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STATE AND LOCAL AUTHORITY TO ENFORCE IMMIGRATION LAW: EVALUATING A UNIFIED APPROACH FOR STOPPING TERRORISTS

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP

OF THE

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STATE AND LOCAL AUTHORITY TO ENFORCE IMMIGRATION LAW: EVALUATING A UNIFIED APPROACH FOR STOPPING TERRORISTS

THURSDAY, APRIL 22, 2004

UNITED STATES SENATE,
SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP, COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:08 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. Saxby Chambliss, Chairman of the Subcommittee, presiding.

Present: Senators Chambliss, Sessions, Cornyn, and Kennedy.

OPENING STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Chairman CHAMBLISS. The Subcommittee will come to order. I am glad we are able to have this hearing today and I appreciate my colleagues, Senator Cornyn and Sessions, for being here. I know that Senator Kennedy is on the way, and there are going to be others joining us before we conclude today.

I particularly want to thank Senator Sessions for his efforts in this area. I know he has worked very hard on this issue and has a bill pending before the Senate and we look forward to your input here today.

I also appreciate the work of my colleagues, Senator Zell Miller and Congressman Charlie Norwood of my State, who have also worked very hard on this. Congressman Norwood, of course, has a bill over on the House side.

This is an important topic that covers both our anti-terrorism efforts and the changes needed in our immigration system. In the post–9/11 world, it is critical for us to think about immigration and national security with a consistent approach.

I think there is a consensus that our immigration laws are in dire need of reform and today's hearing is another step towards a comprehensive review. The system we have in place today lacks incentives for immigrants to come to the United States following the legal process in place. It also lacks enforcement against those who choose not to follow the legal process. It is my hope that we may continue the open dialogue that the President has initiated and all Senators will continue to work on the policy we have been addressing so far in this Congress.

There are some disturbing facts that show just how serious a lack of immigration enforcement can be. Three of the 19 hijackers on September 11 were stopped by State or local law enforcement officials in routine traffic stops in the weeks leading up to the attacks on our Nation. In August 2001, in Arlington, Virginia, a police officer stopped Hani Hanjour for going 50 miles an hour in a 30-mile-per-hour zone. He was driving a van with New Jersey plates and produced a Florida driver's license to the officer. Hani Hanjour was aboard American Airlines Flight 77, which crashed into the Pentagon.

On September 9, 2001, 2 days before the September 11 attack, Maryland State Police stopped Ziad Jarrah for driving 90 miles an hour in a 65-mile-per-hour zone in a rural section of I–95 near the Delaware State line. A videotape of the stop shows the State trooper approaching the car, obtaining the driver's license and registration, and returning to his patrol car for a radio check of the credentials. Jarrah, who was on the CIA watch list, was given a ticket and allowed to go. The registration showed the car Jarrah drove that night was owned by Garden State Car Rental at Newark, New Jersey's international airport. The car was found at the airport after the September 11 hijackings with the citation received by Jarrah still in the glove box. Jarrah had boarded United Flight 93 that crashed in Shanksville, Pennsylvania.

Finally, Mohammed Atta was stopped by police in Tarmac, Florida, in July 2001 and was ticketed for having an invalid license. He ignored the ticket and a bench warrant was issued for his arrest. He was stopped a few weeks later in a town nearby for speeding and the officer, unaware of the bench warrant, let him go with a warning. Hijacker Mohammed Atta is believed to have piloted American Airlines Flight 11 into the World Trade Center's north tower.

There is clearly a seriousness to today's discussion. We need the laws to curb illegal behavior and to stop the bad guys. We also need laws that can be enforced and will be enforced. I am eager to begin that discussion, and I appreciate our witnesses being here today.

Our witnesses are Professor Kris W. Kobach, former Counsel to the Attorney General, now professor of law at the University Missouri–Kansas City School of Law, Kansas City, Missouri. Professor Kobach, we are certainly glad to have you with us.

Mr. E.J. Picolo, Regional Director, Florida Department of Law Enforcement from Fort Myers, Florida. Mr. Picolo, we are pleased to have you here.

Michelle Malkin, investigative journalist and author, from Bethesda, Maryland. Ms. Malkin, we are certainly glad to have you here.

And David A. Harris, Balk Professor of Law and Values, University of Toledo College of Law, Toledo, Ohio. Professor Harris, we are certainly pleased to have you here.

Before we turn to our panel, and anticipating the arrival—here is Senator Kennedy right here. I will turn to my friend and colleague, Senator Kennedy, for any comments he wishes to make in the form of an opening statement.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you. Thank you very much, Mr. Chairman, and I appreciate your courtesy, as always. I thank the witnesses for their patience here in working with us on the Senate schedule.

In the past 2 years, Congress has done much to respond to the terrorist attacks of 9/11. We have authorized the use of force against terrorists and those who harbor them. We have enacted legislation to strengthen security at our airports, seaports, borders, and have given law enforcement intelligence officials greater powers to investigate and prevent terrorism.

But not every measure or action proposed after 9/11 has been effective, legal, or fair. The Attorney General has used the fear of terrorism to justify actions that affect the most basic rights in our society, and one of the most controversial and counterproductive policies the Justice Department has pronounced is the use of State and local law enforcement agencies to enforce the immigration laws.

A Heritage Foundation paper published yesterday criticizes the very legislation that this hearing is examining today, and I also have many letters and statements from law enforcement agencies, domestic violence advocates, and other organizations, liberal and conservative, proposing this policy and I would like to submit these documents for the record.

Chairman CHAMBLISS. Certainly, without objection.

Senator KENNEDY. Mr. Chairman, the Heritage paper sums it all up for us. The proposed policy, quote, "takes exactly the wrong approach, inappropriately burdening State and local enforcement and providing insufficient protections for civil liberties." It is unnecessary because adequate authority already exists. Besides unreasonably burdening local law enforcement, irreparably damaging community policing and undermining the safety of our neighborhoods, this policy will impose heavy financial costs on State and local governments.

The Congressional Budget Office cost estimate says that implementing a proposal like this will cost $9 billion over a 5-year period. That is a lot of money spent on a policy that many law enforcement and security experts believe will undermine national security.

Since 9/11, security experts have repeatedly stated that good intelligence is the key to national security. Helpful information comes from all sources, including immigrants. Local communication shuts down. Immigrants are afraid to approach law enforcement officials. We will forfeit important information and jeopardize the security of our Nation. At this critical time, we must keep all lines of communication open. We cannot afford to undermine the trust of entire communities nor destroy the successes that police departments throughout the United States have achieved through community policing.

If this policy is implemented, it would effectively create a class of criminals that would be immune to prosecution. Immigrant victims of crime or witnesses would not report crimes or seek assistance for fear of being arrested by the police. Criminals would not

be held accountable for their actions because no one will come forward.

State and local enforcement of immigration laws also invites discrimination and racial profiling since local police do not now receive adequate training to understand our complex and ever-changing immigration laws. In fact, none of the bills pending in Congress mandates such training. Local police will not be able to distinguish between an immigrant who is here legally and another who is not.

Current law also provides ways to create effective partnerships between local law enforcement offices and Federal agents. States and localities can enter into memorandums of understanding with the Federal Government to confer civil immigration law enforcement powers on their local officers after extensive training in immigration. Florida and Alabama already utilize these MOUs. This MOU policy gives States the option and the flexibility to use use of their police in ways that meet the real needs of their residents.

So I commend the chair for calling this important hearing, look forward to the testimony. We need to achieve the right balance between protecting our country from terrorism and respecting the rights of our citizens and immigrants, and I am confident we can strike a fair and effective balance without mandating State and local enforcement of Federal immigration laws. I thank you, Mr. Chairman.

Chairman CHAMBLISS. Thank you.

I now turn to Senator Sessions for any opening statement you might wish to make.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman, very much for having this hearing. The topic that we are having today is one that I care deeply about. It is the ability of State and local law enforcement to voluntarily aid—to voluntarily aid—the Federal Government in enforcement of immigration law, and the bill that I have offered and Senator Zell Miller and Larry Craig and others have cosponsored is not the clear act referred to by Senator Kennedy and does not require State and local law officers to do anything. It gives them the ability to do so, but it does not require them to do so.

The bill that I have offered, and it won't be the detailed subject, as I understand, of today's hearing, will clarify the authority of State and local police to act voluntarily. It will ensure that State and local police have access to immigration-related information through NCIC, which has not cleared it, not today, and will increase Federal detention and removal resources to support those local law enforcement officers.

Just as the Chairman said in his opening comments, many times, it is these officers out enforcing traffic regulations that come in contact with the most dangerous of criminals. S. 1906 does not commandeer State and local law enforcement and does not require them to do anything.

I am proud that Alabama, along with Florida, have entered into memorandums of understanding with the Department of Homeland Security to be extensions and effective extensions of their ability to

enforce these laws. I think that is a healthy thing. But it is a big deal and a complicated procedure and the fundamental value of a police officer on the street should not be denied simply because they haven't gone to a two-week school.

We need comprehensive reform in immigration, as the Chairman said, but I don't believe we will achieve that until we have integrity in the system. That means a lot of things. One of the things it means is we cannot push aside the 650,000 State and local officers as we currently do and say to them, don't bother with immigration enforcement. It is a signal that we have no interest in getting a handle on the terrorists who come into our country and no interest in enforcing our laws.

