



UNLOCKED

## Who enforces America's immigration laws?

The Journalist's Resource  
Informing the news

Harvard Kennedy School  
SHORENSTEIN CENTER  
on Media, Politics and Public Policy



### TRANSCRIPT

#### Nancy Gibbs:

Hi, I'm Nancy Gibbs, the director of the Shorenstein Center at Harvard Kennedy School, and this is Unlocked. My guest today is Austin Kocher, who's a professor at Syracuse University and an expert in immigration and refugee policy, here to help unlock the complicated tangle of immigration enforcement. Austin, thank you for joining us, and I'd love to start with the most basic question of who is responsible for policing the border and enforcing immigration policy and who is not? We have been hearing through multiple news cycles about ICE and CBP and Homeland Security and HSI, and then we see the deployment of National Guardsmen and Marines. So help us sort out who does and who does not have jurisdiction over immigration law.

#### Austin Kocher:

Sure. So the way the US Immigration Enforcement System is structured, there are a lot of different agencies that are involved and play various roles in immigration enforcement. The Department of State primarily plays a big role in managing who is allowed to come to the United States through lawful channels. So they do play a certain regulatory role, but for immigration enforcement at the border and immigration enforcement across the country away from the border, the Department of Homeland Security and the Department of Justice primarily play the biggest role. The Department of Homeland Security, the main two enforcement agencies are CBP, Customs and Border Protection. They tend to focus along the border at ports of entry, where people come and go through airports or through specific ports at the border between the United States and Canada, and of course at the Mexico border, as well as policing people who are attempting to come into the country between ports of entry, essentially, to enter unlawfully. While ICE, Immigration and Customs Enforcement basically polices the rest of the country.

That's the agency that does work site enforcement, raids as some people refer to them, hold people in immigrant detention and then ultimately deport people out of the country if that is the decision made in that case. You mentioned HSI, Homeland Security Investigations. That's a very interesting agency within ICE. Typically, when we think of ICE, we're discussing ERO, Enforcement and Removal Operations. That's the acronym that sometimes ICE will get referred to. It's that agency that does most of the enforcement, but there is HSI, Homeland Security Investigations, which is sort of like the FBI of ICE. They play quite a different role. They play a much more complex and sophisticated and technical role than the standard ERO, Enforcement Officers do, but they do play a role. They're involved in policing, transnational criminal organizations, cyber terrorism, cyber security, those kinds of questions, but they're in fact such a culturally different agency than other parts of ICE that they have actually, at different points, tried to separate themselves out from ICE so that they could be a more independent agency and not be stuck under the perception and cultures of ICE.

But those are the main organizations and agencies that are part of immigration enforcement, broadly speaking. You mentioned also the military. I also did mention the Department of Justice. I should just mention that the Department of Justice is the agency that oversees the immigration court system. So judges report to the Attorney General, which is very different than the Department of Homeland Security. But of course under any administration, both of those agencies are going to play a role and have some responsibility in implementing the vision that the president has, whether that's Democrat or Republican. The military and some other agencies have been called upon to do immigration enforcement or to support immigration enforcement. So we've seen Marines deployed in Los Angeles. We've also seen the expansion of policies like 287(g) that make it possible for local law enforcement agencies to also provide supplemental support to Federal Immigration Enforcement Authority. That's a quick picture of just the really large, complicated and very entangled network of agencies, federal, state, and local that are currently involved in doing immigration policing of some kind.

**Nancy Gibbs:**

So the people you didn't mention are the policemen on the corner. Do local police departments have any role to play?

**Austin Kocher:**

They sure do. There are official policies and unofficial practices that make your local law enforcement cop on the street actually does play a role in immigration enforcement. Indirectly speaking, if a law enforcement officer of any agency, again, state highway patrol, local sheriff or a local municipal police officer in the course of doing enforcement of any kind or doing their duty, comes into contact with someone who is an immigrant. And if that person gets booked into a jail or gets sent to court, there could be immigration consequences for that person. So that's the indirect role that local law enforcement might play. And in some agencies, in some jurisdictions, the police chief or the sheriff may say, "Look, we know there's immigration consequences, but we have no interest in doing the federal government's job for them." And so there in some jurisdictions, there's no incentive or there's no motivation to do that work in a way that might increase the immigration consequences for the immigrant community.

