Limiting the Scope of Conflict:

Deportation and Damage Control in Germany and the United States

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Abstract: To what extent can executive agencies in liberal democracies uphold politically controversial decisions when confronted with public opposition? My paper examines this question by studying a highly contested area of public policy in Germany and the United States: *deportation policy*. I ask, what explains variation in the extent to which implementing immigration agencies reverse individual deportation decisions when faced with public opposition? While agencies in some contexts are able to contain these instances of *case mobilization* successfully, in other instances they are forced to concede defeat in the face of public protest.

This paper attributes varied success in conflict containment to variation in the ability of bureaucrats to insulate their decisions from electoral politics. Crucially, the availability of strategies of electoral insulation depends upon the institutional context in which immigration agencies operate. Of particular significance are the degree of overlap between the jurisdiction of immigration agencies and the constituency of elected officials, the relationship between legislatures and bureaucracies, and the role that partisanship plays in immigration politics. The findings suggest that the institutional context in Germany has allowed bureaucrats to successfully utilize centralized administrative structures to insulate themselves from electoral politics—a bureaucratic strategy which is not available to U.S. bureaucrats.

I.   Introduction: Bureaucrats, Advocates, and Public Opinion

This paper[1] examines the capacity of German and U.S. immigration agencies to implement deportation mandates when confronted with popular mobilization against deportation decisions. The uneasy relationship between state sovereignty—here represented through executive agencies—and the institutional and popular manifestations of liberalism has been the subject of a prolific literature on migration control (Calavita 1992; Hollifield 1992; Cornelius, Martin et al. 1994; Freeman 1994; Soysal 1994; Jacobson 1996; Sassen 1996; Joppke 1998; Gimpel and Edwards 1999; Andreas and Snyder 2000; Guiraudon and Lahav 2000). These authors have identified liberal constraints on state sovereignty that manifest themselves in form of judicial activism, interest group lobbying, and normative political discourse, and which operate both at the domestic and international level. While most authors focus their analysis on the legislative and policy-making arena,[2] this paper's locus of analysis is the venue of *policy implementation*. The study of policy implementation not only is essential to identifying and understanding policy outcomes in deportation, but, I argue, *implementation itself is a crucial arena of politics*.

Deportation is a policy characterized by high levels of political conflict (Freeman 2002). It is the enormous costs that result from deportation that renders the policy field vulnerable to the vicissitudes of political contestation. By forcefully removing individuals from their country of residence[3]—which often includes uprooting them from family and workplace—it is one of the most profound forms of state intervention in liberal democracies. Because of its painful consequences for individuals and families, the politics of deportation is characterized by high levels of political conflict. Unlike redistributive and distributive policy fields where beneficiaries are actively invested in policy implementation—the payout off benefits—the targets of deportation policy have a significant stake in its *non-implementation*.[4] However, political mobilization is not limited to pro-immigrant interests. Initiatives such as California's

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[1] This paper is part of my dissertation-in-progress. The data that I draw on was collected during 12 months of intensive fieldwork in Germany and the United States in 2001 and 2002, including over 170 qualitative interviews.
[2] With some exceptions, e.g., Calavita, K. (1992). *Inside the State: The Bracero Program, Immigration, and the I.N.S.* New York, Routledge. Andreas, P. and T. Snyder, Eds. (2000). *The Wall around the West: State Borders and Immigration Controls in North America and Europe.* New York, Rowman & Littlefield.
[3] This, of course, does not equally apply to migrants who are apprehended when illegally crossing the border by the border patrol (voluntary returns) or sent back at a port of entry (expedited removal).
[4] I owe this point to Virginie Guiraudon, National Center for Scientific Research, Lille, France.

Proposition 187 and popular support for right-wing parties across Europe clearly evidence grass-roots support for *restrictionist* policies of migration control. Both in Germany and the United States, the 1980s and 1990s have shown a consistent trend toward increasingly punitive deportation provisions in immigration law—a development which judicial activism has been unable to reverse.

However, while proponents of deportation frequently succeed in the legislative arena, I contend that *it is at the level of implementation that immigrant advocates enjoy a political advantage*. It is there that the human costs of deportation become evident and that countermobilization occurs. As one immigrant advocate put it, "deportation is a good issue to focus on because of its finality, for many it's a matter of life or death."[5] The implementation of deportation policy can thus be conceived of as a battle between immigrants and their advocates, on the one hand, and state bureaucrats, on the other. Because it is the executive state, authorized by legislative mandate, who structurally has the upper hand in this relationship, immigrants and advocates are invested in socializing conflict by drawing previously uninvolved actors—the public, media, legislators—into the arena of implementation—a strategy that Schattscheider has famously termed the expansion and socialization of conflict (Schattschneider 1975).

What influence, then, can advocates exert over executive actors whose actions are not only legitimated, but even mandated by law? Advocates have at their disposal the liberal discourse of human and civil rights which, under certain conditions, they are able to employ in ways that turn legally correct administrative decisions into violations of a shared normative standard, thereby rendering them *illegitimate* (though legal nevertheless). Much scholarly attention has been paid to the findings of public opinion research which have revealed a consistently more restrictionist public than actual legislative outcomes would suggest.[6] However, less attention has been paid to the *ambivalence* of public opinion about issues of immigration control. Espenshade and Belanger's studies of public opinion and immigration control in the U.S. context have shown that, while there is strong public support for the *principle* of immigration control, once confronted with specific and, by necessity, harsh, control measures,

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[5] Interview with Sean-Robert Lafortune, Haitian-American Grassroots Coalition, Miami, 30 May 2002.
[6] See Gary Freeman's notion of "expansionary bias," Freeman, G. P. (1994). "Can Liberal States Control Unwanted Migration?" *The Annals of The American Academy of Political and Social Science* 534: 17-30., also Hollifield, J. F. (1992). *Immigrants, Markets, and States*. Cambridge, MA, Harvard University Press, Cornelius, W. A., P. L. Martin, et al., Eds. (1994). *Controlling Immigration: A Global Perspective*. Stanford, Stanford University Press, Joppke, C. (1998). "Why Liberal States Accept Unwanted Immigration." *World Politics* 50: 266-293, Gimpel, J. G. and J. R. Edwards (1999). *The Congressional Politics of Immigration Reform*. Boston, Allyn and Bacon.

public support begins to wane (Espenshade and Belanger 1997; Espenshade and Belanger 1998). In Germany, in a similar vein, a pervasive restrictionism (Fetzer 2000; European Monitoring Centre on Racism and Xenophobia 2001) coexists with strong support for church sanctuary (*Kirchenasyl*), the most politicized form of social protest against deportations. A Forsa[7] poll in 1994 found that 62 percent of respondents supported the granting of church sanctuary to refugees faced with deportation in cases of individual hardship. Further, 73 percent opposed the use of police intervention[8] when trying to deport refugees harbored in churches. These results suggest a high level of public support for church activism aimed at the prevention of individual deportations.

My interview data suggest that the contradiction between restrictionist attitudes toward deportation as an abstract principle of migration control, on the one hand, and opposition to deportation in individual cases, on the other, can be explained in terms of public ambivalence about a "one size fits all" deportation policy which cannot sufficiently take into account individual circumstances.

> "People support deportation, but not deportation of people whom they know personally. It gets complicated when there is illness in the family."
> (INS deportation officer "A," Detention & Removal program, Miami, June 2002)

> "The problem is relatively simple—the disconnect between legal integration and actual integration. The standard for legal integration is the law, the standard for actual integration is set at the emotional level. And these two standards are in conflict with each other."
> (Deportation officer, municipal foreigner authority Brandenburg a. d. Havel, November 2001)

These quotes by German and American deportation officers express the dilemma of "legality without legitimacy"—situations where the decisions of bureaucrats fall within legal parameters but nevertheless violate a public sense of justice, either because of the disproportionate costs that deportation imposes upon immigrants, or because the criminalizing discourse of deportation cannot be applied to the deportee. This conflict operates at the level of implementation where it gives rise to a form of public protest I call "case mobilization"— *advocacy efforts by segments of the public that appeal to bureaucratic actors to use their discretion to exempt particular individuals or families from deportation.* By questioning the

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[7] Quoted in *Die Woche*, 01 June 1994.
[8] In Germany, the police is regularly involved in the implementation of deportations.

legitimacy of administrative decisions, these instances of case mobilization represent a significant challenge to the decision-making autonomy of bureaucratic actors.

Still, the threat of normative illegitimacy is not something that inescapably will render void the decision-making power of executive agencies. As this paper will show, immigration agencies are able to pursuit and implement politically contested decisions, provided that certain conditions are met. The most crucial of these conditions, I contend, is the extent to which agencies are able to *insulate themselves from electoral pressures*. Electoral insulation is not inevitably an institutional constant but rather can be manipulated by means of *bureaucratic strategy*. As the case of Germany will show, executive actors can, under certain conditions, successfully pursue strategies of electoral insulation. Whether or not bureaucrats can avail themselves of these strategies is contingent upon three institutional factors: (1) the degree of overlap between the jurisdiction of immigration agencies and those of elected officials, (2) the degree to which bureaucracies are autonomous from legislatures, and, (3) the extent to which immigration is a partisan political issue. Once we incorporate these variables into our analysis, we are able to account for variation in the capacity of state actors to deport in the face of case mobilization—variation which is evident both across countries and across domestic regions.

II.   The Threat of Case Mobilization to Deportation Capacity:
Four Empirical Cases

II.1   The Threat of Case Mobilization

In what ways does case mobilization constitute a threat to executive deportation capacity, that is the ability of deportation officers to implement deportation mandates[9]? Case mobilization—the mobilization of attentive publics[10] (Arnold 1990)—can check, even reverse, bureaucratic decisions by calling into question their legitimacy and, specifically, by calling upon elected officials to effect the reversal of deportation orders.[11] Immigration bureaucrats have a strong preference for resisting public and legislative pressures for decision reversal. "Caving in to political pressure," in the words of my interviewees, not only weakens bureaucratic capacity

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[9] Theda Skocpol defines executive capacity as the ability of bureaucratic actors to implement strategies and policies. .Skocpol, T. (1985). Bringing the State Back In: Strategies of Analysis in Current Research._Bringing the State Back In_. P. Evans, D. Rueschemeyer and T. Skocpol. Cambridge, Cambridge University Press.

[10] Arnold defines "attentive publics" as those citizens who are aware of a particular political issue, know what alternatives are under consideration, and hold clear policy preferences.

[11] While case mobilization can also draw courts into the arena of conflict, it most commonly occurs once all judicial remedies have been exhausted and a reversal of a deportation order can only be achieved through administrative fiat.

both by undermining the credibility of the agency, it also sets a precedent that will constrain future implementation decisions.

> "Our benchmark is the law. If we depart from it in one case, then we are no longer credible. There are good reasons for emphasizing humanitarian considerations, but it is our obligation to follow the law."
> (Bernd Joachimsmeier, director, municipal foreigner authority, district Ostprignitz-Ruppin (Brandenburg), 27 November 2002)

The preferences of deportation officers[12] regarding bureaucratic discretion are twofold. On the one hand, officers want to have sufficient discretion to take into account the merits of individual cases—should they themselves choose to do so. Bureaucratic discretion, *if exercised expediently*, can be used to not only arrive at morally justifiable administrative decisions, it also can preempt case mobilization on part of the public.

> "With regards to the media, we engage in damage control. If someone lies in hospital with a broken leg, we delay the deportation. With the media watching, you can't afford to make mistakes. [...] It is easy to figure out what stories the media would latch on to. [...] We must use discretion. These cases are not hard to spot. If you don't, man, you are in trouble. We do whatever is legally possible to give them a chance."
> (INS deportation officer "B," Detention & Removal program, San Diego, July 2002)

On the other hand, when it comes to implementing decisions that are likely to evoke opposition by non-state actors—the public, advocacy groups, the media—bureaucrats pursue strategies of blame avoidance by pointing to their lack of discretion as implementing agents. However, the viability of this strategy crucially hinges upon political back-up from top executive bureaucrats—a necessary condition which, in the opinion of many street bureaucrats, is often absent.

II.2   Case Mobilization in Germany

In Germany, public opposition to deportation tends to mobilize around refugee cases. Available data[13] on church sanctuary—the most prominent form of case mobilization in Germany—shows that, between 1996 and 2000, 909 refugees (240 separate cases) were living in

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[12] Throughout the paper, this refers to both on-the-beat street level bureaucrats and their mezzo-level managers.
[13] Which covers an estimated 88 percent of church sanctuary cases, Just, W.-D. and B. Sträter (2001). Unter dem Schatten Deiner Flügel: Eine Empirische Untersuchung über Erfolg und Misserfolg von Kirchenasyl. Bonn, Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche.

church sanctuary, over half of whom were children.[14] The majority of sanctuary refugees are Kurdish Turks [15] Family members usually entered the country as asylum applicants or civil war refugees and—despite a negative decision on their application—succeeded in remaining in the country. In a common scenario, there are small children who were born in Germany, are well integrated in their kindergarten or school, and are better versed in German than in their "native" language. Their fathers are often actively involved in the life of the local community, they might be coaching the local football club or help organize cultural festivals. What is important here is that the native population experiences the family as fully integrated into their community—despite their lack of legal integration. Because of these community ties, the issuing of a deportation notice is met with political opposition, provided that somebody—a nursery teacher, neighbor, or pastor—takes the initiative and organizes signature petitions, press briefings, letter campaigns, public demonstrations, and, in some cases, even the provision of church sanctuary. Interestingly, it is often individuals who are not otherwise engaged in politics who set into motion these chains of protest. The power of these campaigns is primarily of a *moral* nature—while there are generally few, if any, possibilities to secure residence under the terms of immigration law, the deportation of a family who is well integrated and contributes to community life offends the sense of justice of ordinary citizens.

Regional Variation in Case Mobilization

While church sanctuary is only the tip of the iceberg of case mobilization, it is a useful standard by which to measure case mobilization because of data availability. A cursory look at some raw data suggests that the prevalence of church sanctuary appears to be determined by three factors in particular: (1) *Religious denomination*: Lutheran churches are more likely to grant sanctuary than Catholic churches. In the period 1996-2000, Lutheran churches were 4.5 times as likely to offer sanctuary as were Catholic congregations. (2) *Political partisanship*: Opinion poll data[16] show that support for church sanctuary is highest among supporters of the

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[14] These data do not include refugees sheltered as part of "migratory church sanctuary" (*Wanderkirchenasyl*). Started in Cologne in 1998, this unique initiative of over 100 churches provided shelter to 485 Kurdish Turks by continually moving them from one congregation to the next.

[15] 60 percent of all cases, followed by non-Kurdish Turks (9 percent), Africans (9 percent), and refugees from the former Yugoslavia (7 percent) Just, W.-D. and B. Sträter (2001). Unter dem Schatten Deiner Flügel: Eine Empirische Untersuchung über Erfolg und Misserfolg von Kirchenasyl. Bonn, Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche..