A lack of immigration enforcement in our country's interior has resulted in eight to ten million illegals in this country, making it easy for criminal aliens to just disappear within our borders. Of those here illegally, the Department of Homeland Security has estimated that 450,000 are alien absconders, that is, people who are under court order and just absconded and disappeared. Eighty-six thousand are criminal illegal aliens, people convicted of crimes, subject to being deported, in this country and they have disappeared and been released, and 3,000 of those are from countries designated by the State Department as state sponsors of terrorism.

So why can't we just find and deport these absconders, criminal aliens, and terrorist threats? The answer is simple. Leaving the job of interior immigration enforcement solely to the mere 2,000 Federal interior agents inside our borders guarantees failure. The number of illegal aliens outweighs them 5,000 to one. It is obvious that State and local police, a force of 650,000 strong, sworn to uphold the law, with powers to arrest mayors and Governors and, yes, United States Senators, certainly should be allowed to enforce immigration laws and should have the power to arrest those who are illegally here and not citizens of the United States.

We know the American people care about this strongly. I have a poll, I just would point out, that came out last March, a Roper poll, "Americans Talk About Immigration." Eighty-eight percent of Americans agree, and 68 percent strongly agree, that Congress should require State and local law enforcement agents to notify INS, now ICE, the local law enforcement, when a person is here illegally or presented fraudulent documentation.

It is also clear that, additionally, 85 percent of Americans agree, 62 percent strongly agree, that Congress should pass laws requiring State and local law enforcement agencies to apprehend and turn over to INS illegal immigrants with whom they come in contact. In fact, they are shocked it is not happening now.

It is clear that the first problem preventing State and local law enforcement from participating in immigration enforcement is confusion over authority, Mr. Chairman. A few years ago, police from Alabama started telling me that they have given up on calling INS because INS tells them they have to have 15 or more illegals before they would bother to come and pick them up. This is the pattern all over America. They were basically told also they could not detain people and wait for INS to come. So they were told, in effect, no matter who you apprehend, to let them go. So I believe that telling police this is wrong. It is unwise and we can fix it.

Only two circuits, the Tenth and Ninth, have expressly ruled on State and local law enforcement authority to make arrests on immigration law violations. Both of them confirm that authority. The only confusion that exists really is dicta in a 1983 Ninth Circuit case which addressed whether the authority to investigate and make arrest changes if the immigration violation is a civil one and not a criminal.

This confusion was fostered by a Department of Justice memorandum in 1996 from the Office of Legal Counsel. However, the relevant section of that opinion has since been withdrawn by the Department of Justice. While the confusion seems minor, the threat of lawsuits and of confusion over authority has, in effect, helped paralyze State and local police who are willing to participate.

Problem number two, the Federal agency responsible for immigration enforcement told police chiefs in Alabama to let them go, mainly because they didn't have the personnel to pick them up or the detention space to detain all apprehended aliens. A mere 2,000 officers and less than 20,000 appropriated detention beds, we have got to have more attention to that issue.

In February of 2003, a DOJ Inspector General report entitled "Immigration and Naturalization Service Removal of Aliens Issued Final Orders" found that 87 percent of those not detained before an order of removal was issued were never deported—87 percent. Dedicating the Federal resources needed to effectively pick up and detain illegal aliens apprehended and arrested by State and local law offices is a necessity if we are serious about enforcement.

Problem number three, the first recommendation of the Hart–Rudman Commission, the Commission's report entitled "America Still Unprepared, America Still in Danger," that bipartisan report, their first recommendation was, quote, "to tap the eyes and ears of State and local law enforcement officers in preventing attacks," and examples you read at the beginning, Mr. Chairman, are just what we are talking about. The report specifically suggested that "the burden of identifying and intercepting terrorists in our midst could and should be shared with America's 650,000 county, State, and local law enforcement officers, but they clearly cannot lend a hand in a counterterrorism information void," close quote.

The burden could and should be shared with America's 650,000 State and local officials, but they cannot lend a hand in an information void. State and local police are accustomed to checking for criminal information in the National Crime Information Center database, which is maintained by the FBI. They can access it from roadside when they pull a car over or to stop a suspect.

But separately, ICE operates the Law Enforcement Support Center, which makes immigration information available to State and local police, but it requires a second check, an additional check to NCIC by the local police officer. This second check is not known by most officers. They don't know how to access it. They have no idea who to call and they are not doing so and it does not work. It should be in the main system without doubt.

As part of its Alien Absconder Initiative, ICE is already in the process of entering information on the estimated 450,000 absconders in the NCIC. But as of October 31, only 15,000 of those 450,000 had been entered in the NCIC, a number I find just unacceptable.

And by February of this year, ICE had increased the number of illegal absconders in NCIC from 15,000 to a mere 25,000, a number still totally unacceptable.

In a letter to me on February 12 of this year, ICE said it was committed to using NCIC to its maximum effectiveness as a tool for sharing immigration-related information. Therefore, entry of alien absconders must rapidly increase and additional immigration-related information must be entered into the NCIC.

I know that there are groups that are opposed to this. Essentially, I would conclude that every time a proposal is set forth that has any significant capacity to actually work, identify and remove people who have violated the laws of the United States, those matters draw objections and the objections are for a host of different reasons, but they all have one goal, to frustrate a system that actually works.

It is time for us to reform immigration law, as I know the Chairman believes, and make it better and allow more good people to come to this country who are entitled to this country. We are a nation of immigrants. We welcome immigrants who want to come here and we can increase that number that is coming legally, but at the same time, we need to make clear that those who do not follow the law will be apprehended and detained and the best course is to come legally rather than illegally.

Thank you, Mr. Chairman, for allowing me to take a little extra time to share those thoughts.

Chairman CHAMBLISS. Thank you.

We will now turn to Senator Cornyn for any comments you have or for an opening statement.

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Chairman Chambliss. I want to also express my gratitude to you for holding this hearing and other hearings you have had on related matters pertaining to immigration law reform. This is relevant, it is current, and the issue is not going away and we might as well come to grips with it.

I am very interested in exploring the issues that are being raised in this particular hearing because my professional background as a judge and Attorney General has taught me that in a nation of laws, the failure to respect any of those laws leads generally to the disrespect for all the laws. I don't think that law enforcement should have the liberty nor should they be denied the resources such that they merely pick and choose which laws to enforce and what laws they will ignore. I believe that we can and we should enforce all of our laws.

Now, let me be clear. I don't think we should federalize our State and local police forces and that is not what I understand this issue to be. What I understand the issue to be, and I think Senator Kennedy put his finger on two of those, one is the cost and the other has to do with training. To me, those are absolutely essential ingredients in doing what this hearing suggests might be a viable option.

I don't believe we should go down the path of unfunded mandates that burden already strapped State and local police depart-

ments. Yet at the same time, it makes sense to me that we explore the possibility of having 650,000 State and local law enforcement officials, who are by their very nature the eyes and ears of the community, work with and not against the Federal Government when it comes to enforcing our immigration laws.

As we all know, the Department of Homeland Security, and Senator Sessions mentioned this, has about 2,000 interior enforcement agents who are simply overwhelmed. They are overwhelmed by the 800,000-plus illegal entries in this country each year in the late 1990's. As we all know, Mr. Chairman, from previous testimony at other hearings, they are overwhelmed in almost every sense of the word. They are drowning in a very difficult challenge when it comes to enforcing our immigration laws and I think we ought to give them the help that they need in order to do what America needs, and that is to enforce our laws.

Now, we have heard the argument that any information shared by State and local law enforcement authorities with the Federal immigration officials will destroy community policing initiatives as a crime-fighting tool. Certainly, community policing initiatives are vital tools used by law enforcement all across the country. But I am simply not convinced that voluntary cooperation and information sharing by State and local officers with Federal immigration enforcement officials will make communities less safe. To the contrary, I think it seems almost self-evident that it will make communities more safe if it is done the right way.

So I look forward to hearing today's testimony. I am specifically interested to hear how we can ensure that State and local governments are not financially burdened if Senator Sessions' bill or something like it is enacted, and I am concerned by the provisions that eliminate certain SCAAP funding because, of course, that has a huge impact on the State of Texas. Right now, the Federal Government does a very poor job of living up to its responsibilities with the financial burdens that are being borne by border States when, in fact, it is the Federal Government's responsibility, and this is just one area. So I am very interested in hearing what impact this type of legislation might have on that State Criminal Alien Assistance Program funding.

And with that, thank you again, Mr. Chairman.

Chairman CHAMBLISS. Thank you, Senator Cornyn.

We will now proceed to our panel, and I would tell each of you that we have your full statement, which will be entered in the record, and we would ask that you summarize that statement.

Professor Kobach, we will start with you.

Senator SESSIONS. Mr. Chairman, could I just make one point? I know that several bills have floated similar to this, but in the legislation I am offering, there would only be—SCAAP monies would only be in jeopardy if the State or locality actually stated a policy prohibiting communications between Federal and local law enforcement over immigration issues. A few may have done that, but none, that I know of, significant departments have done that.

Chairman CHAMBLISS. So noted for the record.

Professor Kobach?

STATEMENT OF KRIS W. KOBACH, PROFESSOR OF LAW, UNIVERSITY OF MISSOURI-KANSAS CITY, KANSAS CITY, MISSOURI

Mr. KOBACH. Thank you, Mr. Chairman, Senators. As has been noted, the 9/11 terrorists were able to enter our country undetected. Three overstayed their visas with impunity and all moved relatively freely throughout the country without effective interference from local law enforcement. It is also clear that the effective assistance of State and local law enforcement can mean the difference between success and failure, not only in enforcing our immigration laws, but in the war against terrorism on the domestic front.

