fixed by the chief patrol agent for CBP, or the special agent in charge of ICE.”).

¹² 8 C.F.R. §287.1(b) (2020).

¹³ [The Constitution in the 100-Mile Border Zone](#), ACLU, (last visited Feb. 18, 2021).

¹⁴ Id.

¹⁵ In October 2013, the ACLU of Arizona filed a complaint on behalf of five Arizona residents, each of whom was detained by Border Patrol far from the border. [Letter from James Lyall, ACLU of Arizona Staff Attorney](#), to Dep’t of Homeland Sec. Officials (Oct. 9, 2013). In September 2013, the ACLU of Washington settled a class action lawsuit challenging roving patrol practices on the Olympic Peninsula on behalf of several victims of racial profiling. See *Sanchez v. U.S. Office of Border Patrol*, No. 12-5378 BHS, 2012 WL 3715719 (W.D. Wash. Aug. 27, 2012). Case documents are available at [Sanchez v. Homeland Security](#), ACLU (Sept. 24, 2013). Pursuant to that settlement, Border Patrol agreed to re-train agents on their obligations under the Fourth Amendment and to share stop data with the ACLU.

¹⁶ Families For Freedom & N.Y. Univ. Sch. of Law, [Uncovering USBP: Bonus Programs for United States Border Patrol Agents and the Arrest of Lawfully Present Individuals](#) (Jan. 2013).

¹⁷ Id. at v.

¹⁸ See NYCLU et al., [Justice Derailed: What Raids on New York’s Trains and Buses Reveal About Border Patrol’s Interior Enforcement Practices](#) (Nov. 2011).

¹⁹ Id.

²⁰ Drake & Flores, supra note 6. Dana Liebelson, [A CBP Officer Shot a 21-year-Old American in the Head. Six Months Later, CBP Won’t Say Why](#), HuffPost (Aug. 19, 2019, 5:45 AM).

²¹ Garrett M. Graff, [The Green Monster: How the Border Patrol Became America’s Most Out-of-Control Law Enforcement Agency](#), Politico Mag., Nov.–Dec. 2014.

²² Id.

²³ Id.

²⁴ See *Michigan Immigrant Rights Center v. Dept. of Homeland Security*, Case No. 16-cv-14192 (E.D. Mich.).

²⁵ The Federal Government’s fiscal year begins October 1 and ends September 30.

²⁶ The way that immigration law operates is axiomatic—meaning that a person categorized as “inadmissible” is also subject to removal (deportation) from the United States. Inadmissibility can be established through a variety of factors. These can include entering the United States without authorization and having no valid legal claim to remain in the country (such as a petition for asylum); violating the terms of one’s visa; or being convicted of any number of criminal charges that allow for the cancellation of one’s lawful immigration status. Under most circumstances, the question of inadmissibility is ultimately determined by an immigration court— meaning that many I-213 records indicate the initiation of court proceedings, rather than deportation itself.

²⁷ The time range covered by daily apprehension logs and I-213 records do not entirely line up, due to negotiations over document production that unfolded in the course of litigation.

²⁸ John Washington, [Bad Information: Border Patrol Arrest Reports are Full of Lies That Can Sabotage Asylum Claims](#), The Intercept, (Aug. 11, 2019, 12:20 PM).

²⁹ Rachel Maddux, [Over the Line: Border Patrol’s Obscure, Omnipresent 100-Mile-Zone](#), VQR, Fall 2017.

³⁰ United States Border Patrol, [U.S. Border Patrol Nationwide Apprehensions by Citizenship and Sector](#) (FY07-19), (last visited Feb. 20, 2021).

³¹ [Letter to National Archives and Records Administration on CBP Document Destruction Proposal](#), Gov’t Accountability Project (Sept. 30, 2020).

³² Guillermo Cantor & Walter Ewing, Am. Immigr. Council, [Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered](#) (August 2017); see also Daniel E. Martinez, Guillermo Cantor & Walter Ewing, Am. Immigr. Council, [No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse](#) (May 2014).

³³ A.C. Thompson, [Years Ago, the Border Patrol’s Discipline Was Denounced as “Broken.” It’s Still Not Fixed](#), ProPublica (June 20, 2019, 5:28 PM).

³⁴ [QuickFacts: Michigan](#), U.S. Census Bureau (last visited Feb. 18, 2021).

³⁵ A person’s arrest “within 72 hours” of entry does not necessarily imply that this entry was clandestine or unlawful. The field of data “time in U.S.” simply records the duration since a person most recently entered the United States, which may have taken place via lawful admission at an official port of entry— either at a border crossing with Canada, or at an international airport. Unlawful entry from Canada or Mexico (or elsewhere via an airplane or a maritime vessel) is tracked separately under a category of data labeled “status at entry.”

³⁶ Because CBP would not provide exact coordinates or precise information about the location of its enforcement action, distance here is measured based on a calculation of the geographic center of each municipality where an arrest transpired.