There's other jurisdictions, places where I've interviewed law enforcement officers in the South, North Carolina, Georgia, Ohio, other places where law enforcement officers, with or without the authority, they are motivated and there is an incentive to target, one can say, immigrants in the community because they would like to see more people have immigration consequences. But that is controversial and that's largely unofficial. There are official programs such as 287(g), which explicitly delegates Federal Immigration Enforcement Authority to local agencies and if that cop on the corner or in that squad car is part of a jurisdiction that has a signed agreement with Immigration and Customs Enforcement to do immigration enforcement in the town or county or state where you live, then in fact that officer could be, by proxy, a kind of immigration enforcement officer.

**Nancy Gibbs:**

I feel like you are teeing up a definition of a sanctuary city, and what does it mean for cities or local law enforcement to refuse to enforce laws if those laws were legitimately passed at the federal level?

**Austin Kocher:**

Yeah, it's a great question. And the definition of sanctuary city is very slippery. There's no common definition. There is a relatively common set of intents and practices and policy priorities built into

sanctuary city style policies. Typically, what local municipalities will say is, "Look, it is not our job to do immigration enforcement. We don't want to have anything to do with immigration enforcement." And frankly, when it comes to budgets and so forth, those programs that I mentioned like 287(g), those cost local municipalities and counties often cost them money in terms of training time and staff time as well as other resources. And so there's a lot of jurisdictions that say, "Look, we want no part in this. We're trying to be a welcoming city for immigrants. We need immigrants for our economy for all kinds of reasons, and we do not want to feel pressured or forced or to give the impression that we are participating in these enforcement priorities, which are the job of the federal government, not our job."

So that's basically what sanctuary city policies say. Now, of course, administrations like the current one who have made immigration enforcement a priority, they don't like this because they want to expand their reach as much as possible. And in those jurisdictions that have sanctuary policies or sanctuary style policies, if that policy gives the impression that those cops, those sheriffs are not going to participate, then obviously the administration has tried to really bully those agencies to turn around, but there's nothing criminal. There's nothing illegal about an agency saying, "It's not my job, and we're letting the public know it's not our job and we're not going to spend your local tax dollars doing it." But obviously it is controversial and it matters a lot, the political priorities as well as the economic demands. I mean, again, there's a lot of cities that say, "Look, whatever we think about immigration as a national policy matter, we know it's divisive, we know it's politicized, but frankly, we need immigrants."

And if lawful immigrants are here to work and they're afraid to go into work because they're afraid of getting picked up by ICE, whether ICE is doing their job effectively or ineffectively or legitimately or illegitimately, whatever the effects on the immigrant community are, there's a lot of places that are trying to mitigate that so that they don't see rising labor costs and don't see shortages in those key industries.

**Nancy Gibbs:**

We have been having a robust debate about who has what rights, like habeas corpus and due process. Do rights apply equally to citizens, legal residents and people here illegally, or are different rights applied differently depending on your immigration status?

**Austin Kocher:**

Yeah, so that's a great question and one both about what rights actually are and also what they should be. So yeah, I would say thinking about what rights are, it depends on which area of the law we're looking at. And I should just say at the outset, I'm not an attorney, and this is not legal advice. There are domains of law like labor law that are much more immigration status blind in the sense that just because someone is in the country unlawfully does not give an employer a right to exploit that person in ways that would be illegal if it were a US citizen. So there's areas like labor law where nobody has the right to garnish a person's wage unlawfully, to steal someone's wages in the workplace, to put them in dangerous jobs without adequate protection and so forth. There are protections that are much more across the board. On the other hand, in the area of criminal law and in the area of civil immigration law that can look very different.

So the Supreme Court has said on many occasions that yes, there are things that the United States government can do to people who are not citizens that would be considered unlawful if it were done to US citizens. That comes down to how someone is arrested and detained, as well as deported. So it does matter a great deal. I would say there's a long-standing understanding in the legal and research community that really, if you're not a US citizen, and even for some people who are and who got their citizenship after moving to the United States, what we call a naturalized citizen, if you're not a US citizen

in this country, frankly, the federal government has a lot of latitude over what they can do, not infinite and not completely unchecked, but the government does have a lot of latitude over what they can do to people. And I think traditionally, we've not seen presidents go so far as to arrest green card holders, to arrest lawful immigrants without cause, without warrant, without criminal charges and attempt to detain and deport them.