But what I would like to do is briefly summarize the legal authority upon which State and local police may act. That is the legal authority aside from provisions of delegated authority in Section 287(g).

It has long been recognized that there is this legal authority for State and local police to arrest aliens who have violated criminal provisions of the Immigration and Nationality Act. Where some confusion has existed, as Senator Sessions mentioned, in recent years is on the question of whether that same authority extends to civil provisions of the INA. This confusion was, to some extent, fostered by an erroneous 1996 opinion of the Office of Legal Counsel of the Department of Justice. The relevant provision has since been withdrawn by OLC.

However, the law on this is quite clear. Arresting aliens who have violated either the criminal provisions of the Act or the civil provisions that render them deportable is within the inherent authority of the States, as the Attorney General has said, and such inherent arrest authority has never been preempted by Congress. This conclusion has been confirmed by every court to squarely address the issue. That said, I will proceed to offer my personal opinion as to why this conclusion is correct and I offer this analysis purely in my capacity as a law professor and not as a representative of the Bush administration.

It is well established that the authority of State and local police to make arrests for violation of Federal immigration law is not limited to those—or Federal law of any sort—is not limited to those situations where they are exercising delegated Federal power. Rather, such arrest authority inheres in the States' status as sovereign entities. This is the same inherent authority that exists when, say, a State law enforcement officer observes the commission of a Federal crime and goes ahead and makes the arrest. That officer is not acting pursuant to some delegated Federal power. Rather, he is simply exercising inherent power of one sovereign to assist another sovereign, and there is abundant case law on this point. I would direct the Committee to *U.S.* v. *Di Re* and *Millier* v. *United States*.

The Ninth and Tenth Circuits have expressed this understanding in the immigration context specifically. The Tenth Circuit has reviewed the question on several occasions, concluding squarely that, quote, "a State trooper has general investigative authority to inquire into possible immigration violations," end quote. That is from *Salinas-Calderon*.

Having established that this inherent authority exists, the next legal question is whether such authority has been preempted by Congress. In all forms of Congressional preemption that our courts recognize, there must be some manifest intent of Congress to preempt and displace this existing State authority, and the critical starting assumption has to be that the Federal Government does not normally intend to deny itself any assistance that the States might offer, and that presumption is a long-established one from the case of *Marsh* v. *United States*.

But beside those presumptions as they are, in 1996, Congress expressly put to rest any suspicion that it did not welcome State and local assistance in making arrests in immigration law. Congress added Section 287(g) of the INA providing for these written agreements, but in doing so, Congress stated that a formal agreement is not necessary for, quote, "any officer otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States," end quote. That is from 1356(g)(10).

Moreover, the case law supporting the conclusion that Congress has not preempted State arrests of aliens for civil provisions of the INA is solid and on point. Again, looking at the Tenth Circuit, you have the case of *U.S.* v. *Vasquez-Alvarez* in 1999. I would also direct the Committee to the Fifth Circuit opinion in *Lynch* v. *Canatella* in 1987.

Finally, on the subject of preemption, it must be noted that if there were a conclusion that somehow the preemption had occurred in the criminal arrest authority but not in the civil arrest authority, then that conclusion would have to be reached through what is called field preemption. But field preemption would require a conclusion, or somehow would require us to believe that there is a pervasive regulatory scheme in civil violations of the Act, but there is not a pervasive regulatory scheme in criminal violations of the Act. That is, to put it lightly, absurd.

The criminal and civil violations are woven together. They are part of one complete Act and some violations are civil and some constitute criminal penalties, or trigger criminal penalties. But there is not a separate kind of regulatory structure that would lead to such a split preemption conclusion, if that makes sense.

I want to summarize by talking about a few situations in which it is critical that State and local police exercise this authority. One is observation of suspicious activity that is potentially connected to terrorism. I can't give the details of actual cases in this testimony, but suffice it to say that I can say that I have personally seen in my capacity when working in the Justice Department cases where State and local police observed suspicious activity and used their inherent arrest authority to go ahead and make an arrest on immigration grounds. My written testimony gives some examples of how that might be constructed.

The second area where it is critical is in NCIC listings. As has already been mentioned, there are several types of aliens being listed in NCIC right now. The current number as of March 1 is up to 28,000 absconders. The results are pretty impressive. When you cast that wide a net, and you basically are looking at everyone who gets a speeding ticket, you can achieve real results. Of those 28,000

listed, 8,500 have been arrested at this point. So it is an effective way of looking for people who have made a mockery of our rule of law. People have already had their day in court and lost. We have got to rely on the NCIC system.

In addition, NCIC is critical for terrorist-related alien violators of our immigration law. The NSEERS system, the special registration system, has targeted people who are of particularly high risk and their activity leads to believe that they may be involved in terrorism. There are over 50, now, NSEERS violators who are of such high risk that they have been placed in NCIC. That is a critical subset of aliens, as well as the deported felons file, which has been in NCIC since the Clinton administration. So it is critical to make sure that that way of getting information to State and local police continues to be effective.

I want to also note that the interception of alien smuggling is another case where this inherent authority, to the extent that it can be maximized and can be encouraged by Congressional action, should be undertaken. There are many documented cases where State and local police intercept a truckload of aliens being smuggled across the border, and for one reason or another, they do not feel that they have the authority to make the arrest. Not only is that, of course, a threat to the lives of the aliens being smuggled, but it is a huge gap in our law enforcement when there are the eyes and ears of law enforcement on the front line and yet in some cases they do not feel that they have the authority or the resources to back them up in assisting the Federal Government.

That said, let me just conclude by saying that it is clear that there is massive untapped potential to make real headway in the war against terrorism and in the enforcement of our immigration laws and I think this bill would be a great step in tapping that potential and moving forward on this question.

Chairman CHAMBLISS. Thank you, sir.

[The prepared statement of Mr. Kobach appears as a submission for the record.]

Chairman CHAMBLISS. Mr. Picolo, we are certainly glad to have you here and look forward to your testimony.

STATEMENT OF E.J. PICOLO, REGIONAL DIRECTOR, FLORIDA DEPARTMENT OF LAW ENFORCEMENT, FORT MYERS, FLORIDA

Mr. PICOLO. Thank you very much, Mr. Chairman. As you are aware, Florida in July of 2003 entered into the first of its kind delegated authority MOU with the then-Department of INS for 287(g). That was predicated on our efforts in Florida with our Regional Domestic Security Task Forces to work domestic security and terrorist-related investigations in our own State. The task forces were established by statute just after the 9/11 atrocities.

As a result of our frustrations with the Federal system as it exists currently, we approached the INS about the possibility of the 287(g) authority being delegated to certain law enforcement officers in our State and successfully negotiated with them an MOU, which was signed in July of 2002 by then-INS Under Secretary as well as our Commissioner, or Governor Jeb Bush.

Since that time, we have had an active—we trained our 35 local law enforcement officers. They attended a five-week comprehensive training program put on by the INS. They have subsequently been retrained, another week-long training program to provide some additional refresher training. We have worked hundreds of cases throughout our State, made a couple of hundred arrests as a result of this MOU with absolutely no complaints from any community groups, no complaints from any individual that has been arrested regarding any violation of rights or anything of that nature. So we are very proud of our efforts.

We have had some problems as a result of the formation of Homeland Security with the continuing efforts related to our MOU. Quite frankly, when that legislation was passed and that new Federal agency was established, it created a situation where I think it takes a while for them to organize and understand their own mission.

As a result of that, we lost our supervisory special agents at each of our task forces. One of the primary focuses of our MOU is every task that we complete under our Federal authority is done under the supervisory authority of an ICE special agent supervisor. Those individuals have subsequently been pulled from our task forces, which essentially means that our MOU is not effective. We can't enforce the MOU by policy without the INS individual, or the ICE supervisors there.

We strongly support the continuation of 287(g) and similar authority in our counterterrorism efforts.

Three weeks ago, we met with representatives from ICE in our Commissioner's office, along with Collier County Sheriff Don Hunter and representatives from ICE in Washington and Tampa Bay to work out our differences. These outcomes are still under review. The ICE has renewed its commitment to continue our project and provide the proactive effort to prevent it from becoming simply a stand-by program. Additionally, FDLE and ICE have agreed to support another cross-designation class which will provide an additional 35 cross-designated officers in the State of Florida.

In closing, Florida strongly supports the continuation of our 287(g) cross-designation program. We believe this authority provides a strong force multiplier for our Federal partners and our collective efforts to limit the possibility of another terrorist attack. We remain willing and able to assist our Federal partners in these efforts. By remaining committed to our use of trained personnel and domestic security-related investigative efforts, we are assuring that these highly-trained officers will be put to the best use, thereby protecting Florida and the nation.

I look forward to your questions.

Chairman CHAMBLISS. Thank you, sir.

[The prepared statement of Mr. Picolo appears as a submission for the record.]

Chairman CHAMBLISS. Ms. Malkin?

STATEMENT OF MICHELLE MALKIN, INVESTIGATIVE JOURNALIST AND AUTHOR, BETHESDA, MARYLAND

Ms. MALKIN. Mr. Chairman and members of the Subcommittee, thank you for the privilege of testifying before you today. I ap-

proach today's topic from two levels, as a second-generation American whose immigrant parents arrived here legally in this great country three decades ago and also as an investigative journalist who has reported extensively on the consequences of lax immigration enforcement. My interest is in seeing the failures of immigration enforcement remedied effectively so that the American dream remains accessible to those who embrace freedom and respect the rule of law.