[16] Forsa Institut, *Die Woche*, 1 June 1994

Green Party (71 percent), followed by Social Democrats (68 percent), Liberal Democrats (55 percent), and, lastly, Christian Democrats (49 percent).[17] (3) *Old versus new* Länder: In 1999-2000, the old *Länder* of the Federal Republic were 11 times as likely to have cases of church sanctuary than the new *Länder*. This striking variation can be attributed to a number of factors. First, the immigrant populations of the new *Länder* (2 percent in 1999[18]) are significantly smaller than those of the old *Länder* (10.3 percent)—though they are growing. Second, the relatively small size of the foreign population combines with a more secular society and a much younger civil society tradition to produce an institutional lag effect for the institutionalization of immigrant advocacy.

The two *Länder* examined in this paper, Baden-Württemberg and Brandenburg, show strong variation along these three dimensions. Baden-Württemberg, a border state in the southwest of the country has a foreign population of 12.5 percent, compared with 2.4 percent in Brandenburg. Human rights and immigrant advocacy groups which for years have been firmly established in Baden-Württemberg are only beginning to set up chapters in Brandenburg.[19] In the political arena, Baden-Württemberg has for decades been governed by a coalition of the centre-right Christian Democrats with the Free Democrats. Alongside the conservative mainstream, however, exists sizable support for the socially liberal Greens (see Figure 1). Brandenburg, in contrast, is the stronghold of the Social Democratic Party in the new *Länder*[20]. From 1990-1999 the *Land* has been governed by socially liberal governments.[21] Only since 1999 did policies begin to move toward the centre with the onset of the Grand Coalition between Social Democrats and Christian Democrats.

Finally, Baden-Württemberg is a disproportionately religious society, with only 9 percent of the population not identifying with any religious denomination at all.[22] Religious affiliation is

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[17] However, the interaction between partisanship and religion in Germany is complex. While in general individuals with strong religious affiliations espouse socially conservative attitudes (and are likely to vote Christian Democrat), when it comes to the issue of asylum, religious affiliation—in particular Protestantism—is associated with pro-immigrant attitudes.

[18] Source: Statistisches Bundesamt

[19] Amnesty international, for instance, which is also engaged in immigrant advocacy work, only has one chapter in the whole of Brandenburg, compared with at least 19 groups in Baden-Württemberg.

[20] The PDS (Democratic Socialists), which do not feature in the electoral landscape of the western *Länder*, has endorsed a pro-immigrant platform, even though its constituents do not share the "postmaterial liberalism" that characterizes the constituency of the Green Party in the west.

[21] 1990-1994: Social Democrat/Green/Democratic Socialists, 1994-1999 Social Democrats)

[22] Compared to a 12.3 percent average for the old *Länder*.

rather evenly divided between the Catholic (44.2 percent) and the Lutheran (40.2) church. In contrast, Brandenburg's population is, after East Berlin's, the most secular of all the *Länder*: over 70 percent are not religiously affiliated, with the remainder largely identifying with the Lutheran church (25.9 percent).

Figure 1: Partisan Support in Land Elections, Baden-Württemberg and Brandenburg 1996-2001 (in percent)

| ■ Baden-Württemberg 1996 | □ Baden-Württemberg 2001 | □ Brandenburg 1994 | ☒ Brandenburg 1999 |
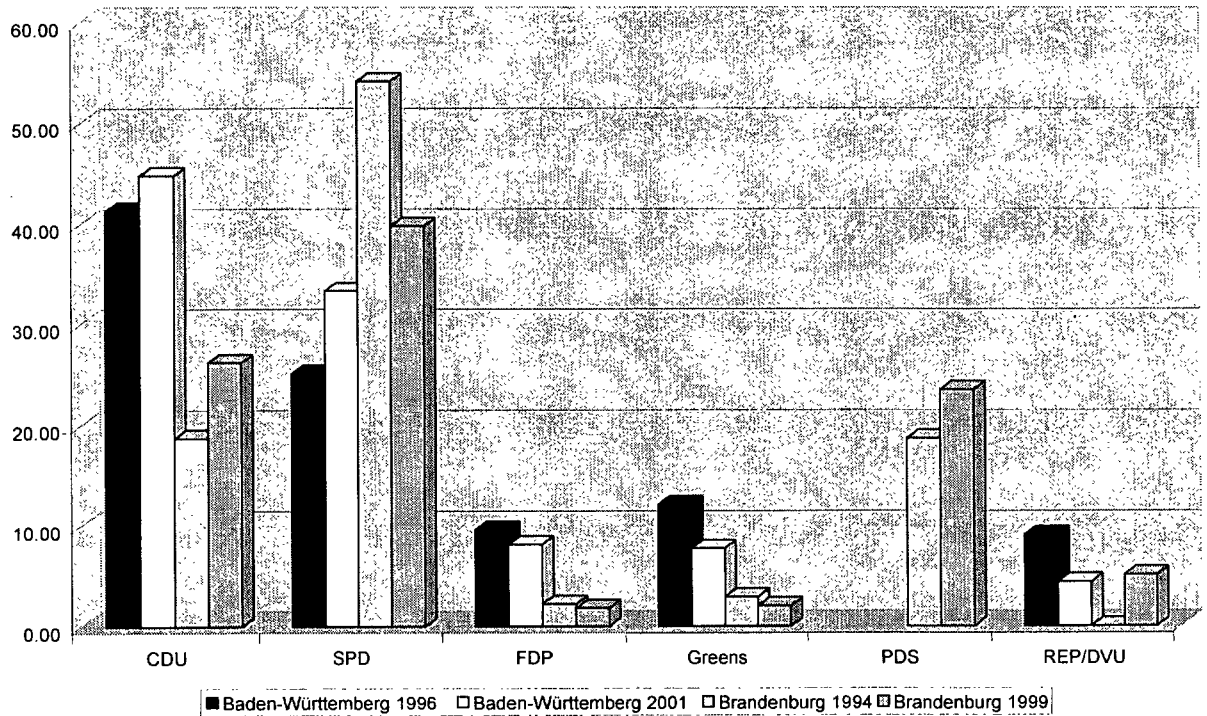
Comparing the two *Länder*, we would thus expect to observe evidence for case mobilization in both cases--supported by a small political left and the mainstream churches in Baden-Württemberg, driven mainly by partisan ideology and in lesser part by the Lutheran church in Brandenburg. However, given the much smaller immigrant population and the concomitant differences in institutionalized immigrant advocacy, we would also expect case mobilization in Brandenburg to lag behind that in Baden-Württemberg.

II.3   Case Mobilization in the United States

In the United States, asylum cases feature less prominently among instances of case mobilization than in Germany, with the notable exception of Haitians in Florida. The vibrant

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church sanctuary movement of the 1980s, which opposed the deportation of El Salvadorian and Guatemalan refugees, and which most closely resembles the current situation in Germany, came to an end in the late 1980s after a series of legislative victories (Cunningham 1995) and has not been resumed ever since. Instead, the vast majority of case mobilization efforts focus on either undocumented immigrants with citizen family members (especially children), or permanent legal residents who have committed minor crimes. This difference in target groups stems from differences in the legal make-up of the immigrant population which, in turn, is influenced by the particularities of immigration law and geopolitical factors.[23] While the characteristics of certain groups, in particular refugees, lend themselves particularly well to case mobilization hardship cases can be found among most groups, with the exception of violent offenders.

Regional Variation in Case Mobilization

In the United States, the politics of immigration does not follow along partisan lines to the extent it does in Germany. In their analysis of voting behavior for Congressional and House elections in the 1990s, Gimpel and Edwards (Gimpel and Edwards 1999) found no evidence for the public's preferences on immigration impacting on voting behavior. In most locations, immigration is not a sufficiently salient issue for voters to override other cues such as party, race, and economic perceptions that effect voting behavior. However, in geographical areas with high concentrations of immigrants, immigration issues have started to impact on partisan and ideological preferences. Crucially, however, while anti-immigrants sentiments can be strong in regions with large populations of foreign-born, these preferences can only translate into electoral successes if minorities don't constitute a large voting bloc. Support for Proposition 187,[24] for instance, varied significantly among racial groups. While 63 percent of white voters supported the measure, only 53 percent of Asian-Americans and African-Americans, and 33 percent of Latino voters voted in favor.[25] Proposition 187 could only pass by such a wide margin because 76 percent of California's electorate in 1994 was white. In Southern Florida, in contrast, registered Latino voters make up a large segment of the electorate that cannot be ignored by elected officials. In 1998, Hispanics constituted 38 percent of registered voters in Miami-Dade

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[23] These status differences in deportee populations is reflected in the way that deportation statistics are gathered in the two countries. While German data clearly distinguish between asylum and non-asylum cases (occasionally broken down by criminal status), U.S. statistics discriminate, first, between criminal versus non-criminal deportations, and, second, by legal versus illegal entry.

[24] Proposition 187 denied access to most health and social services, including access to public education, to undocumented immigrants and their children. The measure was struck down by a federal judge.

[25] Jan Adams, ZMagazine March 1995, www.zmag.org/zmag/articles/mar98adams.htm.

county. Gimpel and Edwards argue that once immigrants are concentrated sufficiently to raise the salience of immigration issues, elected officials will take their cues from the immigration preferences of their constituents. However, the picture gets more complicated once immigrant communities are sufficiently established to make up a sizeable segment of the electorate—we would then expect the preferences of *immigrants* to impact on representatives' voting decisions.

Gimpel and Edwards' analysis of the passage of the 1996 immigration act[26]--the toughest of amendments concerning illegal immigration to date—tests the significance of various factors in accounting for roll call votes. They found that representatives had a significantly higher likelihood of voting for its House passage if they were (1) Republicans, (2) representing a Southern state, (3) represented a district with a high percentage of foreign-borns, and, (4) came from a district with high levels of unemployment. Turning to the two U.S. regional cases of this paper, Miami-Dade County in Florida and San Diego and Imperial Counties in California, to what extent can these factors describe the voting behavior of their Representatives ?

Southern Florida and Southern California both have significantly higher concentrations of immigrants than the national average (10.4 percent). However, while San Diego County and Imperial County have foreign-born populations of 21.2 percent and 31 percent respectively, Miami-Dade County's foreign-borns makes-up a staggering 57.3 percent of the population.[27] Regarding economic indicators, unemployment in 1996 ranged from a low of 3.3 in San Diego County, to 7.3 percent in Miami-Dade, and 29.5 percent in Imperial County[28] Finally, Miami-Dade County represented by two Republican and one Democratic Congressmen, while the two Californian counties elected four Republican and one Democratic Representatives. Comparing Gimpel and Edward's predictions for these indicators with actual roll call votes, we observe a rather poor degree of fit (Table 1). Economic indicators are consistently unable to predict voting behavior, as is the southern/non-southern state distinction.[29] Partisanship appears to be the most reliable predictor, with the important exception of Miami's two Republican Congressmen. Strikingly, the variable of immigrant concentration only has explanatory power for San-Diego County—the County with the lowest concentration of immigrants among the three counties. Once we compare the three counties by the electoral clout of their immigrant populations,

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[26] The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).
[27] 2000 U.S. Census data.
[28] Compared to a national average of 5.4 percent.
[29] Not surprisingly, as the politics of South Florida is distinctly different from Southern politics.

Table 1:   Comparison of predicted roll call votes on House passage of 1996 amendments with actual votes

(cells corresponding to actual vote in dark shades)

House Member	County	Partisan-ship	Predicted vote by partisan-ship	Unemploy-ment	Predicted vote by unemploy-ment	Foreign-born population	Predicted vote by foreign-born population	Predicted vote by southern state	Actual vote	Electoral clout of immigrants
Diaz-Balart	Miami-Dade	Republican	Yes	High	Yes	Very high	Yes	Yes	No	High
Meek	Miami-Dade	Democrat	No	High	Yes	Very high	Yes	Yes	No	High
Ros-Lehtinen	Miami-Dade	Republican	Yes	High	Yes	Very high	Yes	Yes	No	High
Hunter	San Diego	Republican	Yes	Low	No	High	Yes	No	Yes	Low
Cunning-ham	San Diego	Republican	Yes	Low	No	High	Yes	No	Yes	Low
Davis	San Diego	Republican	Yes	Low	No	High	Yes	No	Yes	Low
Issa	San Diego	Republican	Yes	Low	No	High	Yes	No	Yes	Low
Filner	Imperial	Democrat	No	High	Yes	Very high	Yes	No	No	High

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however, the findings line up as expected (Table 1, last column). Representatives from counties with a strong immigrant vote consistently voted against the immigration amendments, while members of Congress with weak immigrant constituencies voted in favor.

Differences in electoral clout of the three counties' immigrant communities reflect divergent immigration histories and community characteristics. The city of San Diego's foreign-born population increased from 15 percent in 1980 to 21 percent in 1990, to 26 percent yet another decade later. Miami's foreign-born population, in contrast, has been consistently high for the past two decades. As early as 1980, 54 percent of Miami's population was foreign-born, increasing to 60 percent in 1990 and remaining at this level for the next decade. Confounded by the fact that Southern California's largely Mexican immigrant population could, at least until the mid 1990s, move relatively easily back and forth across the border, San Diego's foreign-born population is not integrated into tight immigrant communities. Miami politics, in contrast, is inextricably linked with the politically salient Cuban community, at the same time as other Caribbean communities, in particular Puerto Ricans and Haitians, as well as Central Americans, are rapidly gaining in influence. This difference between the immigrant communities of Miami and San Diego was repeatedly pointed out by my interviewees:

> "Miami is different from all other places in a number of ways: there are so many nationalities here. As a result, there are many organized advocacy groups, who are very strong. [...] The Haitian-American Grassroots Coalition, Haitian Women of Miami, Honduran groups, Nicaraguan groups..."
> (Patricia Macha, INS Public Affairs Specialist, Miami, 17 June 2002)

> "We don't have strong advocacy groups here. The strong groups are in Miami, Chicago, New York City, they are more organized. In San Diego there is Border Patrol and military groups everywhere, military personnel. It's not a welcoming environment for poor migrants, so they don't stay here. All of this makes it hard to organize migrants. "
> (Christian Ramirez, Director, U.S./Mexico Border Program, American Friends Service Committee, San Diego, 3 July 2002)

> "Florida and New York are the most liberal states with regard to immigration. Authorities there will not cooperate with the INS. The Miami mayor said openly: there won't be deportations here. California is very different. One aspect is the border. everything is more law-enforcement oriented. In addition, San Diego is a military city, [...] it's a conservative city. Immigrants are perceived as a threat, linked to crime, regarded as juvenile delinquents. Miami and New York are mixed, there are many different immigrant communities, it's a way of life there, many people like it. But here: the communities are so fragmented. We do have a small Vietnamese community, there are

Filipinos in National City, but they are pockets, they don't work together, they are not connected. There is no sense of community among immigrants. "
(Lilia Velasquez, immigration lawyer and community activist, San Diego, 24 July 2002)

Importantly, these differences between the San Diego and Miami immigrant communities have resulted in divergent mobilization potential on behalf of individual immigrants. However, the capacity of immigration agencies to deport in the face of public opposition is not linearly correspond to incidence levels of case advocacy. Rather, the ability of bureaucrats to devise strategies to circumvent public opposition is determined by their larger institutional context.