³⁷ The Border Patrol's use of tips or complaints from "concerned citizens" to justify the initiation of investigatory or enforcement action is concerning, particularly given the kinds of evidence frequently marshalled to justify suspicion. In 20% of these cases, this involved a member of the public overhearing a group of persons speaking in Spanish, while 15% of these cases also cite a person's "Hispanic" appearance. Consider an I-213 record dated July 21, 2016, which includes the following narration: "On July 19, 2016 Border Patrol agent [redacted] received information via phone call from an individual who wished to remain anonymous. During this phone call the caller stated that it had observed a group of at least 6 Hispanic males residing at [redacted] in Marysville, MI. The caller further stated that while observing these individuals all of them were speaking in the Spanish language..."

³⁸ An I-213 record dated 1/4/2017 is exemplary, stating "the driver appeared to be sitting very rigid in his seats, staring straight ahead through the windshield. The driver did not appear to be as relaxed as most of the motoring public passing by the agents." This exact phrasing is repeated in fourteen separate I-213 records delivered by CBP. Another record, dated 6/22/2017, describes "[t]he agents pulled up alongside the driver's side window of the vehicle and noted that there were two males in the front cab... The driver glanced over at the agent's [sic] briefly and then quickly looked away." The above two examples show how either acknowledging and looking at a marked Border Patrol vehicle or agent, or not acknowledging or looking at them, is at different times interpreted by agents as appearing "suspicious."

³⁹ See, e.g., James Lyall et al., ACLU of Arizona, [Record of Abuse: Lawlessness and Impunity in Border Patrol's Interior Enforcement Operations](#) (Oct. 2015). Border Patrol has been found to often rely on arbitrary justifications for initiating stops, for example: claiming that an out-of-state license plate looked "suspicious;" approaching a vehicle with hands on their weapon and asserting that "only criminals and people trying to hide things get nervous;" or providing no explanation at all for the stop.

⁴⁰ Mich. Immigr. Rights Center, [Foreign Driver's Licenses in Michigan: What Does SB 501 Mean for You?](#) (July 2020). This legislative change occurred after Michigan Attorney General Mike Cox issued an opinion that only green card holders, and not undocumented immigrants, could be considered a "Michigan resident" for the purpose of obtaining a driver's license. [Permanent Residency Requirement for Driver's Licenses](#), Op. of Mich. Att'y Gen. No. 7210 (Dec. 27, 2007).

⁴¹ Michigan recognizes the right to drive with a valid foreign driver's license from certain countries, party to treaty agreements with the United States. Mich. Comp. Laws 257.302a (2020). Noncitizens with a valid foreign driver's license and translation from a treaty county such as Mexico, Lebanon, India, Korea or Guatemala can legally drive in Michigan, without needing to show legal presence. Mich. Immigr. Rights Center, [Foreign Driver's Licenses in Michigan: What Does SB 501 Mean for You?](#) (July 2020).

⁴² Sarah Curry et al., One America & Univ. of Wash., [The Growing Human Rights Crisis Along Washington's Northern Border](#) (Pramila Jayapal & Sarah Curry eds., April 2012).

⁴³ Jerry Seper, [Border Patrol Stops Translating Spanish for Other Police](#), The Washington Times, (Dec. 18, 2012).

⁴⁴ The Arizona law, S.B. 1070, involved multiple provisions. Among the most controversial was a requirement that all law enforcement across the state of Arizona cooperate with federal authorities to enforce U.S. immigration law at all times in the course of their routine operations. This provision raised significant public concerns given that most law enforcement officers in the United States have no training in federal immigration law and given the likelihood that officers would therefore be pressured to undertake blanket targeting of noncitizens or of persons who in an officer's judgment might appear to be a noncitizen. Critics of the law alleged that this scenario would not only make the unconstitutional practice of racial profiling inevitable, but would essentially mandate it.

⁴⁵ *Arizona v. United States*, 567 U.S. 387, 413(2012).

⁴⁶ Exec. Order No. 13,786, 82 Fed. Reg. 8,799 (Jan. 30, 2017). This executive order was rescinded by President Biden on January 20, 2021.

⁴⁷ It should be noted that the outcome of immigration proceedings is not known for those who could not demonstrate lawful status at the time of their arrest.

⁴⁸ Geoffrey Alan Boyce & Sarah Launius, *The Household Financial Losses Triggered by an Immigration Arrest, and How State and Local Government Can Most Effectively Protect Their Constituents*, 8 J. on Migration & Human Sec. 301 (2020).

⁴⁹ Mai Thi Nguyen & Hannah Gill, *Interior Immigration Enforcement: The Impacts of Expanding Local Law Enforcement Authority*, 53 *Urban Stud.*, 302 (2016); Nik Theodore & Robert Habans, *Policing Immigrant Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, 42 *J. Ethnic & Migration Stud.* 970 (2016); Kelle Barrick, *Latino Confidence in the Police: The Role of Immigration Enforcement, Assimilation, and Immigration Status*, 12 *J. Ethnicity Crim. Just.*, 289-(2014); David S. Kirk et al., *The Paradox of Law Enforcement in Immigrant Communities: Does Tough Immigration Enforcement Undermine Public Safety?*, 641 *Annals Am. Acad. Pol. & Soc. Sci.*, 79 (2012).