There has been much public debate here in Washington over the past few weeks about the wall of separation between the CIA and FBI because the bureaucratic barricade between agencies prevented crucial information sharing about potential terrorist threats. But there is another dangerous barricade that impedes communications between investigators and undermines our safety and security. It is the wall between Federal immigration authorities and State and local law enforcement officials. Terrorists and criminal aliens alike have benefitted directly and indirectly from this barrier.

When 9/11 hijackers Hani Hanjour and Khalid Almidhar needed help getting fraudulent government-issued photo I.D.s, they simply hopped into a van and headed to the parking lot of a 7–Eleven store in Falls Church, Virginia, and that is where scores of migrant day laborers supplied bogus identity papers to other illegal aliens from around the world. During my research, I visited the 7–Eleven. It is just a stone's throw from the Pentagon, where Hanjour and Almidhar deliberately crash-landed American Airlines Flight 77.

Well, the parking lot was, as usual, filled with so-called undocumented day laborers and the local cops that I interviewed suspect that most of these men are here illegally and that they continue to facilitate trade in fake I.D. documents, but nobody arrests them, and this is an all too familiar scene. Public officials talk tough about the need for improved cooperation among local, State, and Federal authorities to secure the homeland, and yet several areas of the country remain safe havens for criminal aliens and as magnets for immigration outlaws with far more nefarious aspirations.

The overwhelming majority of illegal aliens, of course, have no connection to terrorism, but they are breaking the law, and one of the key lessons of 9/11 was that our continued high tolerance for massive illegal immigration gives terrorists and criminal aliens deadly cover. Remember, more than half of the 48 Islamic radicals convicted or tied to recent terrorist plots in the U.S. over the past decade either were themselves illegal aliens or relied on illegal aliens to get fake I.D.s.

The dangerous public safety impact of this other wall reaches beyond terrorism. Last spring, I reported on the case of David Montiel Cruz, also known as Enrique Sosa Alvarez. He was an illegal alien from Mexico who dragged a 9-year-old girl from her San Jose, California, home in broad daylight and he faces trial later this summer for kidnapping and raping her over 3 days. This case stands out as a textbook example of the continued failures of interior immigration enforcement.

According to the San Jose P.D.'s official policy manual, officers may not, quote, "initiate police action when the primary objective

is directed towards discovering the alien status of a person," unquote. Translation: San Jose cops are prevented from proactively contacting the Feds if they suspect violations of immigration law in the course of their duties. Quote, "Our department is very lenient," unquote, when it comes to illegal aliens, San Jose P.D. Spokeswoman Katherine Unger told me. "We don't do anything on immigration," she lamented. It is not, you know, politically correct. It is frustrating.

It is important to note that this other wall is not just a one-way obstruction. In untold instances, cops have reached out to the Feds only to be ignored or rebuffed. A couple examples.

On Memorial Day weekend, 2002, with the nation on high alert, NYPD officers contacted the then-INS and attempted to turn in seven illegal aliens from the Middle East who had been arrested with false I.D.s near a major tunnel. The agency ordered the furious cops to release the men, who were all admitted illegal aliens.

And just this week, four illegal aliens suspected of felony crimes walked free—walked free—in White County, Arkansas, after the Feds explained to local law enforcement that they cannot automatically expel the men just because they are here illegally. Quote, "I had to hand this guy his car keys and allow him to walk out the door," Detective Randy Rudisill said. "He is not even supposed to be in this country and he admitted he was here illegally, but we can't do a thing about it. Our hands are tied."

Even if every State were to enter into cooperative agreements with the Feds to train the nation's 600,000-plus State and local law enforcement officers to enforce immigration law, little would change without an effective system of detention and deportation that puts an end to the standard procedure of catch and release. This policy undermines homeland security and has cost lives, and in my written testimony, I cite a number of examples of that. The bottom line is that increased enforcement and collaboration cannot succeed without greatly expanding the Federal Government's 20,000-bed detention capacity.

What happens when the wall between Federal immigration authorities and local law enforcement officers is surmounted? In at least one case, the decision likely saved untold lives. A year and a half ago, I reported on the extraordinary circumstances surrounding convicted D.C.-area snipers Lee Malvo and John Mohammed.

On December 19, 2001, Bellingham, Washington, Police Detective Al Jensen called the Border Patrol for assistance during a domestic dispute involving Malvo, his mother, and John Mohammed. The detective suspected that Malvo and his mother were illegal aliens and the Border Patrol confirmed their unlawful status and processed them as deportable aliens. Malvo and his mother were fingerprinted and photographed and later released pending deportation proceedings, against the recommendation of the Border Patrol.

As we all now know, Malvo and Mohammed went on to carry a bloody rampage that terrorized the greater Washington, D.C. area and took the lives of ten innocent people. The toll probably would have been higher if not for Police Detective Jensen's decision to call the Border Patrol and have Malvo processed as an illegal alien. His

prints were taken by the Border Patrol and formed in the former INS, now ICE database called IDENT and they were found at an Alabama liquor store crime scene. Those prints were critical in unraveling the sniper case.

Now, neither Detective Jensen nor the Border Patrol agents could have foreseen the havoc that Malvo helped create, but in the course of just doing their jobs together, one local cop and two Federal immigration officers may have averted an even greater public disaster.

I think this case underscores the importance of basic routine cooperation between local and State police and Federal immigration authorities. Police officers are sworn to uphold the law and to enforce it when they have reason to believe that the law is being broken. Local cops don't sit back and watch bank robbers escape because they lack jurisdiction over a Federal crime. A State trooper wouldn't look the other way, one hopes, if he spotted someone breaking into a U.S. Postal Service mailbox or committing arson in a national forest. Just because immigration law enforcement is not a local cop's primary responsibility doesn't mean that he must or should ignore indications that these Federal laws are being broken.

S. 1906 would help break down this other wall by affirming the inherent authority of States and their political subdivisions to apprehend, arrest, detain, or transfer illegal aliens to Federal custody. It would increase criminal penalties for illegal entry into the U.S., improve information sharing, and it would address the Federal detention space crunch.

I think that these steps all reflect a fundamental principle that must be adopted to make homeland security meaningful, namely that immigration law breaking must carry real consequences in a post-September 11 world. Thank you.

Chairman CHAMBLISS. Thank you, Ms. Malkin.

[The prepared statement of Ms. Malkin appears as a submission for the record.]

Chairman CHAMBLISS. Professor Harris?

STATEMENT OF DAVID A. HARRIS, BALK PROFESSOR OF LAW AND VALUES, AND SOROS SENIOR JUSTICE FELLOW, UNIVERSITY OF TOLEDO COLLEGE OF LAW, TOLEDO, OHIO

Mr. HARRIS. Thank you very much, Mr. Chairman and members of the Committee. I appreciate very much the opportunity to speak to you today about this important legislation.

Over the past year, I have had the opportunity to travel the country interviewing police officers for a new book I am doing. I have interviewed police chiefs, captains, lieutenants, many, many patrol officers, and I have been really surprised at the one theme that has jumped out at me time after time after time, and that is this. Please do not get us saddled with the job of doing enforcement of immigration law. This is a constant, recurring theme for local and State police, and I am privileged to be here today to see if I can try to give voice to why local and State police do not want this responsibility and why they feel it is more properly a Federal responsibility.

Point number one, and it goes directly to what Senator Cornyn was raising in his statement. I want to come right to that, and that

is this. There is probably no single innovation or program in policing that has been more successful or more widely adopted than community policing. Even police departments that do not have a community policing program have adopted wholeheartedly its core concept, and that is the police cannot do the job of making the streets safe alone.

They need the community with them. They need a relationship with the community. They need a partnership with the community. Why? Because even the dumbest criminals don't usually do their business in front of the police, so the police need information. They need intelligence. They need people to tell them where the criminals' business is going on and who is doing it. It is that simple.

If they want that information, they have to have relationships of trust with every community that they protect and serve. Now, forging those kinds of relationships is very difficult under the best of circumstances. It is doubly difficult for immigrant communities to forge such relationships with police departments. You have barriers of language. You have differences in culture. Police have been diligent, have done a great job building those bridges under some very difficult circumstances.

In those immigrant communities, and when I say immigrant communities, I am not just talking about the big cities. I am talking about cities of all sizes, towns all over the country. The fastest-growing immigrant communities in this country are no longer in the Southwest, in Texas and in Florida and California. They are in places like Georgia. They are in places like Arkansas. They are all over this country.

So police departments everywhere face these issues, and when they go into immigrant communities, some of the people in those communities are illegal. That is a fact and it is a fact we cannot get around, and police know that their success in working with these communities and getting information and making the streets safe depends on working with all members of those communities.

If the people in those communities don't trust the police, if they fear them because they think that the police are working with immigration and have an interest in deporting them, those people will not report crimes. They will not offer assistance. They will simply act out of the basic human emotion of fear, and that will cut off the flow of information to the police.

I agree very strongly that we should look at local and State police as our eyes and ears in the community. If we want those eyes to see things and ears to hear things, they must be in touch with the people they serve, whether those people are legal or illegal.

That is why local and State police officers, to a person that I spoke to, said over and over, please, don't put us down this path. They say, I want to serve everybody in my community. I want to protect everybody. I don't care what the status of a person is, if a woman is, if she has been raped. I don't care what the status is of a victim of domestic violence. I want those people made safe. That is my job and I am going to do it.

Two things happen when the police officer doesn't get information and doesn't get contacted out of fear of deportation. Two things happen. Number one, the victim is not served. Number two, and

this is very important, the predator remains on the streets to strike somebody else, and that is not a cost that anybody wants to pay.