III.   The Institutional Determinants of Bureaucratic Deportation Capacity

The ability of immigration bureaucrats to circumvent case mobilization by means of strategies of electoral insulation is, I have argued, determined by the institutional context in which they are operating. Among these factors, the following three are of particular significance:

III.1   Relations Between Elected Officials and Their Constituents

Case mobilization most effectively constrains the deportation capacity of bureaucrats when it is able to engage *elected officials* in the conflict between agency and non-state actors. Through constituency casework, elected representatives support members of the public to challenge the decisions of bureaucrats, a service the electoral payoffs of which are widely acknowledged (Fiorina 1989). Cain et. al's 1987 study of constituency service found that in the United States, immigration issues were the second most frequently reported examples of casework for federal legislators[30]—a salience which today is likely to be even higher. Similarly, in the committee of petitions[31] (*Petitionsausschuss*) of the state parliament of Baden-Württemberg, 29 percent of petitions concerned immigration issues.[32] In an administrative state—and the INS has been the fastest growing federal bureaucracy in recent years—elected representatives have strong incentives to engage in ombudsman-like activities. Douglas Arnold argues that U.S. legislators are responsive to narrow and organized interests in situations where

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[30] After social security and military or veteran's benefit problems.
[31] The committee fulfills the function of ombudsman for the public.
[32] Interview with Roland Schmid, advisor to the Christian Democratic Party, state parliament Baden-Württemberg, January 11, 2002.
[33] Occupational Safety and Health Administration

the group's costs and benefits are both visible and traceable to their actions, with the costs and benefits to the larger public being less easily discernible (Arnold 1990). While Arnold makes his argument in reference to pork-barrel politics (i.e., *policy* choices), it can equally be applied to constituency *casework*: should a representative succeed in pressuring the INS to reverse a deportation order, the benefits for the constituent are not only substantial but also are clearly attributable to the representative's intervention. Among legislative staff interviewed by Cain et. al, estimates of successfully resolved cases varied greatly—the authors suggest a success rate of at least 50 percent (Cain, Ferejohn et al. 1987).

While constituency service by elected officials can be observed across democracies, its prevalence varies by institutional context. In general, constituency service is more likely in plurality electoral systems than in proportional representation (PR) systems. Plurality systems are based on territorial representation, with legislators serving as representatives for a clearly delineated geographical constituency. As voters select individual candidates, candidate visibility and recognition is regarded more important for reelection than in traditional PR systems where voters select a party, rather than a candidate (Cain, Ferejohn et al. 1987; Lancaster 2002; Norris 2003). However, recent evidence suggests a more complicated picture, with *combined* plurality and PR systems (such as Germany's) showing equal or stronger levels of voter-member contact activity to that of plurality systems (Norris 2003).

The literature on constituency service and "the personal vote" (Cain, Ferejohn et al. 1987) has been largely confined to the Congressional, and, more recently, parliamentary institutional contexts. However, as this paper demonstrates, constituency service is an integral part of the political activities of elected officials at *all* levels of government. Scholz et al's study of county-level OSHA[33] enforcement found that county, state, and federal officials all used their elected positions to influence local enforcement activities (Scholz, Twombly et al. 1991).[34] In the German context, Bernhard Wessel argues that relatively few members of the German Bundestag engage in constituency service--regardless of whether or not they were elected in single-member plurality districts or through PR party lists—because many local services of concern to the electorate are within the jurisdiction of the *Länder* (Wessels 1999). It follows that, to understand the influence of elected officials over policy implementation, we need to study the political

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[34] Political parties at the county level exerted influence on decisions within the discretion of local field offices, while members of Congress influenced local activities under the decision-making authority of the national office.

activities of elected officials *below* the federal level. To the extent that there is variation in the locus of executive jurisdiction across cases, then, we need to study elected officials at *corresponding* levels of jurisdiction.

III.2   Locus of Executive Jurisdiction

Crossnational variation in the loci of executive jurisdiction is largely determined by differences in how local-central relationships are structured—a variable that varies even across federal political systems. While both Germany and the United States are federal political systems, their vertical separation of powers is based upon differing organizing principles. American "layer cake" federalism (Grodzins 1966) reflects a strict separation of federal from state government jurisdiction based on distinct *policy areas*.[35] In contrast, German "marble cake" federalism differentiates between *types of competencies*: while federal institutions are charged with legislating, states are responsible for implementation (Laufer and Münch 1998). Whereas American federalism emphasizes the independence of the states from the federal government, German federalism is premised on cooperation between the two levels of government.

These institutional differences have resulted in strikingly different immigration bureaucracies. In the United States, a federal agency, the Immigration and Naturalization Service (INS)[36] is charged with implementing federal immigration laws. The locus of executive policy making is the INS headquarter within the Justice Department in Washington, D.C., from where policy mandates get passed down via three regional offices to the 33 INS district offices charged with on-the-ground implementation. In most instances, INS districts do not correspond with state boundaries. As a consequence of its federal jurisdiction, immigration enforcement is one of the few major areas of domestic public policy in the U.S. over which states hold no jurisdiction. In Germany, in contrast, the 16 *Länder*[37] are charged with implementing federal immigration law.[38] The locus of administrative decision-making is the interior ministries of the *Länder* who delegate

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[35] Within a particular policy area, one level of government usually holds the powers of both legislation and policy implementation.

[36] This organizational structure reflects the period 1940–2002. In March 2003, the INS was formally dismantled and broken up into three different agencies within the newly created Department of Homeland Security.

[37] German federal states

[38] With the important exception of the *Bundesgrenzschutz* (BGS), the German border police, which is a federal police force in charge of border control. As far as the implementation of deportation policy is concerned, the BGS is charged with escorting deportees during air deportations.

the tasks of implementation to local foreigner authorities. The administrative structure of the bureaucracy of the various *Länder* follows one of two basic models. While some *Länder* have only municipal authorities (at city and county level), others are distinguished by a *regional* level of administration which links municipal with *Land* bureaucracies. Thus the loci of jurisdiction of deportation tasks vary not only between the two county cases, but, in the case of Germany, also between the regions.

This variation in loci of executive jurisdiction has important implications for the politics of case mobilization. While American immigrant advocates will turn to their Congressional representatives for help, in Germany *Bundestag* delegates only hold little influence over deportation agencies, as these report to the *Länder* governments. Instead, advocates turn to elected officials at the municipal level, such as mayors and county mayors[39] (*Landräte*), and, occasionally, to *Land* parliamentary representatives. Crucially, those *Länder* with regional, rather than municipal, foreigner authorities do not have a class of elected officials whose jurisdiction corresponds with regional administrative boundaries, as the jurisdiction of mayors and county mayors does not extend to the regional level. At the same time, the particularities of executive-legislative relations at the *Land* level are such that parliamentary representatives exert only little power over *Land* and regional executives.

III.3 Executive-Legislative Relations

Not only have differences in federalist structures between Germany and the United States resulted in divergent loci of executive decision-making, they have also shaped executive-legislative relations, most notably through the different functions of the U.S. Senate and the German *Bundesrat*.[40] In contrast to U.S. Senators who directly represent the interests of the state electorate and are independent from their state government, the *Bundesrat* consists of delegates of state executives who are bound by instructions from their cabinets and are represented in committees by *Land* civil servants (Lehmbruch 2000a). This *Exekutivföderalismus*, a variant of federalism particular to Germany, not only gives the *Land* administrations sole jurisdiction over policy implementation, it also accords their representatives a key role in the legislative and

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[39] The equivalent to town mayors for rural areas.
[40] The parliament's upper house.

policy-making process. As a consequence of institutional developments over the past few decades,[41] the political significance of the *Land* parliaments (*Landtage*) has further declined, thereby providing state executives with an enormous amount of autonomy from the *Länder* legislatures. The strong role of the executive in the legislative process assures the administration a degree of autonomy absent in the U.S. political system. Where in the United States Congress decides on the terms of administrative delegation and oversight, in Germany it is bureaucrats themselves who co-determine the *terms* of delegation—a condition that Daniel Carpenter considers crucial to the exercise of executive autonomy (Carpenter 2001).

Table 2: <u>Bureaucratic Capacity at Implementation Level</u>

Case	Brandenburg	Baden-Württemberg	Miami	San Diego
Mobilization potential of local advocacy groups	Intermediate	High	High	Low
Expected impact on level of bureaucratic Capacity	Low	Low	Low	High
Bureaucratic level of implementation	Municipal	Regional	Federal field office	Federal field office
Corresponding elected officials	Mayor, county mayor		House members, Senators	House members, Senators
	State legislators	State legislators		
Likelihood of constituency service	High		High	High
	Low	Low		
Expected impact on level of bureaucratic capacity	Low	High	Low	Low

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[41]Germany's federalisms has moved continually toward federal legislative unitarization, as the *Länder* surrendered parts of their original legislative jurisdiction to the federal level. In exchange, legislation in these policy areas has remained subject to the consent of the *Bundesrat*, thereby preserving the organization domain of state bureaucracies Lehmbruch, G. (2000a). The Institutional Framework: Federalism and Decentralisation in Germany. *Comparing Public Sector Reform in Britain and Germany: Key Traditions and Trends in Modernisation.* H. Wollmann and E. Schröter. Aldershot, Ashgate: 85-106.

While state bureaucracies are largely autonomous from the state parliaments, they are closely controlled by governing parties (Lehmbruch 2000a). And, as partisanship strongly determines preferences on immigration policies in Germany, there is significant variation in policy decisions between those *Länder* governed by Christian Democrats, on the one hand, and Social Democratic *Länder*, on the other. It follows that, while executives may enjoy a degree of autonomy from the legislature not found in the United States, political conflict surrounding deportation decisions *within* the executive is likely to vary by partisanship of the governing coalition. We would expect there to be stronger political support for controversial deportation decisions in *Länder* governed by the Christian Democrats.

Table 3: Bureaucratic Capacity at Decision-making Level

Case	Brandenburg	Baden-Württemberg	Miami	San Diego
Bureaucratic level of policy-making	Brandenburg interior ministry	Baden-Württemberg interior ministry	Agency HQ, Washington, D.C. (Department of Justice)	Agency HQ, Washington, D.C. (Department of Justice)
Corresponding legislature	Brandenburg state parliament	Baden-Württemberg state parliament	U.S Congress	U.S. Congress
Bureaucratic autonomy from legislature	High	High	Low	Low
Level of political conflict within bureaucracy	High	Low	High	High
Expected level of bureaucratic capacity[42]	Low	High	Low	Low

Tables 2 and 3 summarize our assumptions so far. Deportation capacity is conceived of as a function of four variables: (1) the level of case mobilization, (2) the likelihood of constituency

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[42] High levels of capacity require *both* autonomy from the legislature *and* low levels of intra-bureaucracy contestation.

service at the level of implementation, (3) bureaucratic autonomy from the legislature at the level of policy making, and (4) the level of political conflict *within* the executive at the level of policy making, which will correspond with the level of political back-up in cases of contested decisions. Variation in the deportation capacity of immigration agencies will correspond to variation among these variables.

IV. Bureaucratic Capacity and Case Mobilization in Germany

IV.1 Baden-Württemberg

Baden-Württemberg is the originator of the regional model for foreigner authorities[43] which, since its establishment in 1989, has served as a blueprint for the administrative structures of deportation authorities nationally. Until 1989, deportation in Baden-Württemberg was, like elsewhere, in the hands of the approximately 120 municipal foreigner authorities which operate at city and county levels[44]. The purpose of regional centralization was to allow for a more consistent implementation of deportation mandates for rejected asylum applicants.[45] Until the mid-1980s, German authorities only infrequently deported rejected asylum applicants,[46] in large part because many refugees were protected under *Länder*-imposed stays of deportation responding to economic and political turmoil in their home countries. This started to change with the decision of the 1988 conference of interior ministers[47] to restrict and even annul existing deportation stops.

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[43] "Karlsruher Model"

[44] In 1989, the *Land* ministry of the interior established two central deportation authorities in two of the four administrative regions (*Regierungsbezirke*), Karslruhe and Stuttgart. In 1992, in response to the drastic increase in asylum applications, the federal ministry of the interior decided to establish 6 „Regional Asylum Offices" (*Bezirksstellen für Asyl*). These offices included a reception center for asylum applicants, a satellite office of the Federal Office for the Recognition of Foreign Refugees, a satellite office of the regional administrative court, and a foreigner authority charged with deporting. These offices were collectively also known as the „six-week-model"(*Sechswochenmodell*). According to this blueprint, the asylum process should be finished within 6 weeks, and voluntary departure or deportation should take place within an additional six weeks. At present, there are four Regional Asylum Offices, one in each of the regions.

[45] Interview, *Zentrale Landesaufnahmestelle für Flüchtlinge*, Karlsruhe (Baden-Württemberg), 25. January 2002.

[46] Between 1976 and 1980, only 2000 asylum applicants were deported nationally, compared to 47,386 rejections of asylum applications Münch, U. (1993). *Asylpolitik in der Bundesrepublik Deutschland: Entwicklungen und Alternativen*, Opladen.

[47] The conference of interior ministers of the *Länder* (*Innenministerkonferenz*), plays a major role in policy formation. The conference coordinates policy preferences between the *Länder* and drafts policy proposals for the *Bundesrat*.

Soon after the establishment of the central deportation authorities in the middle of 1989, the number of deportations in Baden-Württemberg started to rise.[48] While in the 6 months prior to their establishment, 160 deportations were recorded, during the following 6 months 400 asylum applicants were deported. Deportations in the following 3 months further increased to 602 (Garhöfer 1991). Within the course of one year, deportation numbers had tripled. Figure 2 describes the numerical development of asylum deportations in Baden-Württemberg. Asylum applicants today make up for 55-65 percent of deportations in Baden-Württemberg, compared to 30 percent in 1989.

How can we explain the increase in deportations starting in 1989? One possible explanation attributes the increase in deportations to a concomitant increase in the number of deportable immigrants. We would expect that, the more asylum applications, the higher the number of potential deportees, the higher the number of deportations.[49] However, Figure 3 suggests a more complex relationship. The graph compares the number of asylum applications (potential deportees) and the number of deportations in Baden-Württemberg with those of Germany as a whole.[50] The two lines do not run parallel, as a straightforward input-output model would suggest. Rather, Figure 3 shows a striking increase in Baden-Württemberg's deportation share for the period of 1989-1992, despite a decline in its asylum share. Between 1989 and 1992, Baden-Württemberg received 13 percent of asylum applicants, while deporting 17 percent of all deportees. In contrast, the gap declines after 1992, when Baden-Württemberg receives an

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[48] Interview, *Zentrale Landesaufnahmestelle für Flüchtlinge,* Karlsruhe (Baden-Württemberg), 25. January 2002.
[49] Certainly, the number of asylum applicants and the number of deportee in any given year are not the same individuals. For the majority of cases, we would expect 1-2 year gap between asylum application and eventual deportation. In 1999, the appeals process in the administrative courts lasted an average of 16 months.
[50] Unfortunately, the federal ministry of the interior does not break down its deportation data in asylum versus non-asylum cases. For this reason, I am comparing all (asylum and non-asylum) deportations in Baden-Württemberg with those at the national level. However, there is no reason to suggest that there is a systematic difference in the composition of the deportee populations among the various cases.

average of 11 percent of asylum applicants, while performing 13 percent of all deportations.[51]

Baden-Württemberg still deports a disproportionate share of migrants, though other *Länder*

appear to have caught up. The timing this development perfectly correlates with administrative

developments. 1989 marks the time of the establishment of the *Land*'s central deportation

authorities, while 1993 marks the extension of this model to other *Länder*.