That's been unusual because it's seen as politically unpopular. And the question of enforcing undocumented immigration and undocumented people in the country has been enough of a political divisive topic that no one has really wanted to drag in enforcing and deporting people who are in the country lawfully. This administration has taken a different approach. They have maximized, they're taking a very maximalist view of how they're enforcing immigration law against people who are even in the country lawfully. And I think what we're seeing in the courts is the courts are saying, "You don't have totally unregulated power." However, the law is written in a way that gives the president an awful lot of latitude. So that's the area that we're seeing play out at the moment. And I think the takeaway point here from all of this is, what rights someone has in some cases is up to what a judge ultimately says and maybe ultimately up to what the Supreme Court says. So in a way, we're in this period where who has rights is the question that's being worked out in the courts literally on a day-to-day basis.

**Nancy Gibbs:**

So the Supreme Court just gave permission to send detainees to third countries, not just deport them to their home country. When does the government have the right to send someone to jail somewhere as opposed to just sending them out of the country?

**Austin Kocher:**

If the government's going to deport someone, they have to send them somewhere. And the question of where any government is allowed to send someone is subject to a variety of conditional factors around where the person is from, where that person is born may not be the same place that that person has citizenship. And in some cases, even if an immigrant in the country has been said, "Okay, we're not going to deport you back to the country of your citizenship because you may face persecution." It may still be the case that the United States has the authority to send that person to some other country who is willing to receive them. So in a way, the deportation practices that happen on a regular basis, and are certainly being expanded right now, are really partly a matter of foreign policy in the sense that it's the United States government negotiating with other governments around the world around who is willing to take people.

In a way, during this administration that we haven't seen in a very long time is this president really throwing his weight around to pressure other governments to take people when they might not normally do that. So this is a good case of the Supreme Court basically saying, "Yeah, actually the government can do that." Although I think for a lot of us, we see the outcome of the case, and even if that is technically what the law allows, it does feel, I think, ethically and legally uncomfortable.

**Nancy Gibbs:**

My last question is, as you watch the way this issue is being covered and it's been in almost continuous one news cycle after another, are there things that you wish journalists understood or common mistakes or mis-characterizations or misunderstandings that you see in how this issue is covered?

**Austin Kocher:**

I have to say, having interacted with a lot of reporters since the start of the administration and before and reading a lot of reporting, I'm continually impressed, actually, at how well the reporters who have been covering immigration for a long time continue to keep up with and do the work of covering really contentious and really fast evolving policy area. And I've seen more new reporters than ever come on the scene getting often assigned from their editors to cover immigration for the first time, and I have tremendous compassion for the challenge of trying to get someone's head around such a complicated issue. I've been studying this for 15, 16 years now of my professional career, and I learn new things every day. It's such a uphill battle. I largely think that reporters are doing tremendous work under tremendous pressure. I think probably the most important thing is to always remain skeptical of government assertions, especially when it comes to data.

I spend a lot of time working on immigration data, and I think the thing that probably worries me the most is just when the government makes claims about how many people have been deported or how many people have been arrested, when adequate data to support those claims haven't been validated and verified. It's important to note that. So I would just say make sure when you're reporting on data, especially, that you get the underlying data and make sure that there's evidence for those claims. And if there's not, to just be sure to ask for it, and if you don't get it to be sure to let the readers know that there isn't... It's not to say that it's false, it's just to emphasize that evidence is crucial when talking about data. The other thing I would say is, and this is a very difficult time to do this, but I think the voices of immigrants who are affected could be featured more prominently.

I think there's a lot of opportunities still for firsthand narrative and deeper explorations of what it's like to be an immigrant in the United States right now and go through these processes. I think we always need policy experts and data people and people from within the government and elected officials to help to break down all of this for the public. But I think there's nothing quite like understanding the real effect on one person and on one family, on one faith community or one city, one neighborhood, can really go a long way, I think, to painting a clearer and fuller picture of the real life stories that these policies are... How these policies play out in real people's lives.

**Nancy Gibbs:**

Practicing good data hygiene and centering humanity is probably valuable for unlocking any of the hard topics that journalists are wrestling with, as are all of us. Austin Kocher, thank you very much for joining us on Unlocked.

**Austin Kocher:**

Thanks so much for having me.