Two other points kept coming up in my conversations with police officers. One was resources. They are simply stretched to the limit. They have all kinds of new responsibilities with homeland security. They have many things on their plates. To give them a new job now with no new resources to do it under the threat of losing Federal funds if they don't decide to voluntarily cooperate in a time of the tightest State and local budgets in a generation, there is no choice involved here, really. They are going to have to go along with this and they don't want to be forced to do that. It will take resources away from their other priorities, the priority, the bread-and-butter priority of making the streets safe.

Last but not least, they had another concern. That concern is training. Training is important here because immigration law is incredibly complex, incredibly complex. I was very interested to hear what Mr. Picolo said about the training that his men got under the MOU, five weeks plus another week of in-service. That is the way we have to go if we want this done right. Without the training, we are sending our officers out there into a potential disaster, and the losers will be the police because it is their relationship with the public that will be undermined.

Thank you very much for the opportunity to speak to you and I look forward to your questions.

Chairman CHAMBLISS. Thank you very much, Professor.

[The prepared statement of Mr. Harris appears as a submission for the record.]

Chairman CHAMBLISS. Mr. Picolo, let me start with you. Your 287(g) was entered into, your MOU was entered into in July of 2002, correct?

Mr. PICOLO. Yes, sir.

Chairman CHAMBLISS. If you had had—

Senator SESSIONS. Mr. Chairman, you might note that MOU is a memorandum of understanding.

Chairman CHAMBLISS. I am sorry.

Senator SESSIONS. I didn't define that, either, when I was talking.

Chairman CHAMBLISS. This is a town of acronyms and we tend to get wrapped up in that sometimes, so thank you, Senator Sessions.

The memorandum of understanding that you entered into was in July of 2002. If you had had that exact MOU in place in July of 2001 when Mohammed Atta was stopped that second time for a traffic violation and when a bench warrant was issued, what likely would have happened as a result of that MOU being in place?

Mr. PICOLO. I think we would have had much better communication between our local law enforcement agencies and the Regional Domestic Security Task Force. That is the mechanism that we use to investigate domestic security and terrorist events in Florida. Virtually all of our local law enforcement agencies in Florida now have at least a liaison, if not a member actively assigned, to one of these task forces. So we communicate regularly with them and whenever there is someone identified that is of interest to a local law enforcement officer, that is one of our primary responsibilities as we go

out and investigate that issue and determine if that is someone we need to be more interested in and need to pay more attention to.

Chairman CHAMBLISS. Ms. Malkin, I agree with you that information sharing is a critical aspect of not just immigration law, but particularly the war on terrorism, and I have been a strong advocate since my House days of trying to improve information sharing both vertically and horizontally with our law enforcement as well as other related entities.

I am sure you are probably familiar with the Heritage report that has come out recently and has been critical of the legislation that is proposed and the utilization of the NCIC, saying it would be an overload on the NCIC if we put all of these names into there. Give me your reaction to that. You have had some experience with NCIC. What do you think about that?

Ms. MALKIN. I don't think it would be an overload. I mean, we live in the most technologically advanced, technologically sophisticated society in the world. I think putting the brightest minds to that task is not out of the realm of the impossible.

I also think that the human toll with regard to failures to do this kind of information sharing has to be exposed. Here in Washington, we have been aware of these kind of failures ever since the days of the railway killer, Angel Resendez. Again, the IDENT database played a big part here because, I mean, if you are going to appropriate money to these sophisticated databases, there ought to be good information in them. From my interviews with local cops, and I have done a lot of interviews myself across the country, they have been clamoring for useful information in these databases.

In the Malvo case, which I mentioned, I think is very relevant and germane because those fingerprints of Lee Malvo were in IDENT but they were not in the NCIC. Had they been in the NCIC, the delay that it took before Malvo's prints were identified led to a couple of other people being slain who might otherwise be alive today because of that.

There is so much information that still needs to be put in the databases, as well, including visa overstayers and the absconders, and it is going slowly, but it is going. Again, I don't think it is an impossible task.

Mr. KOBACH. Mr. Chairman, may I comment on that question, too?

Chairman CHAMBLISS. Certainly.

Mr. KOBACH. When I was at the Justice Department, I worked extensively with CJIS, which oversees the NCIC system. There are millions and millions of records in NCIC. Every single want and warrant that any State or local jurisdiction has and wants other jurisdictions to know about is tappable through NCIC, and it is not like our home PC where we are running out of RAM space. There is plenty of space there. We have already got 111,000 deported felon files in the NCIC and now we have got these 28,000 absconders and less than 100 NSEERS violators. The immigration portion is a drop in the bucket and we could make that drop ten times larger and there would be no problem of overloading the system.

Ms. MALKIN. And if I just may make one final comment on that, of course, nobody ever talks about the problems with overload when it comes to registering, for example, law-abiding gun owners.

If we can do that, if we have the capacity to do that, certainly we should have the capability of registering people who are breaking the law.

Chairman CHAMBLISS. Professor Kobach, the Heritage report also criticized the proposed legislation on the basis that it would tend to put more of a burden upon local law enforcement officers and take away, as Professor Harris said, their ability to do their bread-and-butter, day-to-day issues. I share that concern and I want to make sure that if we move forward with this, that we don't take away from our local law enforcement officials their primary obligation of enforcing criminal laws within their local communities. What is your reaction to that report and this criticism?

Mr. KOBACH. My reaction is that if we were trying to displace their primary mission of enforcing garden-variety criminal laws in their communities, that would be a problem. But that is not what the objective of this bill or similar bills are. The objective is to make it a secondary mission and an entirely voluntary mission. If they don't want to do it, they still don't have to. But there are a lot of police who are extremely frustrated that they can't get more involved, and I have to disagree strongly with Professor Harris.

As counsel to the Attorney General, I spoke on many, many occasions to police organizations around this country and I have continued my interviews since I have left the Justice Department because I am really frustrated by this. I think this is one of the biggest myths that has arisen on this issue. There is not one bit of statistical evidence out there that anyone has presented that I have ever heard of what percentage or what number of crimes are being reported by illegal aliens. I am glad Professor Harris is writing a book on this and I hope he is able to find that statistic because his book will be much stronger if he can give us some numbers.

I think this is a myth. When I talk to police officers, and I try to say, do you have any reports, can you give me any numbers, how many criminal cases have been based upon reports from aliens, legal or illegal, in your communities, they laugh at me, especially with the illegal part. The point is, if you are an illegal alien in the United States, you avoid all contact with law enforcement, period. They don't know the niceties of whether it is a State authority or a local authority or a Federal authority. The smart thing for you to do is to avoid all contact with law enforcement.

So it is another myth that we are getting some massive community assistance in policing from the illegal aliens that have anything to fear. Now, the legal aliens, those alien communities, absolutely. They can come forward and they have nothing to fear. But I just think that there is not a lot of evidence here.

I would also point out that the Major County Sheriffs Association, which is the organization of the sheriffs of the 100 largest counties in America, has gone on record saying they want greater cooperation and they are frustrated by those instances in which there isn't adequate communication and cooperation, especially those instances where they have someone they would like to turn over to the INS and the INS says, let them go.

And in my conversations with several police officers, this is one theme that came out quite often, too. The officer doesn't want to be the guy that let the obviously illegal alien go who went on to

rape someone or commit a murder or commit a robbery. He doesn't want to be the guy who let him go. The police officers, they have a strong instinct of where there are certain apparent violations of the law, an individual may be involved in other more serious violations of the law. And when they cannot act upon, when they don't have the tool in their pocket to enforce and make an arrest on immigration law, many of them have this fear that they are going to be the police officer that made the mistake and let someone go who goes on to do a much more serious crime.

So I have a very different perspective on what police officers are saying and I guess I would just like to see the numbers, if there really is this massive amount of reporting by illegal aliens, because I don't see it.

Senator SESSIONS. Mr. Chairman, just for the record, the legislation I offered, the Homeland Security Act, does not require police to do anything. The CLEAR Act, which the Heritage Foundation evaluated as originally proposed in the House, did have mandates on local police. So I think I just want to suggest that the Heritage report was not focused on the voluntary proposal I have offered.

Chairman CHAMBLISS. Good point.

Professor Harris, I want to give you equal time. Do you have anything to add to your initial statement on that, relative to that?

Mr. HARRIS. Yes, sir. Thank you, Mr. Chairman. Well, Mr. Kobach and I do have very different perspectives on this. I have seen active programs in place in cities such as Chicago, cities such as—you know, just all over the country, the objectives of which are to let the community as a whole, not just the legal residents but everybody, know that the police are there for them. This sometimes goes on quietly. This sometimes goes on with public relations campaigns. And it has been very successful in a number of places around the country.

What police officers, from chiefs down to patrol officers, said to me unprompted many, many times is you never know where information is going to come from. There is no way to predict who will be the witnesses to a crime, whether that person will be legal or illegal. There is no way to predict who the victims will be of crime except that if you push people out of the circle of protection, if people feel that they cannot access the police, they can't get to them, that they have something to fear from the police, they are actually more likely to become victims. That is a common occurrence.

Unless we are very, very conscious of what we are doing here, we are going to send people farther away from the authorities. We are going to send them—make them more hesitant to come to the police. We are going to make them more fearful when they come to the police and that just isn't in anybody's interest, because like I said, they will stop communicating.

I don't think it is true at all that no illegal aliens are communicating with police. That is simply not true. Talk to police officers. You will see. And what they have to say is valuable. If you want those eyes and ears in the community, we have to open them to everybody. That is the long and short of it.