**Figure 2: Deportations of Rejected Asylum Applicants, Baden-Württemberg**

(Source: Innenministerium Baden-Württemberg)

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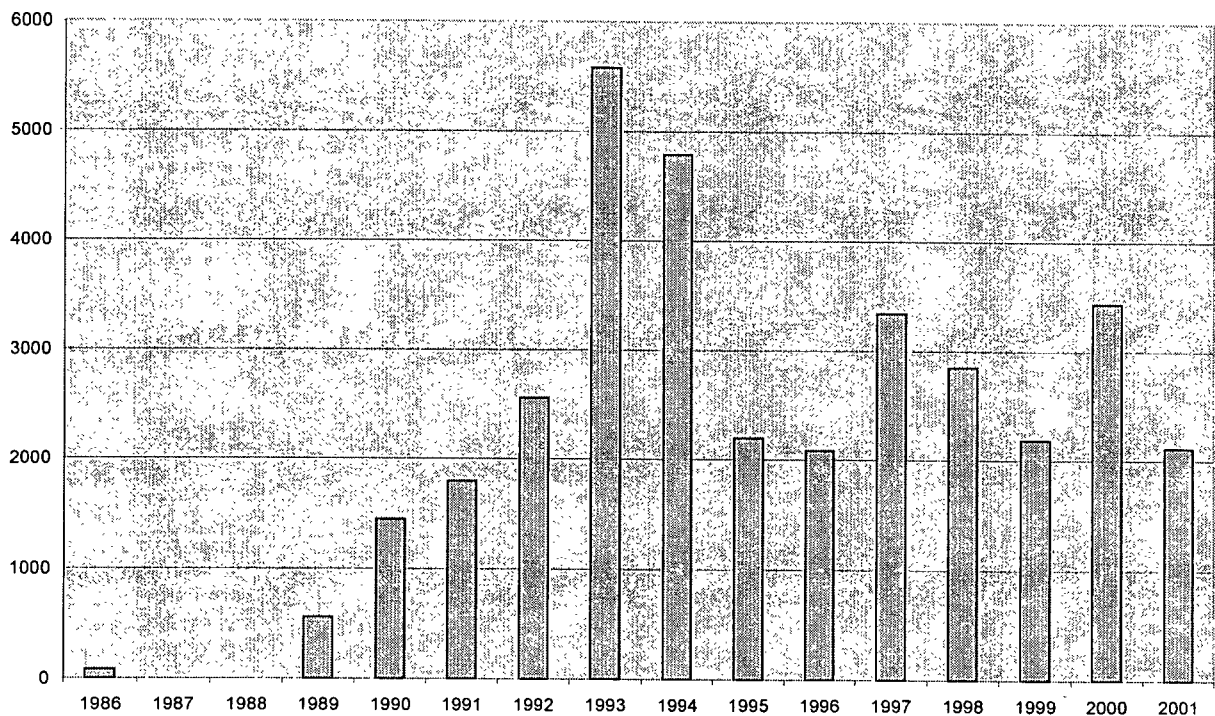
[51] Legislative change in 1992 provided for a centrally-administered key to allocate asylum applicants to the various *Länder* based on population size.

**Figure 3: Asylum Applications and Deportations in Baden-Württemberg
as Percentage of National Figures**

(Source: Statistisches Landesamt, Innenministerium Baden-Württemberg)
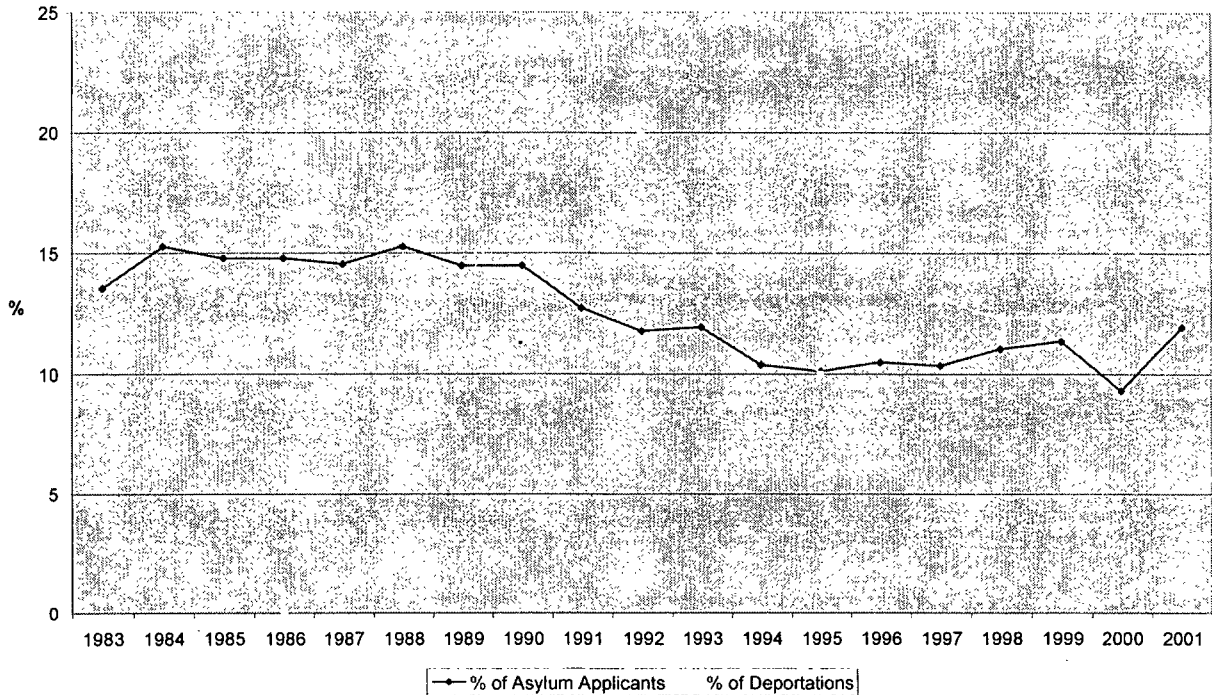

The decrease in Baden-Württemberg's deportation share after 1992 happens in a context of *increasing* deportation numbers, as Figure 4 shows. The peak in absolute numbers in deportations in 1993 and 1994 reflects a strong increase of asylum applications in the early 1990s. While this influx did impact on deportation numbers, a breakdown of the data in Figure 3 suggests that changes *within* the deportation regime have impacted on deportation numbers. The most important of these developments, I argue, has been the administrative centralization of deportation functions. Within the course of a few years, municipal foreigner authorities in Baden-Württemberg had lost all but a remnant of their original jurisdiction over the implementation of deportation—responsibilities which they had held for over four decades. When in 1995, the regional authorities were additionally put in charge of the deportation of *non-asylum* cases, municipal foreigner authorities in Baden-Württemberg ceased to conduct deportations.[52]

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[52] Baden-Württemberg is unique among the *Länder* in having centralized virtually all tasks relating to deportation. Other *Länder* with strong centralized structures, for instance North Rhine-Westphalia, have centralized selected tasks, such as obtaining identity documents or the transportation of deportees, while closely working with local foreigner authorities in the remaining tasks of deportation.

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Figure 4: Deportations, Germany and Baden-Württemberg

(Source: Innenministerium Baden-Württemberg, Bundesgrenzschutz)

Baden-Württemberg ☐ Germany ▨
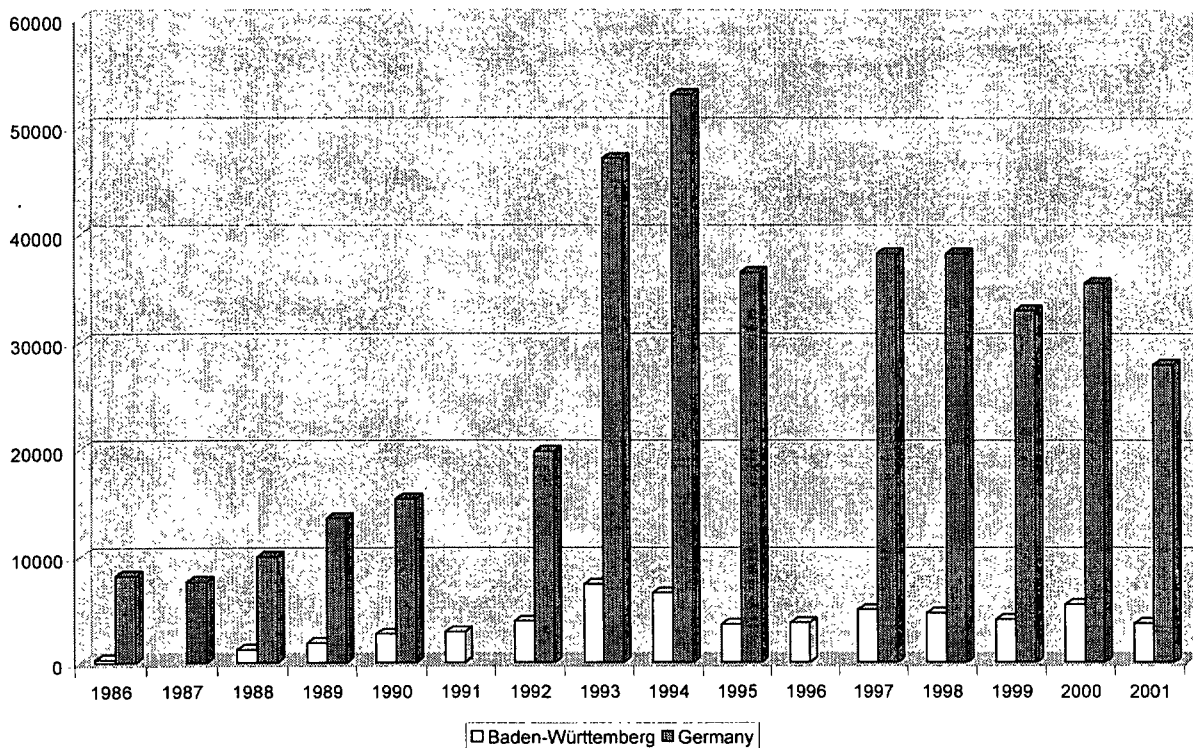
IV.2 Brandenburg

Like all the new *Länder*, Brandenburg had to start from scratch when after unification it was faced with the task of setting up foreigner authorities. Under the old regime of the GDR, matters relating to foreigners were generally handled by the police, and deportations were a rare occurance.[53] Not only did the new *Länder* have no institutional experience in „administering" foreigners, the very presence of a sizeable population of foreign nationals after unification was in itself a new experience. Brandenburg started to set up its own institutions not long before the federal ministry of the interior decreed that all *Länder* were to establish central reception centers for asylum applicants. Drawing upon the Baden-Württemberg model, the Brandenburg interior ministry decided to establish a central foreigner authority in Eisenhüttenstadt near the Polish border that would operate from the same area as the mandated reception center. Two arguments in particular were advanced to justify this decision: first, the assessment of Baden-Württemberg's experience with centralized foreigner authorities had been overwhelmingly positive. Second, the

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[53] Interview, Almuth Berger, Commissioner for Foreigner Affairs for the *Land* Brandenburg (*Beauftragte der Landesregierung Brandenburg für Ausländerfragen*), Potsdam (Brandenburg), 23. October 2001.

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experience and expertise of the newly established municipal foreigner authorities in Brandenburg were so limited that it made sense to centralize particularly difficult tasks such as deportation.[54] Accordingly, the central foreigner authority was opened in early 1991.

Not long after its inception, the central authority's initially wide jurisdiction began to shrink—in striking contrast to the institutional developments in Baden-Württemberg. Since 1995, it has only been responsible for deporting those asylum applicants who are still in the reception center at the time of their departure.[55] The director of the authority believes that in the future it will further limit its deportations to only those foreigners who are in detention,[56] the detention center having been added to the central authority in 1997.[57] The reason underlying this unexpected development was a state-wide administrative reform in Brandenburg, which by 1994 had reduced the number of counties and by 1997 had resulted in the decentralization of previously centralized tasks at the new county and city level.[58] The new county boundaries were drawn up with the aim of creating administrative entities that would be large enough to engage in self-administration and yet small enough to allow for citizen participation.[59] Policy-makers decided against a three-tiered administrative system (city/county, region, *Land*) on the grounds that Brandenburg was too thinly populated to justify the creation of a regional bureaucracy(Büchner and Franzke 1999). Moreover, it was argued that the establishment of a strong municipal bureaucracy would provide the public with better access to administrative services ("*Bürgernähe*"). Finally, a number of county mayors—the *elected* heads of public administration at the municipal level—lobbied for the enlargement of the jurisdiction of municipal foreigner authorities. These decisions resulted in a policy U-turn toward the *decentralization* of deportation tasks, a development that was to prove consequential for capacity of bureaucrats to deal with case mobilization efforts.

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[54] Interview, Reinhardt Appel, former consultant on asylum and foreigner affairs to the *Land* government of Brandenburg, Berlin, 18. December 2001.

[55] Asylum applicants spend a maximum of 3 months in the reception centers.

[56] Interview, Tanja Neumann, Director, central deportation authority, Eisenhüttenstadt (Brandenburg), 24. September 2001.

[57] Interview, detention center Eisenhüttenstadt (Brandenburg), 24. September 2001.

[58] Interview, Lothar Kaden, Director, interior affairs (*Ordnungsamt*), office of the county mayor, district Oder-Spree, Beeskow (Brandenburg), 2. November 2001.

[59] Friedrich-Ebert-Stiftung (1991). Die Gemeindeverwaltungs- und Kreisgebietsreform in Brandenburg. Potsdam, Friedrich-Ebert-Stiftung, Landesbüro Brandenburg.

Deportation data shows that the move toward decentralization in Brandenburg has been accompanied by a drop in the number of deportations (see Figure 5). Comparing the development of asylum deportations in Brandenburg with those in Baden-Württemberg, we observe that the continuous downward trend in Brandenburg is at odds with developments in Baden-Württemberg where numbers, despite considerable fluctuations since 1995, have not fallen much below the level of 1995. In Brandenburg, in contrast, after the sharp drop of 1994—a decline that is also observable in national data and is related to the drastic decrease of asylum applications after the

Figure 5: Asylum Deportations in Brandenburg and Baden-Württemberg
(Source: Ministerium des Innern des Landes Brandenburg, Zentrale Ausländerbehörde
Eisenhüttenstadt, Innenministerium Baden-Württemberg)

■Asylum Deportations, Brandenburg □Asylum Deportations, Baden-Württemberg
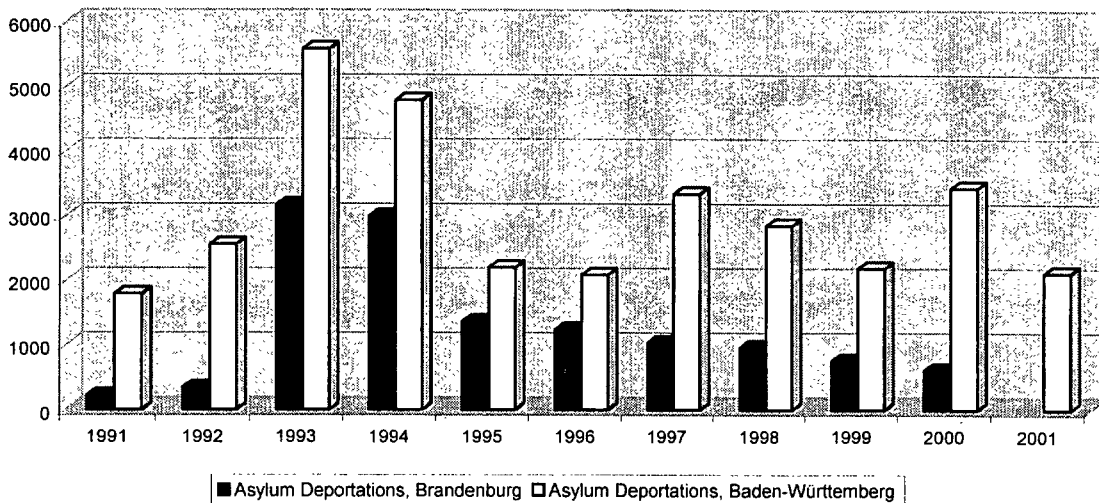
constitutional and legislative reforms of 1993—deportation numbers in the late 1990s continued to fall. Breaking down the figures according to deporting authority (Figure 6), we see that municipal foreigner authorities have not been able to offset the drop in deportations by the *Land's* central foreigner authority resulting from the change in jurisdiction in 1995. Looking at the development of asylum deportations of the two *Länder* in Figure 7, we observe that, until 1996 and during a time in which the central foreigner authority had taken up its deportation work, Brandenburg succeeded in drastically increasing its deportation numbers. Beginning in 1996, however, the Brandenburg trajectory departs from that of Baden-Württemberg returns to it pre-1992 level.

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Figure 6: Asylum Deportations in Brandenburg By Foreigner Authority
(Source: Ministerium des Innern des Landes Brandenburg, Zentrale Ausländerbehörde
Eisenhüttenstadt)

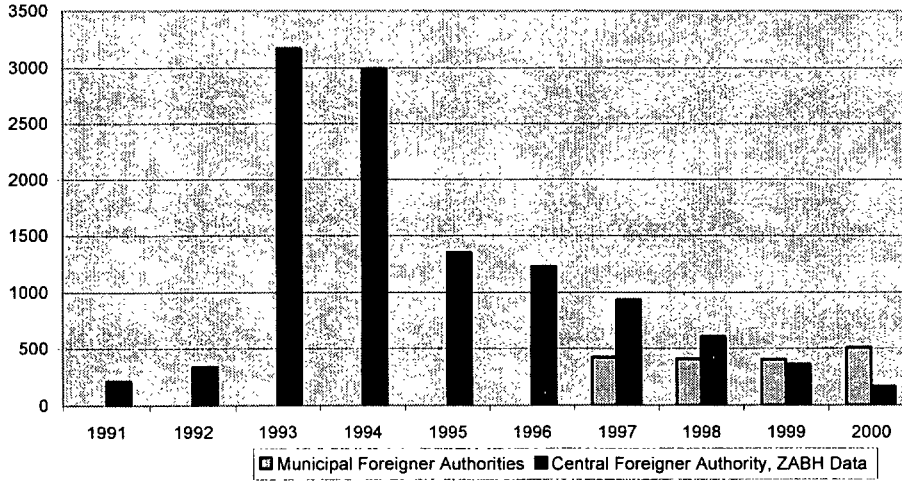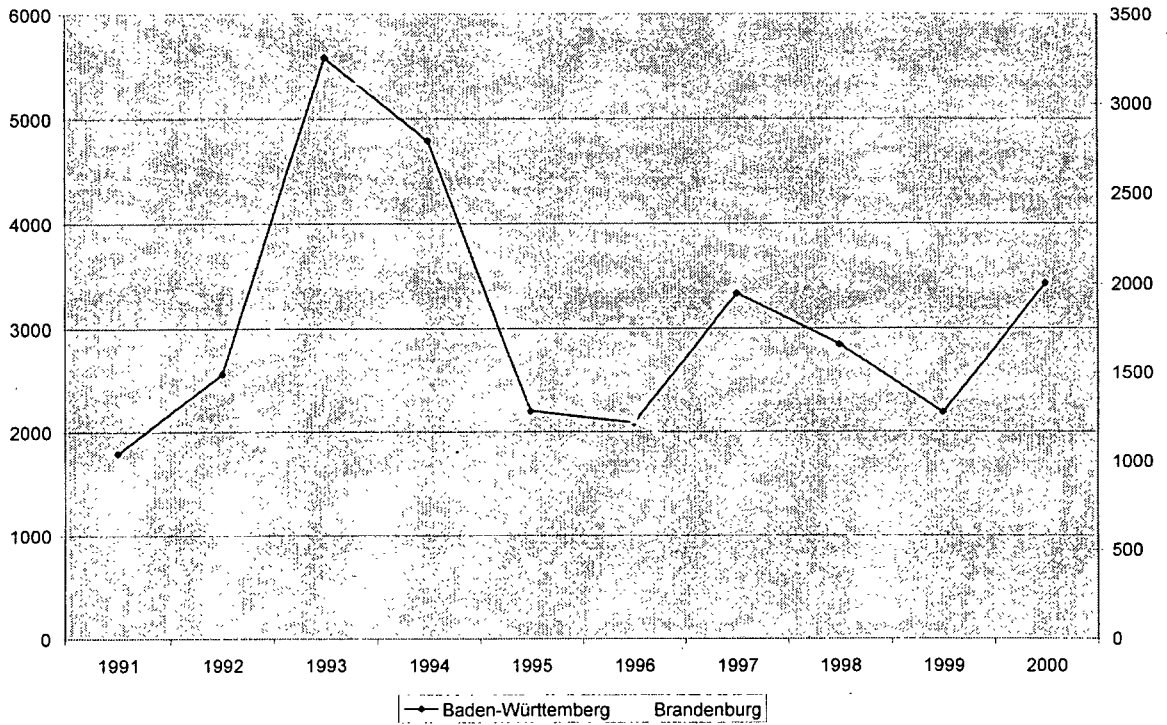☐ Municipal Foreigner Authorities ■ Central Foreigner Authority, ZABH Data

Figure 7: Asylum Deportations, Brandenburg and Baden-Württemberg

Baden-Württemberg   (Source: Innenministerien Brandenburg, Baden-Württemberg)   Brandenburg

Baden-Württemberg   Brandenburg

IV.3   Case Mobilization and Bureaucratic Centralization

While instances of case mobilization occur in all *Länder*, the ability of foreigner authorities to pursue to their chosen path of action in the face of local opposition varies significantly with the degree of administrative centralization. In Brandenburg, where the issuing and implementing of deportation orders is primarily the responsibility of municipal foreigner authorities, deportation officers are often confronted with enormous political pressure to revoke their initial decisions. Because the county and city mayors—the heads of public administration— are *elected* officials,[60] they are particularly vulnerable to political influence. The following account of one of my interview partners in Baden-Württemberg who used to work for a municipal foreigner authority before the onset of centralization is representative for many bureaucrats working in municipal foreigner authorities.

> "When I used to work for the municipal foreigner authority in X, we had to deal with a whole group of individuals who constantly tried to exert influence over our decisions: the principal of the local school, the pastor, and, in the end, even the city mayor who was under pressure from the city council and even his own [Christian Democratic] party. Every time when a municipal authority is charged with implementing a federal law, there are countless opportunity points for local political influence. That's why there were hardly any deportations in Baden-Württemberg in the 1980s."
> (Deportation officer "A," regional foreigner authority, Karlsruhe (Baden-Württemberg), January 2002)

In a similar vein, the director of a municipal foreigner authority in Brandenburg expresses her frustration with the attempts of the city council to exert control over the decisions of the agency.

> "Last December [2000], the city councilors decided to form a working group to consult with us on questions pertaining to deportation. The group consists of councilors— originally it was intended that the churches should also be represented, but they decided against that. We get summoned to their meetings where we discuss individual cases. The group has no legal expertise whatsoever, which is understandable. Discussions therefore take place at an emotional level. Afterwards the press reports on the meeting and creates further moral pressure. We always get portrayed as people without a conscience, especially in the letters to the editor."
> (Frau Brändel, supervisory deportation officer, municipal foreigner authority, Brandenburg a.d.Havel, 21 November 2001)

While at the *Land* level we can observe partisan differences in deportation policy between Social Democratic and Christian Democratic governments, at the local level this difference is much more blurred, if not completely absent. Because local protests tends to focus on the fate of

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[60] City mayors are elected directly, county mayors indirectly. through the county council.

individual *cases*—rather than on larger *policy* issues—the matter is phrased not in ideological terms, but rather as an issue of *humane* agency behavior. Moreover, not only does pressure operate independent of party orientation, it always is exerted *on behalf of* those threatened with deportation. Given the particulars of German history, it is politically unacceptable to publicly campaign for the deportation of particular individuals. Political activism from the ideological right therefore tends to steer clear of the case level and instead focuses on policy issues.

> "[When I used to work for the municipal foreigner authority,] political pressure always was exerted against, not in favor of, deportation. Even those who in principle supported deportation didn't dare to publicly demand the deportation of a particular individual or family. And this was independent of what party was in power. Protest always came from the left. And the Christian Democrats struggled just as much as the Social Democrats." (Deportation officer "A," regional foreigner authority, Karlsruhe (Baden-Württemberg), January 2002)

This is not to say that partisan factors play no role whatsoever. Certainly, municipal foreigner authorities in a staunchly conservative *Land* such as Bavaria—where administrative structures are similarly decentralized as in Brandenburg[61]—stand a better chance of obtaining the necessary political support, if not at the level of the county, than at the *Land* level. My interview partners at municipal foreigner authorities in Brandenburg frequently expressed envy of their Bavarian colleagues whom they perceived to receive more unreserved political support concerning controversial deportation decisions. Subsequent interviews at Bavarian municipal foreigner authorities in some measure confirmed this assumption, though I would argue that political support in Bavaria is less categorical as is generally assumed. In the end, however, what matters most might *not* be the actual outcome of a highly politicized case. Even in situations where the interior ministry decides to override a mayor's ruling and backs the initial decision of the foreigner authority, the political struggle and personal defamation that the authority has been subjected to lowers the likelihood that in the future it will be equally inclined to make and defend controversial decisions.

While deportation officers in Brandenburg consistently complained about political power struggles at the municipal level, the change in *Land* government in 1999 from the Social Democrats to a grand coalition of Social Democrats and Christian Democrats appears to have strengthened political support for deportation decisions at the *Land* level.

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[61] Though, as a consequence of the events of September 11, 2001, the ministry of the interior is now in the process of preparing for the centralization of deportation tasks mirroring the institutional set-up in Baden-Württemberg. Interview, Herr Steiner, Director, *Sachgebiet I A 2,* interior ministry, Munich, 15. February 2002.

"In Brandenburg, we now have more political back-up because of the Christian Democrats. More so than under Ziel, the previous [Social Democratic] interior minister. Schoehbohm [the present Christian Democratic interior minister] only once caved in to the churches, this was with regards to legalization policy *(Altfallregelung)* Otherwise, the implementation of deportation law has improved."
(Herr Jacob, supervisory deportation officer, municipal foreigner authority, district Teltow-Fläming (Brandenburg), 22 November 2001)

Given the significance of political opposition at the municipal level, foreigner authorities stand to gain from having at their disposal strategies that serve to remove controversial decisions from the reach of electoral politics. *The centralization of deportation tasks can be regarded as such a strategy.* The three-tiered structure of public administration in Báden-Württemberg—county and city administrations, regional authorities, *Land* ministries—lends itself to the creation of centralized executive institutions at the middle level that enjoy some degree of political insulation. The four regional governments mediate between the various bodies of administration—both horizontally and vertically—and serve to bundle and coordinate the functions of the various specialized agencies. They are politically insulated because, unlike the lower level of administration, they do not directly deal with the public, and because, unlike the upper level, they are a purely administrative body the president is *appointed* by the governor.

The centralization of implementation has reduced access to bureaucrats, lessened the likelihood of personal contacts between bureaucrats and the public, and has reduced the political impact of political mobilization. Today, a decade after the inception of the regional foreigner authorities, a deportation officer reflects on his experience:

"It is no longer possible to exert political influence at the county level. The local umbrella organizations of course continue to try to make statements and influence the outcome of decisions. But these efforts fail. We have curtailed the power of the lower bodies of administration. A city mayor can no longer use his opposition to a particular deportation decision in order to win the next election."
(Deportation officer "A," regional foreigner authority, Karlsruhe (Baden-Württemberg), January 2002)

This position is also shared by immigrant advocates. The following excerpt is taken from an interview with the chaplain for refugees of the Lutheran Church in Baden-Württemberg.

"The establishment of the regional foreigner authorities marked a clear turning-point. The shift of responsibility away from municipal authorities added a new element of anonymity. [...] Before we were able to strike deals with municipal authorities, people knew each other. There used to be all sorts of gentlemen's agreements. Now these authorities have little power to influence decisions. [...] And even if we have struck a deal with a municipal foreigner authority, the regional government often will deport without

even informing the municipal authority beforehand. Deportations are much more rigorously implemented today."
(Werner Baumgarten, Lutheran Chaplain for Refugees, *Evangelisches Asylpfarramt* Stuttgart (Baden-Württemberg), 18 February 2002)

Contrast this experience to a Lutheran refugee chaplain in Potsdam, a liberal stronghold in Brandenburg.