Chairman CHAMBLISS. Thank you. Senator Kennedy?

Senator KENNEDY. Thank you very much, Mr. Chairman.

The provision which is included in S. 1906, to which Senator Sessions refers, says that after 2 years from enactment, any State or local that has a statute, policy, or practice that prohibits local officers from enforcing immigration laws or cooperating with the Federal immigration law shall not be federally reimbursed for incarceration of non-citizens and the State and local municipal reimbursements funds that would have gone to these will be reallocated to jurisdictions that are in compliance with the Act.

So it would suggest—I don't know whether, and I don't want to spend a lot of time with this, that this is a little bit different than just being voluntary. If they are not going to have a problem, there is going to be a risk or it is going to raise serious doubts in the minds of the police chiefs in those areas, and I think that is the matter of concern. Maybe I don't understand it correctly or I read it wrongly, but that is the basic kind of concern, whether there is going to be a requirement or something else.

I think we have heard about interesting programs, particularly in Florida, on how this function can be done and be done correctly, and I think it is a rather compelling story that has been outlined for the Committee.

Mr. Kobach, I was interested in your comments about the roles of police departments and the attitude of policemen. I have the letters from three departments in Kansas that oppose the legislation, Kansas City, Lenexa, and Overland Park. I understand these are cities that are in the district you hope to represent in the Congress.

The Chief of Police in Kansas City writes that they have established good relationships with their minority communities, but if this bill becomes law, they say it will have a devastating effect on how we provide law enforcement. The Chief of Police in Lenexa writes that his city, like many other jurisdictions, is short on resources and manpower. This bill would magnify the problem, force them to make cuts in other areas. Oakland Park's Chief of Police has a similar concern, writing that "this bill would be detrimental to all who live, work, and visit here," and he says he wants all to know that the police are available to protect them, no matter who they are and where they come from.

Why do the police departments in your own back yard believe the policy that you support will jeopardize their ability to keep your own community safe?

Mr. KOBACH. I thank the Senator for providing that communication. The Police Chief from Overland Park, I used to work very closely with because I was a City Councilman at one time in that jurisdiction.

I think it depends on how the question is asked. If you frame the question, we want you to take a part of your mission and devote to enforcing immigration law, you will always get the same answer from resource-conscious police chiefs. No. We don't want an additional mission foist upon us.

But what we are talking about here is a situation where the arrest has already been made. The traffic stop has been made. The police officer is now deciding what to do. The resources have been expended. The only additional resource is the cost of the phone call to the INS LESC, the Law Enforcement Support Center.

So it is not as if we are asking them to go out on a new mission and devote more investigatory resources. So I think, like a lot of polling, it depends on how you ask the question and I think you get very different answers.

The other point I would mention is to your point about how, well, it is not voluntary in this current bill. I am not sure if the Committee is aware, but actually under U.S. law already, it is impermissible for a city to have in place a policy that prevents sharing information with the Federal Government. This is 8 U.S.C. 1644. Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may prohibit or in any way restrict from sending or receiving to the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

As you know, many municipalities are simply violating Federal law flagrantly by creating so-called sanctuary policies, and as I understand it, the provision in this bill, in S. 1906, would simply add some teeth to a Federal law that has been utterly ignored by some municipalities and say, look, if you are going to keep ignoring Federal law and put policies in place to block your police officers from voluntarily calling the feds, then look, you are going to lose some SCAAP funds, and I think that is a completely reasonable—

Senator KENNEDY. You are not here just to advocate the repeal of the law. As I understand your statement, you are saying that if you are not going to do it and to move ahead in enforcement, they are going to lose local funds.

Mr. KOBACH. As I understand it, the provision in S. 1906 will say if you have something on your books in your city ordinances that says you are not going to comply with this Federal requirement, then you are going to lose SCAAP funds, and I don't think that is forcing them to undertake a mission and expend resources.

Senator KENNEDY. It says that it prohibits local enforcers from enforcing immigration laws or cooperating with Federal immigration law. There is something on that. It shall not be federally reimbursed.

Let me ask, we had these three prominent conservatives, Grover Norquist, David Keane, Bob Barr, who also wrote these. It is amazing the company I am keeping these days.

[Laughter.]

Senator KENNEDY. They wrote—

Chairman CHAMBLISS. And that is in the record, too, Senator.

Senator KENNEDY. That is in the record. They wrote that the bill will set a dangerous precedent. They talk about an unmanageable burden on local law enforcement, and the critics say the mechanism already exists to foster Federal law enforcement cooperation when appropriate.

What is your own background in law enforcement?

Mr. KOBACH. Serving as counsel to the Attorney General of the United States.

Senator KENNEDY. But you haven't—served as a law enforcement officer or police.

Mr. KOBACH. Also as a member of the Public Safety Committee of a large municipality which oversees—

Senator KENNEDY. Your total law enforcement is as a counsel, is that correct?

Mr. KOBACH. Yes. I haven't carried a gun in law enforcement duty, if that is what you are asking.

Senator KENNEDY. Well, no. You don't have to necessarily to be involved in other forms of law enforcement. I am just trying to get some sense of your own background in law enforcement.

Mr. KOBACH. Sure. Lots of contact, oversight, not walking the street as you might be implying.

But on the unmanageable burden point, if I might jump in there, again, I think the—in many ways, the burden occurs right now without this bill because some municipalities, some local police will go ahead and try to enforce right now and they will go ahead and make a detention in the hopes that the Federal Government will act. And what is happening now in some cases is that the Federal Government either says, well, let them go and doesn't reimburse them for that detention expense, or does ultimately take them but doesn't reimburse adequately with adequate SCAAP funds. So I think the burden occurs now when you have local law enforcement in good faith trying to enforce Federal law and not getting adequate assistance.

Senator KENNEDY. I am impressed by the Florida and Alabama programs. I don't want to take a lot of time of the Committee on this, because I have just one final question. It seems that the police and law enforcement officers have a different opinion from Mr. Harris.

I have the statements from Paul Evans, who is from my own State of Massachusetts—I will include these—from the California Police Chiefs, from President Rick Terbach. It is the strong opinion that California police, in order for local and State law enforcement to be effective partners, not be placed in the role of detaining or arresting individuals solely on the charge of immigration.

From Chicago, Police Department Tom Needham, former General Counsel and Chief of Staff. "It would be virtually impossible to do it effectively if witnesses and victims, no matter what their residency status, had some reluctance to come forward for fear of being deported."

Los Angeles County Sheriff's Department, Sheriff Leroy Baca, "I am responsible for the safety of the largest immigrant community. My department prides itself in having a cooperative, open relationship. This bill would undermine that relationship—talking about the CLEAR Act, in fairness."

Miami Police Department, New York Police Department, Chief Michael Collins, Philadelphia Police Department, Andy Graber. "If they are otherwise law abiding, we will not tell the Federal Government of their status. We are afraid immigrants would not report crimes." Seattle Police Chief, and the list goes on.

It may be that they just don't want it, but we have seen the examples both in Florida and Alabama, evidently, where they are getting the training, they are getting the support, they are getting the information where they are willing to take this on and there has been a positive response to it. Again, I think it underlines it.

Let me just wind up here, because the hour is going on. Mr. Picolo, I understand the issue here is whether the State and local

police are equipped to take on the larger new burden of immigration enforcement without the training, supervision, and support you receive from the Federal Government under the MOU. In talking about the MOU, Governor Jeb Bush said, "I would have a lot of trepidation if every police officer was going to be a sworn INS officer and our duties end up with local law enforcement becoming the immigration cops of the country." This is the Governor of Florida that is saying that.

The statement clearly argues against broad legislation to expand the authority, certainly without the kind of careful attention that they have given in the State of Florida in the development of the training and the programs which developed, I guess, under the State. Your comment just finally?

Mr. PICOLO. That is the official position of the State. The Governor does support the limited INS authority, at least at this point with the legislation that exists. He does not support the broader authority.

Mr. HARRIS. Senator, may I?

Senator KENNEDY. Yes, just briefly and then my time—I guess I do have another minute. Go ahead.

Mr. HARRIS. I just wanted to say that your comments are very important. You know, the idea that the policy comes out of some kind of misguided political correctness, I think, is really insulting to police officers.

What this is, police officers are practical people. They are pragmatic. They want to know what works and they know what works. They have been on those streets. They have been in those communities. They know that they have to work with the people there no matter who they are. That is why they don't want to be involved in this. That is why they want it done, if at all, with the Florida model.

Senator KENNEDY. Thank you very much, Mr. Chairman. My time is up.

Chairman CHAMBLISS. Senator Sessions?

Senator SESSIONS. Thank you, Mr. Chairman. I will just offer for the record a list here of about 50 law enforcement groups that support the CLEAR Act. This is the one that has the mandates in it. The National Sheriffs Association, Law Enforcement Alliance of America, the Illinois Association of Chiefs of Police, the Iowa Association of Chiefs of Police Officers, Connecticut Association of Women Police, the Southern States Benevolent Police Association, and it goes on and on, agency after agency, that support the CLEAR Act, the one that had the mandate in it.

I would also offer a letter from 16 experienced immigration law officers, a very thoughtful letter. I think it is important to make it a part of the record. They say, "We strongly support S. 1906. We urge the Senators to cosponsor the bill. Failure to act on S. 1906 only helps law breakers, forces both Federal and all State and local law enforcement officers to fight with one arm behind our backs and leaves a gaping hole in the defense of this Nation and the enforcement of our laws."

The National Sheriff's Association said, quote, "Passage of this legislation will settle the question of jurisdiction by codifying and

affirming local law enforcement's ability, when properly trained, to enforce immigration law."

The National Fraternal Order of Police says the FOP strongly supports the efforts of Senator Sessions to enhance the security of our Nation and will work closely with him to craft legislation to that end.

And there are a lot more. The police officers I know, and I know a lot of them personally. They are friends of mine. I was Attorney General and United States Attorney for nearly 17 years. Those are my best friends, and they are not telling me—I will tell you, I think Mr. Kobach is correct. If you say, we are going to mandate you to do something, they are going to say no, and they should. You mandate me to do something, I want to be paid for every bit of it and I am still not sure I want to do it, and I don't blame them.

But to tell them that we are going to allow them the option, when they are out and made an arrest on the highway or somebody is wrecked or been DUI that they can't even have a way to participate, I think is quite different, and that is why you have the support there.

I think that the concern has floated with the CLEAR Act that had a mandate in it, as originally proposed, that did do some of that. It probably would not be successful.

Let me ask you, Mr. Picolo, this, and I think it is important to get straight. A memorandum of understanding in Florida, that was pretty close to a cross-designation, what we would call a deputization, was it not?

Mr. PICOLO. Absolutely. That is exactly what it is.

Senator SESSIONS. So your law officers that went through that training and participated in that MOU had all the powers of a Federal INS officer, or at least those that were delegated to them?

Mr. PICOLO. Exactly, though it did specifically focus on domestic security and counterterrorism investigations solely.

Senator SESSIONS. Yours was more narrow than the Alabama MOU.

Mr. PICOLO. That is correct.

Senator SESSIONS. Ms. Malkin makes the point, I think it is of some value, that if a police officer observes a criminal in the act of committing a Federal crime, they can act, as Mr. Kobach cited the authority, is not that correct as you understand it?

Mr. PICOLO. Yes, sir.

Senator SESSIONS. So to me, you know more about grassroots, I know you know that, it seems to me there are two different things. One is you can have a memorandum of understanding and a deputization as I have done on drug task forces and you are probably familiar with. You designate a local sheriff officer, cross-designate them with Federal authority and vice-versa. That is a big step. But it is different, is it not, if a police officer who has not been deputized is out on the interstate and gets a hit on an illegal alien through NCIC or some other factor? They don't have to be deputized to make an arrest there, do they?

Mr. PICOLO. No, sir, not to my knowledge.

Senator SESSIONS. Mr. Kobach, you have researched that. And by the way, thank you for your extraordinary testimony and the amount of legal research you put into it. I think it was a good his-

tory and good background for all of us in the fundamentals of immigration law. Did I say anything incorrect?

Mr. KOBACH. You stated it correctly. If the alien's name and date of birth are on NCIC, then by virtue of that listing, there exists probable cause to believe that an immigration violation has occurred and so the officer is completely within the law in making an arrest.

Senator SESSIONS. Since there is no way to prosecute in State court a Federal immigration law, the officer has to turn him over to somebody who can, is that correct?

Mr. KOBACH. Yes. We don't generally ask State law enforcement to play any role in the prosecution of immigration violations or in the processing of the administrative violations, if we are not actually prosecuting the time.

Senator SESSIONS. I think that is the way the system, what we are talking about, creating a system in which a local law officer who stops a Mohammed Atta is not basically told to let them go, don't even bother to check. That is what is happening today. Then you have to have a system to get them turned over and transmitted to Federal. You have created a group of State officers that will help transport them to the Federal officials, and Alabama has done that, too, which is helpful. But I just don't think a major memorandum of understanding is necessary for an average law officer to do his duty out on the street.

Mr. Kobach, you mentioned that we have gotten 28,000 names out of the 450,000 absconders put in NCIC. It is breathtaking to me it takes this kind of time. It really should not, in my view. But of that number, once they have been put in there, 8,000 have already been picked up.

Mr. KOBACH. Yes.

Senator SESSIONS. I think that is a dramatic thing.

Mr. Picolo, isn't it true that today, if somebody skips bail, is not arrestable on an arrest warrant, and they go out, the police officer may make a search at their house, but if they have moved and absconded from the territory, about all they do is put it in the NCIC on the expectation that, sooner or later, this guy is going to get picked up again and there will be a hit and he can be brought back to that jurisdiction.

Mr. PICOLO. That is exactly what happens, yes, sir.

Senator SESSIONS. And NCIC is the most historic change in law enforcement, I guess in history almost, would you agree?

Mr. PICOLO. Yes, sir. I have been in the business for 29 years now and it has existed my entire career. It has always been a tool that I have used.

Senator SESSIONS. It is almost breathtaking to think that we are not using it with regard to non-citizen illegal aliens, wouldn't you agree with that?

Mr. PICOLO. Absolutely, and again, that is one of the core frustrations that led us to the 287(g) agreement to begin with.

Senator SESSIONS. Mr. Harris, do you see anything wrong with putting in the NCIC the names and identifications of people who have been arrested, ordered deported, who have absconded, who have committed crimes and been ordered deported? Do you have any objection to that?

Mr. HARRIS. Senator, I keep thinking of that incident six or so months after the terrible events after 9/11 in which two of the hijackers who were dead were contacted by the INS and given permission to stay, or something like that.

The problem is not with using NCIC. It is with the records that we want to put in them. If the records themselves are inaccurate, incomplete, if they are not kept up to date, and I have to say the INS has been absolutely notorious for this, everybody agrees, we will have a system full of incomplete, out of date stuff that will not actually be useful. We will have to comb through the junk to find the gems. And in any system of handling information, it is just as important what you don't put in as what you do put in. That would be my hesitation. If I knew that what the INS had to offer to put in was really up to date and fixed, that, I think, would present a whole different set of questions.

Senator SESSIONS. Well, the National Crime Information Center is a confidential system that is available only for law enforcement. It is an abuse to access it for any other reason, but they do it every day for every kind of crime. You get a DUI and you don't show up for court—

Mr. HARRIS. Yes, sir.

Senator SESSIONS. —your name is in there.

Mr. HARRIS. Yes, sir.

Senator SESSIONS. Perfection is not guaranteed in this life.

Mr. HARRIS. No. Nobody looks for perfection.

Senator SESSIONS. And I can't imagine why it would be more difficult to enter in an absconder from an immigration hearing than it would be to enter a person who didn't show up for his court date for a DUI. Mr. Kobach?

Mr. KOBACH. Yes, if I can jump in there. Part of the reason why the entering of data is going so slowly into NCIC regarding absconders is because right now, the ICE is scrubbing the records, as they put it, looking to comb everyone very carefully to se if the individual has since left the country and there is some record of him leaving, or if, in very, very few cases—this would be less than one in 100—that the individual has gotten a status adjustment and is now here legally.

In the case of someone who has left, there is no harm done by putting that record in. It is never going to be triggered. And in the case of someone, the very, very minuscule number of cases where someone has actually gotten a status adjustment, then you might have an arrest which the moment they make a call to the LASC, the LASC can say, well, actually, they got a status adjustment. You can let them go. So they might be detained for a few minutes extra. But the cost is minimal, so I share your frustration with the slowness of the adding of data.

I would also elaborate on your point earlier about Mohammed Atta and when he was in the custody of that officer in Broward County, Florida. If we had this bill in place, I think things would have been different. This bill, in combination with what the ICE has been doing with the NSEERS system, where individuals coming from particular countries or holding certain profiles overstay their visas, that also dumps those names into NCIC right now and

it is unclear whether Mohammed Atta would have triggered that or not.

If you add the bill S. 1906, and especially the provision requiring known overstays to go into NCIC, that officer would have had a hit when he typed in Mohammed Atta's name and date of birth in his squad car computer. That might have caused the plot to unravel. Who knows. Maybe he was just one of the 19 and maybe it would have gone on without him.

But the point is, if we could go back in time and do everything we could to try to prevent that from happening, I would certainly think that we would try to do this, get as much information to State and local police through NCIC as possible, and I don't see any strong legal or policy objection to doing so.

Senator SESSIONS. Thank you, Mr. Chairman.

Chairman CHAMBLISS. Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman. Mr. Chairman, it seems to me that we have come to the point as a result of the various hearings that you have chaired in the immigration reform debate dealing with various aspects of it where I think it has become increasingly clear that we have two choices to start with. One is to do something and one is to do nothing. Clearly, I am on the do something side and I think it is important as a result of this hearing and others that you have had to determine exactly what that something is.

But I don't want any of us to be under the illusion that doing nothing is free. Obviously, there are a lot of costs associated with it. The Federal Government has done a lousy job across the board and particularly in foisting the costs of illegal immigration onto the State and local government. Last year, the Federal Government provided $250 million in SCAAP funding for criminal aliens and that is the State Criminal Alien Assistance Program, which is supposed to reimburse the cost of detention and law enforcement related to these aliens, but that is about a third of the documented costs to State and local governments. Texas got $20 million, and I should tell you, that is a fraction of the costs that have been incurred by State and local government in my State.

You add on to there unanticipated costs, like health care costs of people when they are in detention, which is uncompensated and performed by the local taxpayer and the State. I had to get that off my chest.

But with that, I want to ask Professor Harris and perhaps others of you about community policing and reimbursement for costs, payment of costs and training, which I think are all legitimate issues that we need to figure some way to deal with.

One of the things that I read, and Professor Harris, maybe we can start with you, is while community policing is important, and I would grant you that, I agree with you on that, that a lot of the violence and crime being committed is simply unreported at all by people who are reluctant to call law enforcement authorities, whether they be State, Federal, or otherwise. And so I know it is hard for us to get a handle on how much is occurring because it is not being reported. It is hard to quantify what you don't know or what is not being reported.