"Church sanctuary always depends on the political situation in both the local community and the *Land* as a whole. Church sanctuary is problematic in the sense that it is an indicator that there are insufficient opportunities for negotiation—if these exist, church sanctuary is unnecessary. We in Potsdam have opportunities for negotiation. In the past ten years there has been only one instance of church sanctuary. There are clear channels of communication between us, local politicians and the foreigner authority in Potsdam. We usually manage to find a compromise and can avert deportation. [...] The church here in Potsdam is very involved, right from the beginning we took a clear stance on these issues. We are a strong group, and councilors cannot afford to ignore us because we have both legal expertise and political power. I don't mean to brag, but the *Wende* [the fall of the Berlin wall] in this area basically started in this vicarage. Because of this I know all of the politicians."
(Annette Flade, Lutheran Chaplain for Refugees, *Evangelischer Kirchenkreis* Potsdam, (Brandenburg), 12 December 2001)

These comments support my argument that the centralization of deportation tasks has served to depoliticize decisions concerning deportation *at the level of implementation*. Centralization has reduced the access of opposing interests to decision-makers by shifting the locus of decision-making from public administrators directly accountable to elected officials, to structures of accountability that rest on administrative *appointments*. By doing so, it has in some measure removed administrative decisions on deportation cases from the realm of electoral politics, thereby strengthening bureaucratic deportation capacity.

Finally, in addition to insulating bureaucrats from electoral pressures, centralization has weakened the influence of local interests by shifting decision-making processes to an administrative level that is relatively impervious to public scrutiny. Political mobilization depends to a large degree on well-functioning information flows—a condition that requires a certain measure of transparency on part of public authorities. By rendering implementation invisible, centralization can serves not only to stifle, but also to *preempt* public protest. One example for the way in which centralization has rendered deportation invisible is the establishment of central reception centers for asylum applicants. In the early 1990s, the federal government decreed that all *Länder* set up central reception centers that accommodate asylum

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applicants during the first three months of their stay apart from local communities. This policy shift was not only justified in terms of administrative efficiency, but also in terms of preventing the factual integration of asylum applicants and, thus, the mobilization of political support. As a parliamentary consultant for the Christian Democratic Party at the Baden-Württemberg parliament put it:

> "Deporting is, of course, a difficult undertaking. Our strategy is [...] to centralize. In the past, we had a more humane approach. But then we had to deal with more and more opposition. Folks didn't want to leave, and support groups sprung up all over the place. People really started to celebrate refugee work. [...] The churches became very active. Of course, we were talking about larger numbers [of asylum applicants] then. [...] Centralization did help. Even though the big reception centers are not without problems—there often are social tensions between the foreigners—they do manage to prevent integration. Otherwise people are all over the place, in particular in sports clubs." (Roland Schmid, advisor to the CDU, state parliament Baden-Württemberg, 11 January 2002).

While many asylum applicants get moved on to county accommodation[62] either during asylum proceedings or as they await deportation, those individuals who do remain have little opportunity to establish ties with the local community. As a consequence, their eventual departure will take place more or less unnoticed.

V.   Bureaucratic Capacity and Case Mobilization in the United States

V.1   San Diego

San Diego is a flagship INS district, laying claim to roughly one-third of deportations nationwide (Figure 8). This disproportionate share in deportations is largely attributable to its geography: the district straddles part of the U.S./Mexican border and is home to San Ysidro Port of Entry, the world's busiest border crossing. The district's strategic location not only ensures a seemingly unlimited pool of deportable immigrants, its officers also provide administrative assistance to other districts in escorting deportees across the border. In addition, JPATS (Justice Prisoner Alien Transportation System)[63] flights to El Salvador, Guatemala, and Honduras leave from within the district, providing yet another hub for deportees from all across the western

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[62] Their stay at reception centers is limited to 3 months.
[63] Operated by the U.S. Marshall's Service, the Justice Prisoner Alien Transportation System provides regular international flights for deportations.

region. Finally, because of California's vast prison system, there are 4 state prisons located within the district's jurisdiction, providing the INS with sizable numbers of non-citizens who are to be deported at the end of their sentences.[64]

Figure 8: Total Removals Nationwide, San Diego District, Miami District, 1997-2002
(Source: INS HQ, Internal Data)
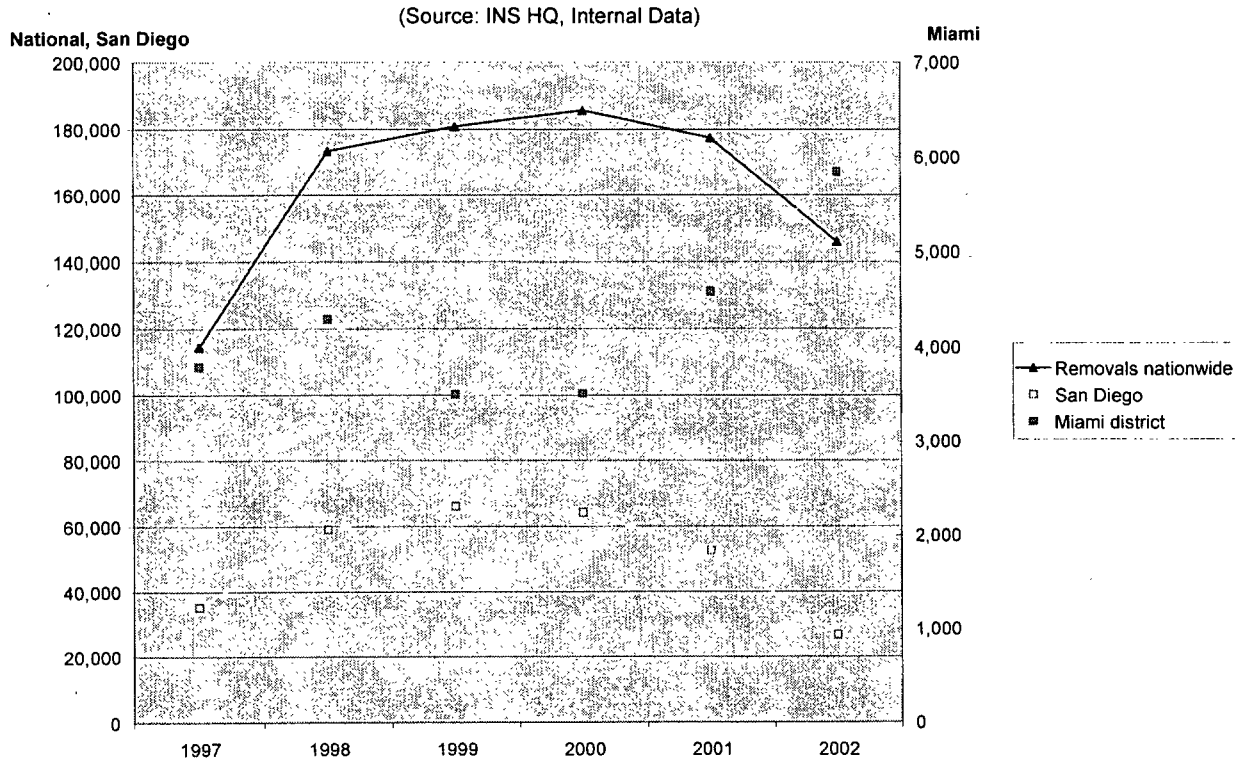
The district's deportation profile closely resembles that of the INS nationwide (Figure 10). Figure 9 shows the enormous numerical impact of expedited removals, a new exclusion[65] procedure instituted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.[66] As an administrative form of removal, expedited removal provisions authorize INS

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[64] The district operates IRP (Institutional Removal Program) offices in all four prisons.

[65] The 1996 act combined the previously separate institutions of exclusion (removal at a port of entry) and deportation (removal from within the country) into removal proceedings.

[66] The procedure applies to non-citizens (and non-legal permanent residents) who present fraudulent or no documentation to the INS at a port of entry. Expedited removal is a form of administrative removal as individuals do not have the right to a hearing before an immigration judge.

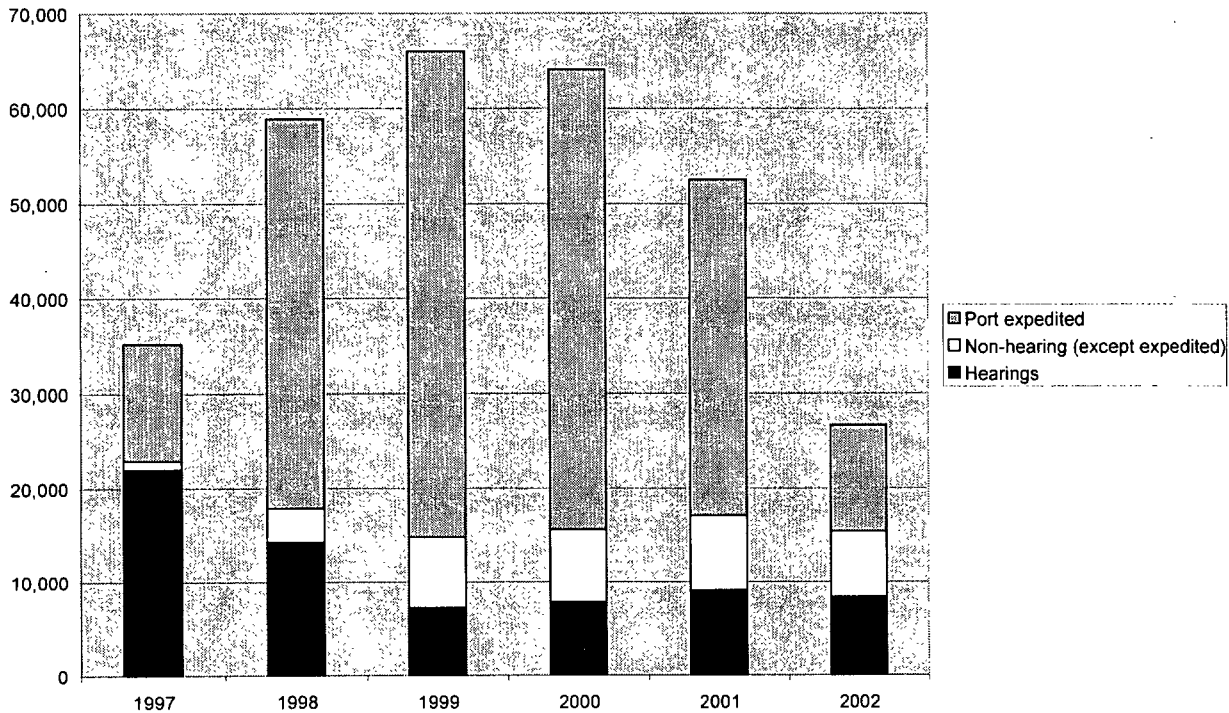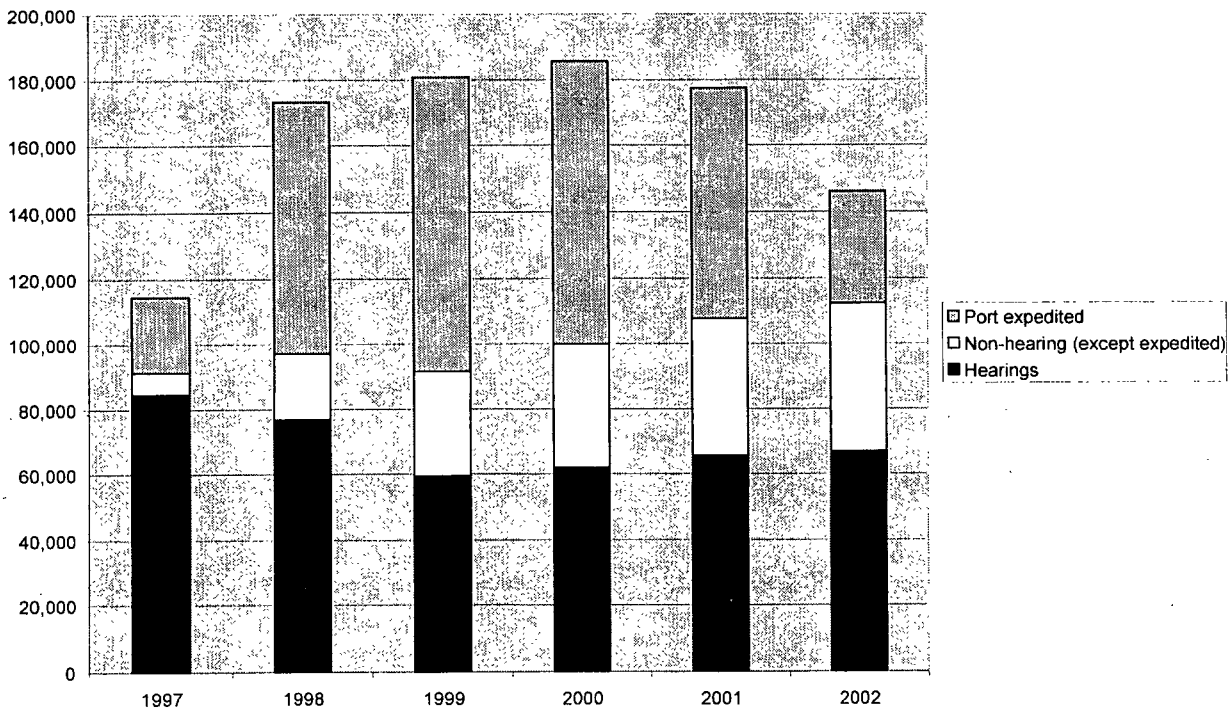## Figure 9: INS San Diego Removals, by Type

(Source: INS HQ, Internal Data)

Legend:
- Port expedited
- Non-hearing (except expedited)
- Hearings

Figure 10: INS Total Removals, by Type

(Source: INS HQ, Internal Data)

Legend:
- Port expedited
- Non-hearing (except expedited)
- Hearings

officers to order migrants deported—in contrast to judicial (hearing) forms of removal which require a court hearing before the order can be executed. Implementation began in 1997, and, in the same year, already constituted over one-third of removals in the San Diego district. The subsequent growth of these administrative removals is particularly pronounced there, peaking in 1999 with close to 80 percent of all removals (compared to 50 percent nationally).

The proliferation of expedited removals can largely account for the parallel decline in hearings deportations—many individuals who used to be eligible for a court hearing, after 1996 are instead removed through administrative fiat. 1999 appears to mark the end of the transition period for the institutionalization of expedited removal; expedited removals actually begin to decline, with the number of hearing deportations stabilizing. Finally, a second new type of administrative (non-hearing) removal authorized under the 1996 legal changes allows for the administrative deportation of aggravated felons who do not have legal permanent status as well as the "reinstatement of orders" for previously deported individuals. This group increases from 2 percent to 12 percent from 1997 to 1999. In sum, the enormous increase in removals in San Diego from just over 35,000 in 1997 to 65,000 only two years later can be attributed to the new institution of administrative removal.[67] However, after the transition period, judicial hearings deportations begin to increase again.

V.2   Miami

Like San Diego, Miami is a large district in terms of both the number of non-citizens under its jurisdiction and the number of INS personnel.[68] Like San Diego, it is one of only 9 of the 33 districts with their own Service Processing (detention) Center. While Miami does not have a land border, its large international airport is the main gatekeeper for entrants from the Caribbean, South and Central America to the United States. From their sample of expedited removal cases who where granted a judicial hearing,[69]--a hurdle less than 4 percent of those placed in expedited removal master (Immigration and Naturalization Service 1999)—47 percent had arrived through the Miami port of entry, compared to only 3.1 percent for San Ysidro

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[67] The significance of the "dejudialization" of deportation will be addressed elsewhere in the dissertation.

[68] Even though it has a large number of deportation officer, its staff is about half the size of that of the San Diego office.

[69] If individuals express a fear of persecution during expedited removal proceedings they are placed in detention and given a credible fear hearing with an INS asylum officer. If the asylum officer establishes that the individual has in fact a credible fear of persecution, he or she is placed in normal (non-expedited) removal proceedings and offered a court hearing with an immigration judge.

(Musalo, Gibson et al. 1999). This divergence can be attributed to geopolitical differences between the two ports: while Mexicans, who make of 92 percent of total expedited removals (and only 3.8 percent of sample cases in the immigration courts' database,[70] (Musalo, Gibson et al. 1999), are predominant in the San Ysdiro port of entry, Miami is the prime destination for Haitian refugees, who are strongest represented in the courts' database (36 perecent, (Musalo, Gibson et al. 1999). Thus, while the number of migrants processed through expedited removal is significantly higher in the San Diego district, the number of individuals who move from administrative proceedings into judicial hearings is higher in Miami. Finally, while its sea border does not expose the district to the arrival of undocumented migrants anywhere close to the number of those crossing the Mexico/California border, the arrival of Caribbean boats and rafts is a highly visible, and easily politicized, event. And, while San Diego's proximity to the Mexican border allows for quick removals by bus, this is not the case in Miami.

Figure 11: INS Miami Removals, by Type

(Source: INS HQ, Internal Data)

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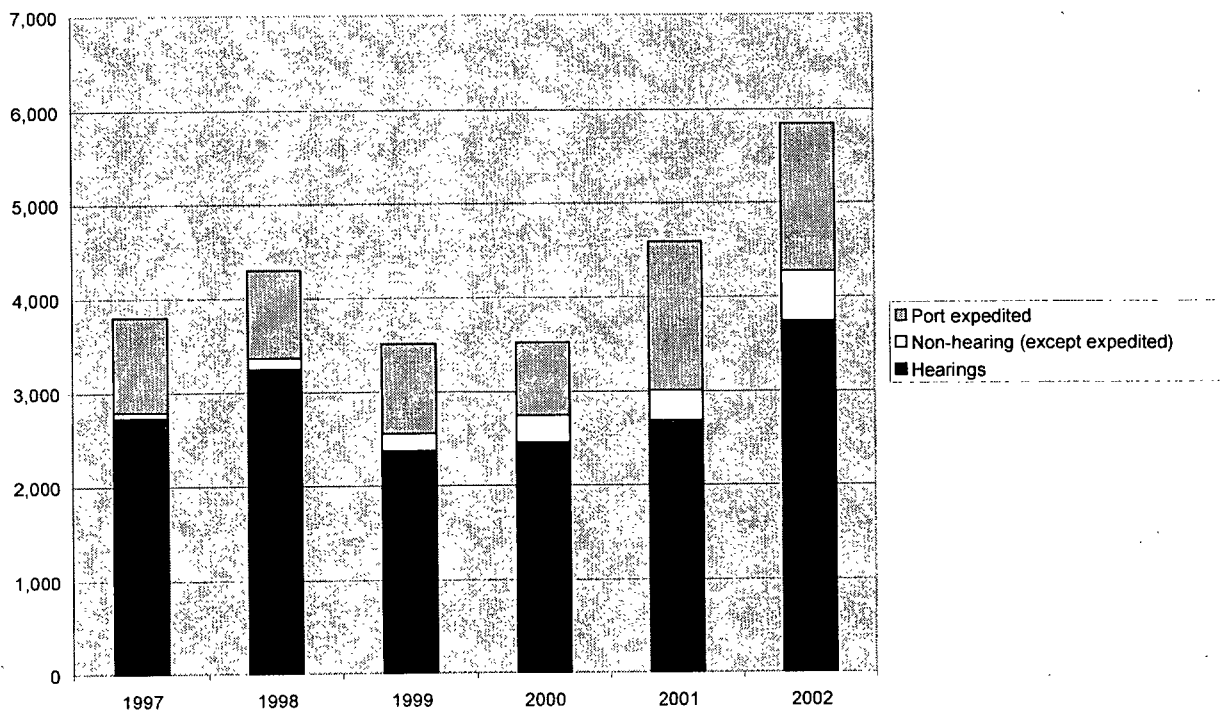
[70] Executive Office of Immigration Review (EOIR)

Figure 11 demonstrates the relatively small role played by expedited removal in Miami. In 1997, expedited removals accounted for roughly one-fourth of deportations, and this proportion has remained fairly constant since then. In a similar vein, other forms of administrative hearings play a lesser role than either in San Diego or nationally. In contrast, hearing removals constitute close to 70 percent of all removals, compared to 40 percent nationwide. Because, unlike administrative removals, hearing deportations take place in the public sphere and can take months, even years, to work their way through the judicial process, they are much more likely to involve non-state actors than is the case with administrative deportations.

V.3 Bureaucratic Exposure to Case Mobilization at District and Federal Level

In Miami, few issues are as politically volatile as is immigration. The confluence of the highly visible and often dramatic arrival of economic and political refugees from the Caribbean with the activism of well-organized advocacy groups and tightly-knit immigrant communities makes deportation, from the point of view of state bureaucrats, a difficult undertaking. Deportation officers in Miami carry out much of their work under the scrutiny of the organized public and the press.

> "Miami is a big district. And INS officers who have come from elsewhere tell me that they were shocked how much press there is here, how everything gets scrutinized. There is usually much less of it. "
> (Alfonso Chardy/Andres Viglucci, staff writers, The Miami Herald, 6 June 2002)

> "Then there is the community, issues get politicized. [...] Protest can be violent, especially as far as Cubans is concerned. All Latin countries and Haiti, Bahamas have a strong voice. [...] Advocacy groups will take anyone's case. "
> (INS deportation officer "E," Detention & Removal program, Miami, May 2002)

> "Detention policy with Haitians has been on the forefront since the beginning of December [2001]. [...] The acts in 1996 brought detention and removal to the forefront. There have been many heart-sting stories as a result. People unfairly blame INS for this. [...] These laws make INS seem heartless."
> (Patrichia Mancha, INS Public Affairs specialist, Miami, 17 June 2002)

Immigrant advocacy in Miami takes many forms, from protest marches, public rallies and press conferences, to letter writing campaigns and visits by Congressional representatives. Advocacy fundamentally relies upon widening the scope of conflict to a point where it draws in federal Congressional representatives. Once mobilized, members of Congress either directly approach INS officials at the district level or direct their inquiry to INS hadquarters in Washington, D.C.

"For advocacy groups, the key to success is to understand the system. Mere protesting in front of the building doesn't get them anywhere. Congressional representatives are the most promising avenue. [...] If you look at Haitian Women of Miami, Marleine Bastien was on the cover of Ms., a very prestigious magazine. Now that gives her credibility, provides her with name recognition. [...] Advocates bring in famous people, [civil rights activist] Al Sharpton, Senators Graham and Nelson. They know that people in D.C. are watching. And yes, things really filter up. The best way is to get elected officials involved. Senator Nelson has often asked [INS] Commissioner Ziglar to visit Krome [detention center]. Either way, there will be attention paid."
(Patrichia Mancha, INS Public Affairs specialist, Miami, 17 June 2002)

"There are two main factors that determine success with individual case advocacy. First, we have to be consistent and persistent, engage the INS. It depends on the merit of the case, the justice of the case. Second, we need to involve Congressmen. We often first approach the House, then the Senate, sometimes both. Once we have their commitment, there is a 60% of success. It depends on how busy they are. We were excluded from NACARA[71] because we didn't make ourselves heard. But Haitians are starting to be a swing vote in Miami."
(Marleine Bastien, Executive Director, Haitian Women of Miami, 22 June 2002)

In the German context, bureaucratic vulnerability is most pronounced at the local level because the heads of administration are elected officials and thus exposed to electoral pressure. In the United States, INS leadership both at the local and national level is appointed, rather than elected. However, while district offices are dominated by technocrats, the INS headquarter is run by political appointees who enjoy little autonomy from elected officials in Congress. In the words of one of my interviewees, "at the local level, you are more likely to find career bureaucrats, who are not so susceptible to political pressure."[72] Interviewees both from within the administration and the advocacy community frequently referred to the local district offices as "fiefdoms" and "feudal offices." This connotes the relative independence of districts, which can account for significant variation in policy implementation among different districts. As the case of San Diego shows, under certain conditions this independence can be used by bureaucrats to implement politically controversial decisions. However, as immigration has become a politically salient issue and as Congress has drastically increased agency funding, Congressional subcommittees have demanded more accountability from INS headquarters.[73] As a consequence, reporting structures between field offices and headquarter have become more detailed, and decision-making more centralized. Communication between districts, the regions, and headquarters takes place on a daily basis, with one of

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[71] The 1997 Nicaraguan and Central American Relief Act.
[72] Daniel Vara, INS District Counsel, Miami, 29 May 2002.
[73] INS deportation officer "C," San Diego, July 2002.

the prime objects of headquarters being political damage control through the filing of "significant incident reports."

> "The INS is scared that something might go up national, that they would get knocked from above. When Wallace [former district director] was here, he passed it up, when something was too hot, said: you handle this one. Headquarters worry about Congressional repercussions. There are a
>
> number of powerful Congressmen from here, for example Ros-Lehtinen and Bob Graham. "
> (Alfonso Chardy/Andres Viglucci, staff writers, The Miami Herald, 6 June 2002)

> "The worst thing you can do is to embarrass the agency. Once we sent out letters to people with final removal orders, telling them that they might be eligible for some new relief. Over 50 turned up! And we arrested them. We had checked it all up with the trial attorneys and with headquarters, had the OK, that this was legal. It didn't go up all the way to the Commissioner, though. We had a reporter here from the Los Angeles Times, we thought this was a good chance for enforcement coverage. Then, one woman knelt on the floor, crying loud. Of course, this was a picture that was on the front page! This stirred up a lot of trouble. The Commissioner was furious! Now these sting operations have to be approved by the Commissioner."
> (Robert Mandgie, INS deportation officer, Detention & Removal, San Diego, 1 August 2002)

Because of the exposure of the central level of decision-making to Congressional influence-taking, the most promising avenue for case mobilization is the national, rather than the local district level. It is in Washington, D.C. that advocates stand the greatest change of political success.

> "Even some aliens in mandatory detention get out, even though the law is clear. We had a case of a [...] Cuban. [...] His lawyer knew the system. [...] She went straight to D.C., argued for his release on humanitarian grounds. When headquarters rejected, she went to the press and to the district court under habeas corpus. Then headquarters caved in, they didn't want to get dragged down to the local level and all the political controversy. The lawyer tried to suck them into local litigation. Yes—I can't say much on this topic—but it is true that political pressure has some impact."
> (Daniel Vara, INS District Counsel, Miami, 29 May 2002)

> "I keep on telling you. Things here blow with the wind. [...] With the INS, if we arrest illegals, 50% of the public are against it. We try to enforce that law, place aggravated felons in mandatory detention, and then, this is very common, a Congressman calls us up and tells us about this letter from his constituent. We also get letters from the families. There is no support from Congress."
> (Senior INS official, INS Headquarter, Washington, D.C., August 2002)

> "The main thing about administrative advocacy is that it shows the authorities that the pressure is on. [..] We often don't get anywhere locally. [...] When a decision moves to a higher level, when it's with the regional office, it becomes easier, I'd say. Because there relations are better, there isn't as much baggage as with the district office. And we have got contacts to there, through Cheryl [Little, the director]. And once its regional or in

headquarters, we get our coalition groups in D.C. involved. Here [in Miami] we are the
lone player. "
(Becky Sharpless, Supervising Attorney, Florida Immigrant Advocacy Center, Miami, 21
June 2002)

"The action is in D.C. Miami INS has discretion, but it only uses it to make things harder,
never to make things easier. [...] We have access in D.C. through Congressional
representatives and personal contacts. [...] In the beginning of our work, access was
difficult. 10 years ago we had no access. But we have acquired knowledge since then, we
have learnt how to upset people, how to get access. We've learnt the ropes."
(Sean-Robert Lafortune, Haitian-American Grassroots Coalition, Miami, 30 May 2002)

However, centralized advocacy requires substantial organizational resources that many small, grass-roots groups do not have access to. While Congressional influence in Washington remains the most promising avenue of action, this comes at a high cost to grass-roots groups:

"If the decisions get made at headquarter level, it gets harder. We don't have enough resources.
D.C. is a long distance from here, we have to travel, make phone calls. We bus our people up
there from here, 24 h non-stop bus ride. On the way, we stop in a church, so they can freshen up,
get something to eat. And then after the meetings we drive right back. But we have little access."
(Marleine Bastien, Executive Director, Haitian Women of Miami, 22 June 2002)

In addition, changes in partisan control of Congress and the Administration can have a strong impact on groups that have come to depend on a few relationships with a select number of representatives, in particular if this link is of a partisan nature. This has been the case with the Miami Haitians whose strategy has been to build up strong connections to Democratic representatives.

"Under Clinton, we had more access. We don't know the players as well in D.C. as we do here.
The players in Miami are the representatives. But it also depends on their power in Congress.
Meek had more power under Clinton. When you talk to them now, you can feel the
powerlessness. The most they can do is a press conference."
(Marleine Bastien, Executive Director, Haitian Women of Miami, 22 June 2002)

"What works partially depends on which Administration is in power! When the Democrats are in
power, we have better access in D.C. to policy makers. With Republicans, we have less access. It
is our aim to work with moderates of both parties. [...] Under Clinton, we were referred to senior
staff dealing with domestic policy issues. Under Bush, were referred to the NSC [National
Security Council], right from the beginning. The message is clear: Haitian refugees are a security
threat."
(Sean-Robert Lafortune, Haitian-American Grassroots Coalition, Miami, 30 May 2002)

A comparison of the Miami INS with their San Diego colleagues reveals striking differences in the way deportation officer have come to experience their work. San Diego deportation officers operate in a political environment much more conducive to the implementation of deportation mandates. As

pointed out above, immigrant communities in San Diego are not well organized and there exists no advocacy organization that enjoys the political clout of the Florida Immigrant Advocacy Center (FIAC) in Miami. Immigrant advocates in San Diego tend to either be lawyers who try to affect the reversal of deportation decisions through judicial strategy, or are members of immigrant rights organizations that operate outside of the political mainstream.[74] In addition, San Diego's only paper, the San Diego Union Tribune does not share the pro-immigrant agenda of the Miami Herald, which even has a Spanish language edition. As a staff writer of the Union Tribune explained, "when I write an article, I have a white readership in mind."[75] Moreover, several of the San Diego Congressional representatives have run on anti-immigration platforms, thereby alienating their immigrant constituents. The influence of Congressmen on local politics and implementation thus is often one of restrictionism.[76]

> "The key actors in San Diego are the Congressional delegates, especially Duncan Hunter. He was instrumental for the building of the fence. He led a whole personal crusade. The representatives are restrictionist, are conservative Republicans. Local Congressmen here keep on stirring the pot on immigration."
> (Detention officer "D," U.S. Border Patrol San Diego Sector, Alien Detention & Removal, July 2002)

As a result, deportation officers in San Diego are able to implement decisions with a much larger degree of insulation from the efforts of immigrant advocates than are officers in Miami. While the San Diego district certainly has its share of controversial cases, deportation officers generally feel that they have the autonomy to use their discretion to contain, at times even preempt, the politicization of individual cases.

> "Controversial cases are not a problem here, I don't know why. But we've been lucky like this. There only was one case, it was about a princess from a small country[77], I forget which one, who married an US citizen."
> (INS deportation officer "F," Detention & Removal program, San Diego, July 2002)

> "I have worked in this position for 2 years, and in this time, there have been 2 or 3 high interest cases. Whether media interest changes the course of events? Yes and no. I wouldn't say that INS necessarily arrives at a different decision. But the case gets handled more expeditiously, we scrutinize the case more."
> (Lauren Mack, INS Public Information Officer, San Diego, 25 July 2002)

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[74] For instance, the American Friends Service Committee, La Resistencia, The Raza Rights Coalition. These groups tend to focus on border issues and are perceived by officials as radicals.

[75] Leonel Sanchez, staff writer, The San Diego Union Tribune, 17 July 2002.

[76] With the notable exception of Bob Filner of Imperial County who often advocates on behalf of immigrants.

[77] The officer is referring to princess Mariam al-Khaleifah, a daughter of the Bahraini ruling family, who in 1999 married a captain of the US Navy and subsequently applied for political asylum.

"The district here hasn't really had bad scandals. This is partially due to good management. Over the last few years, management has been excellent, especially in Detention and Removal. A good manager mainly listens, officers have to vent, and they need to be able to do this. They also need to trust their employees, most employees really are motivated [...] *The most important thing is backup, and we have that. If there is trouble, we do get backed up. This is not always popular with headquarters. But it's crucial for officers.* [...] Of course, not all districts are like this, but all the bad press that INS has gotten may be true for some senior management, but when you go out to the field offices, you find some really dedicated people."
(INS deportation officer "C," Detention & Removal, San Diego, July 2002, my emphasis)

While it is difficult to disentangle the role played by a politically supportive external environment, on the one hand, and good management offering support internally, on the other, San Diego officers appear to benefit from both and therefore experience a greater locus of control over their work than do their Miami colleagues.

Finally, what role does partisanship play in determining the level of political support extended by the Administration to the INS? From the point of view of street-level officers, the answer is, very little. My respondents repeatedly pointed to the influence of libertarian economic ideas within the Republican Administration as the biggest obstacle to political support for immigration law enforcement.

"There is a problem with senior management – [INS Commissioner] Ziglar's deputy [Stuart Anderson] is an open borders guy – of course, he wouldn't admit this publicly, but that's his belief. So I'm asking you: how can they put people who believe in open borders put in charge of an immigration agency who is supposed to enforce immigration laws?"
(INS deportation officer "C," Detention & Removal program, San Diego, July 2002)

"Ziglar not an immigration career person. He holds very libertarian views, he brought into the administration a CATO philosophy, Bush also holds very libertarian views. Ziglar brought in many people from the Judiciary subcommittee. Especially fascinating is Stuart Anderson, former chief counsel, he worked very closely with Spencer Abraham. So a lot of Capitol Hill staff was moved into the administration. Anderson is still there, he's a top policy advisor, a CATO person, a libertarian."
(Patrick Sheehan, Legislative Director, Congressman George Gekas, Washington, D.C., 18 August 2002)

What finally did result in a political watershed, however, were the terrorist attacks of September 2001, which drastically raised the political costs of lax law enforcement and ultimately led to Attorney General John Ashcroft's ascendancy as the key mover in immigration matters within the Administration.

"The initiatives are from Justice down, they are not [Commissioner's] Ziglar's choice. [...] Before 9/11 [...] Ashcroft wasn't involved that much in immigration issues. [...] After 9/11, Ashcroft took over, and the White House didn't stop him. Bush was very concerned about his ratings, he

wanted to court the immigrant vote, but after 9/11 his ratings are so high, he's not so concerned about it."
(Maurice Belanger, Senior Policy Associate, National Immigration Forum, Washington, D.C., 23 August 2002)

The post 9/11 commitment to more rigorous immigration enforcement impacted on both the San Diego and Miami districts, though in divergent ways. In San Diego, the most visible implications of the terrorist attacks have been of administrative, rather than political, nature. As one immigrant advocate argued, "ironically, 9/11 hasn't changed much for San Diego. San Diego has always been a hub for right wing politics."[78] Since September 2001, the Justice Department has issued a multitude of new regulations, the implementation of which it closely monitors. This has substantially increased the administrative workload of deportation officers.

> "Since 9/11, we have to make sure that everything is done correctly. There is a lot of review. We are more cautious. Yes, I suppose it slows us down. But we know really must read the regulations and prescriptions. The Service is putting more pressure on us to give other branches of INS more access to our files."
> (INS deportation officer "F," Detention & Rmeoval, San Diego, July 2002)

In addition to heightening the administrative costs of deportations, the attacks have made air deportations more difficult, as commercial airlines have refused the transportation of deportees for security reasons.[79] In the San Diego district, the number of deportations drastically fell after September 2001. As Figure 9 shows, we observe a drop in all categories of removals after 2001, most pronounced, however, for expedited removals. This drop is largely the result of a transfer of staff from secondary inspection (where expedited removals are processed) to primary inspection, as a strategy of tighter border control.[80] More interesting for the purposes of this discussion, however, is the development of hearing removals because it is there that changes in administrative costs impact most strongly.

Comparing the development of non-criminal hearing deportations in San Diego and Miami, Figure 12 charts divergent developments. In San Diego, the number of non-criminal deportations fell by over 10 percent from 2001-2002, compared to a steady increase of 23 percent from 1999-2001. While it is difficult to exactly pinpoint the factors accountable for this drop, the increase in administrative caseload is likely to play an important part. In contrast to San Diego's declining numbers, Miami's non-

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[78] Christian Ramirez, Director, U.S./Mexico Border Program, American Friends Service Committee, San Diego, 3 July 2002

[79] Senior INS official, INS Headquarters, Washington, D.C., August 2002.
[80] John Bjerke, Statistical Division, INS Headquarters, Washington, D.C., 27 August 2002.

criminal hearing removals[81] drastically increase by 25 percent in 2002, after a period of stagnation from 1999-2001. How can we explain this striking development? My interview partners—both deportation

Figure 12: Criminal and Non-criminal Hearing Removals, INS San Diego and Miami
(Source: INS HQ, Internal Data)
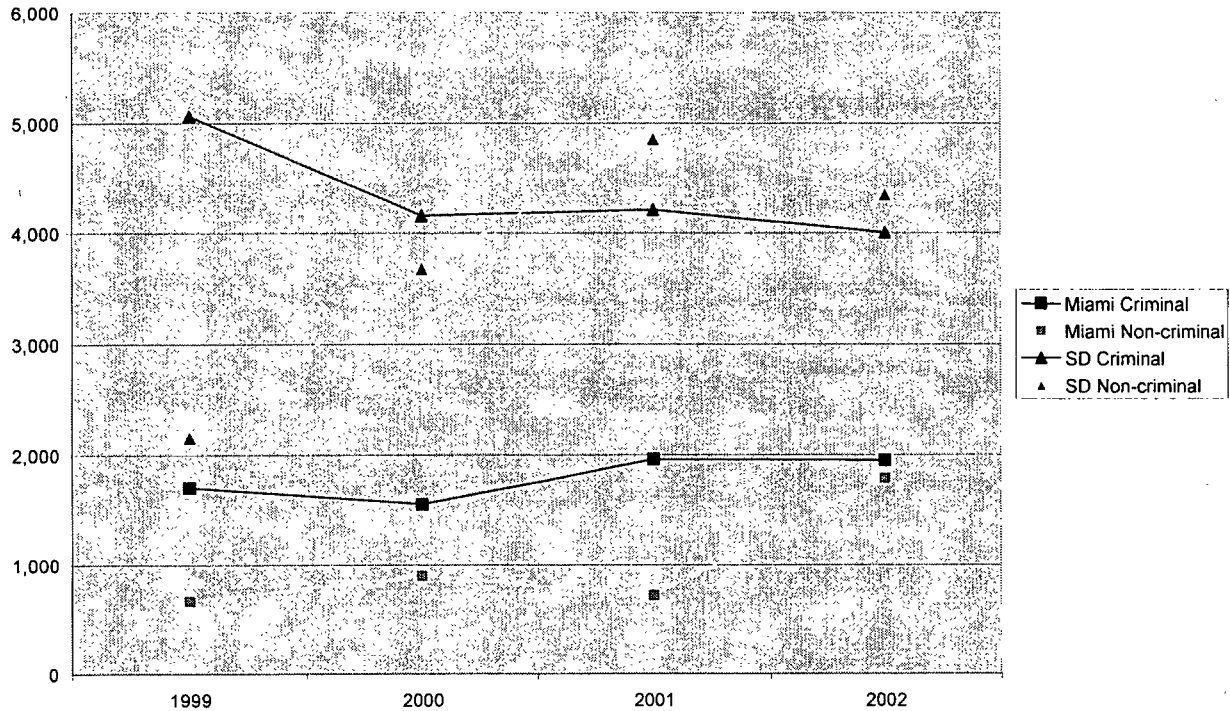
officers and advocates—commented on the drastic impact that the terrorist attacks have had on the political climate in Miami.

> "After 9/11, the focus of the nation became enforcement-minded. People didn't want to see people protesting, people didn't care about people in detention. People wanted to know whether dangerous people were in jail. This had made things hard for advocacy groups. Public opinion is necessary for advocacy groups to be successful. Now people ask: why are you protesting? If you are illegal, get out of the country. Slowly the issues is becoming less emotional. But advocacy groups aren't as overt as they used to be."
> (Patrichia Mancha, INS Public Affairs specialist, Miami, 17 June 2002)

> "9/11 has changed a lot. Things have become less liberal. We can finally do our job. Before we couldn't pick up illegals, you know what I mean? [...] I have the file of an Israeli case here, entered illegally and worked illegally. Before 9/11, we would have looked the other way, because of political pressure. No longer."
> (INS deportation officer "G," Detention & Removal, Miami, June 2002)

> "September 11 has been used as a scare. People are scared now, they are scared to speak up. Even people who qualify for INS benefits are scared to approach the INS. People won't go to get their

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[81] Which mainly consists of undocumented immigrants.

driver licenses renewed, even if they could. And I can't blame them. People who have criticized Bush have received death threats. [...] Our work has become 10 times as difficult. We used to get 1000s of people for our rallies. Now we're lucky if we get 300 – that is now a big turn out. The media now focuses on terrorists. [...] There is a strong sense of hopelessness."
(Marleine Bastien, Executive Director, Haitian Women of Miami, 22 June 2002)

The changed perception of deportation officers of their work after 9/11 clearly show how changes in the intensity and political viability of case mobilization impact on the deportation capacity of immigration agencies. While the Miami and San Diego INS districts have for decades operated in strikingly different political environments, September 11th has provided bureaucrats in Miami with some of the political advantages which their San Diego have been benefiting from for years.

V.4   Empirical Findings

How, then, do these findings compare to our initial expectations regarding the deportation capacity of the four empirical cases? Table 4 shows that the case of Miami most straightforwardly corresponds to our expectations. Miami has the lowest deportation capacity of the four cases, which is not surprising, given the high threat of case mobilization, the lack of electoral insulation at the levels of policy making *and* implementation, and the low degree of political back-up within the agency as a whole. In contrast, the district office in San Diego exhibits a higher degree of deportation capacity, even though it shares low capacity values for all three institutional variables with Miami. This suggests that its stronger capacity is attributable to the lower threat of case mobilization, rather than significantly stronger internal resources. While at the district level San Diego has more internal management support than Miami, this cannot explain significant differences in deportation capacity, given the fact that, increasingly, controversial cases are handled by headquarters, rather than the district office. Good management may result in a more expedient use of administrative discretion at the district level, though this is also contingent upon some degree of administrative insulation from advocacy groups.

Table 4:   Summary of Findings

	Brandenburg	Baden-Württemberg	Miami	San Diego
Threat of case mobilization	High	High	High	Low
Bureaucratic capacity for electoral insulation at level of *implementation*	Low	High	Low	Low
Bureaucratic capacity for electoral insulation at level of *policy-making*	High	High	Low	Low
Bureaucratic capacity for internal conflict containment	Low	High	Low	Low
Empirical findings: deportation capacity	Low	High	Low	Medium

Baden-Württemberg has the highest deportation capacity of all the four cases, despite the fact that it operates in a political environment marked by high levels of case mobilization. The case of Baden-Württemberg most clearly demonstrates that immigration bureaucrats are in fact able to circumvent certain constraints of liberalism, *provided that certain institutional conditions are met.* Most importantly, the existence of a regional level of administration which does not have a corresponding class of elected officials, coupled with the political determination to undertake centralization at the regional level, has enabled bureaucrats to achieve a degree of electoral insulation not present in the other three cases. Finally, as far as Brandenburg is concerned, the incidence of case mobilization was higher than expected, and is likely to further increase as immigrant advocacy is becoming institutionalized. Its deportation capacity is much lower than that of Baden-Württemberg, which can be explained by it lack of electoral insulation at the level of *implementation* and the higher degree of internal political conflict at the *Land* level.

V.   Conclusion

Policy venues matter. Whether it is the availability of closed-door policy venues in order to push for the expansion of immigrant rights (Guiraudon 1997), or policy entrepreneurs' choice of Senate versus House subcommittees in their pursuit of immigration reform (Hunt 2002),

policy outcomes vary with the availability and choice of particular policy venues. This paper has examined the venue of policy implementation as an opportunity point for immigrant advocates to mobilize against deportation decisions. Crucially, however, it is not only immigrant advocates who select policy venues in accordance with their political aims. Bureaucrats, too, try to navigate between different policy venues when faced with the conflict of case mobilization, whether it is from municipal to regional levels of jurisdiction as in the case of Germany, or from district to national level in the United States. The case of Baden-Württemberg in particular illustrates how bureaucratic strategies to shift the venue of implementation from municipalities to regions have succeeded in insulating executive actors from electoral politics by moving implementation beyond the constituency of municipal elected officials.

Both the U.S. Immigration and Naturalization Service and German foreigner authorities have undergone processes of centralization over the past decade. As recently as the summer of 2002, the Detention & Removal program of the INS district offices became centralized, with officers reporting directly to headquarters, rather than the regional offices. As of March 2003, further organizational reforms are under way with the incorporation of the agency into the new Department for Homeland Security. It is too early to say how this will impact on the deportation capacity of immigration officers. The findings of this paper suggest that even after reorganization, the deportation activities of the agency are likely to remain hotly contested, possibly even more so than before, because the layers of political insulation surrounding the immigration bureaucracy in Washington, D.C. are particularly thin.

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