But a lot of the crime, it is my suspicion—I think this is probably true—is being committed by members of that community against each other, and so there is sort of a double-whammy there. So rather than only looking at the trust, which is important, between law enforcement and the community, I am wondering whether it is the community itself, let us say in this instance illegal immigrants, who are suffering the most, or how you would put that in the balance of deciding how we deal with this problem.

Mr. HARRIS. Yes, Senator. It is clearly the community itself that suffers the most. You are quite correct that many crimes do go unreported. A surprising number of crimes go unreported. It always surprises me when I look at those statistics.

The community itself suffers the most when predators roam the streets, and they generally roam in their own communities. That is why when you have immigrant communities, it is doubly difficult and doubly important to make the efforts to have connections with people so that they will work with the police. It is not the natural inclination of many in immigrant communities to work with police because many of them come from countries in which police are corrupt, in which it can't mean anything good when the police officer comes to your door or stops your car. And building that kind of trust so that immigrants in general will come to see that working with the police is very much in their interest is a very difficult task.

I think it only becomes more difficult if we add other reasons to fear this police. This is why, for instance, police in your own State, in Austin, Texas, have made very concerted and strong efforts to connect with their immigrant communities to impress upon them that they want people to come forward and they want people to do things to prevent the crime before it happens.

They want to have drug dealing reported to them. They want to have every robbery reported to them. They don't want these cases to fall through the cracks and they will do what they have to do, the police tell the community, to make them safe, because every time they don't make them safe, every time a crime is not reported, adding any additional reasons not to report crimes simply makes it more difficult for the police to do. It adds more victims within that community, outside that community. Making the streets safe is always the top priority for local police, and community policing has, frankly, been popular because it works that way, because it actually shows real results over time. It gets police where they want to be. It brings crime down in the course of connecting communities with their officers.

Senator CORNYN. I will go to Mr. Kobach in just a second to respond to that same question, but let me just say, Professor Harris, since you mentioned Austin, it always concerned me that when we call ourselves a nation of laws, when communities like Austin and others had day employment facilities where obvious immigrants, and who knows how many of them are here legally versus illegally, are waiting to be hired for day labor and what kind of mixed message we are sending to the community as a whole. We are a nation of laws, but we only respect some of those laws.

Mr. HARRIS. That is very true.

Senator CORNYN. How do you address that?

Mr. HARRIS. It is a very, very good and penetrating question, Senator, because what it points out is that the immigration problem—and we have a huge immigration problem in this country—the immigration problem is a problem of economics as much as anything else. The reason that people go and hire day laborers, some legal and some not, is because, frankly, it pays. They find it a good thing. It is good for their business. The people want to work. They might work for less.

And until we address some of those basic questions of economics, I don't have any wish to make our discussion more complicated, but simply relying on law enforcement will only take us a certain distance. It is like many other problems. If you have only one tool, a hammer, everything will look like a nail. Unless we go beyond thinking of this just in law enforcement terms, we will not make any kind of progress.

It is not a good thing for society when laws are not honored. But what we need to do is we need to think how is the best way to bring this whole system in conformity with law.

Senator CORNYN. Mr. Kobach?

Mr. KOBACH. Yes, Senator Cornyn. Thank you. I would have two responses. One, with respect to community policing, those communities that have gone the farthest in the direction of accommodating or taking a hands-off policy toward illegal aliens are, of course, those communities that have formally adopted the so-called sanctuary policies, where they formally prohibit their police officers from communicating with the Federal Government or formally prohibit their police officers from asking the questions.

To take Professor Harris's words, it is the community that suffers, I would say exactly. There has been a lot of documentation in Los Angeles, which has had a sanctuary policy for a long time. Right now, 95 percent of all outstanding warrants for homicides in Los Angeles are for illegal aliens, 95 percent. What it does is it creates a haven where those aliens who are involved in other illegal activity know that they won't be bothered.

There are numerous reports from police officers who say, look, we know that these gang members have left. They have been deported already. We see them back. We know that they are illegal. We aren't allowed to make any arrest on that basis. We have to wait until we have evidence of some other crime. Now, they know that there is an immigration violation occurring, a criminal immigration violation, by the way, to reenter after deportation, occurring right in front of them, a continuing violation, but they can't do anything about it.

Consequently, the gangs know this and they know that they are going to be able to reenter with impunity. And another statistic that I just found shocking is that 60 percent of L.A.'s 2,000-member 18th Street Gang, which is a particularly violent drug trafficking gang, 60 percent is composed of illegal aliens, it is estimated. The aliens see this, and it is indeed the community that suffers when the police's hands are tied.

And that leads me to my second point, and that is, really, if communities follow these sanctuary policies or if the Federal Government doesn't act to clarify and say, look, you can act and we want to encourage your city councils to allow you to act, then you have

a tool taken out of the tool box. You look at some of the cases that the Tenth Circuit and Ninth Circuit have adjudicated. Usually, the case arises in a situation like this.

The police is watching the group of aliens because he is trying to make a drug bust. He is trying to pursue some other investigation and he doesn't yet have enough information to make an arrest based on that, but he is getting close. But he then comes across information that the alien is here illegally. Well, sometimes it makes more sense in law enforcement to build the quickest case you can, to use that tool, which is an effective and fast tool and say, well, we know we have an immigration violation here. We can get the person out. We can stop this drug ring on that basis, and that is exactly the kind of situation that led to those cases in the Tenth Circuit.

It is kind of like Al Capone. It would have been harder to build the case on the racketeering charges, but tax evasion was easy. Well, similarly, it is sometimes hard to build the case on drug trafficking, but immigration is easy. We are taking that tool away from police officers and we can make our communities safer if our police officers have more tools.

I would just like to beg the Committee's pardon. I am going to have to depart early, and I thank you for the opportunity to testify.

Senator CORNYN. My time is up and so am I. Thank you.

Chairman CHAMBLISS. Mr. Picolo, there was a recent AP story where it was reported that sheriffs on the Florida Domestic Security Task Force oppose issuing driver's licenses to illegal aliens. Can you shed any light on that, particularly with reference to the security concerns that may be present in that thought process?

Mr. PICOLO. Yes, sir. The sheriff that has raised the highest concern, Sheriff Don Hunter, is in my region and was just in Tallahassee Monday on it. The bill was introduced approximately three weeks ago and we are nearing the end of our legislative session. The primary concern was regarding the documentation requirements to secure such a license.

It is, quite frankly—we quite frankly have very little confidence in the source documents that many of these aliens possess and the authenticity of the source documents that many of these aliens possess. Some of the other source documents, such as matricular consular, we have very little confidence that those types of source documents would be accurate reflections of who we are actually issuing a driver's license to, and until those kinds of concerns can be addressed, I don't think the sheriffs in Florida are going to support this legislation.

Chairman CHAMBLISS. Thank you. Senator Sessions, anything else?

Senator SESSIONS. I wanted to ask Ms. Malkin about the Malvo situation. I know that that fingerprint in Montgomery, Alabama, played a role in his apprehension, John Mohammed. But you mentioned that the print went into the IDENT system but not to NCIC. Would you explain for those who are not sophisticated in that what that means and why that was important?

Ms. MALKIN. The IDENT system was used by the legacy INS, and I believe ICE now, to fingerprint and photograph suspected illegal aliens and Malvo's two index fingers were recorded into the

system and those were the only records on file of his prints. So when the local authorities in Alabama were trying to identify the fingerprint at the Alabama liquor store scene where apparently Malvo and Mohammed had committed a robbery, they couldn't find anything, and that is because they were looking in the NCIC database. I think that case just underscored the need to merge those two databases, and as Professor Kobach, I think, mentioned, that effort is going on now.

Senator SESSIONS. And one more question. You mentioned the San Jose situation. I appreciate your writing. It is superb, and you articulate this well. How would you articulate the mentality of the average police officer in the San Jose Police Department with regard to their conflicted responsibilities of trying to enforce the law and then being told what they can't do? What did you learn from that?

Ms. MALKIN. Absolute frustration. I mean, it was extraordinary that a spokesperson of a police department would be as candid as Ms. Unger was with me. I think it is a little bit too convenient to dismiss and pooh-pooh the politically correct culture and the effect that it has on morale of these police departments, particularly in sanctuary cities like Los Angeles, New York, San Jose, Portland, Seattle.

I have interviewed dozens of police officers who want to cooperate, who would like not to have that sort of Sword of Damocles hanging over their head, that if they were to proactively contact Federal Homeland Security Department officials, that they might suffer negative consequences, and these are people who work day in and day out with the victims of massive illegal immigration and law breaking, and as has been said, in many cases, the victims of those crimes are illegal aliens themselves.

Now, there is no empirical evidence that knowing that they could be turned in will lead them not to cooperate with law enforcement. I mean, I just cited the Malvo case. This is not a sanctuary city and certainly Malvo's mother knew that there was a risk that they could be turned in and they suffered the consequences of that risk.

I personally and candidly believe that it is not a bad thing for law breakers, and immigration law breakers in particular, to feel some sort of fear that they might suffer the consequences of their law breaking. I mean, this is the problem. This is the problem with before September 11, and unfortunately afterwards, is that we think that immigration law breakers should be exempt. And I think getting a handle on it and starting to get a handle on our immigration chaos means starting to enforce the law uniformly and consistently and without apology.

Senator SESSIONS. One brief question. With regard to the part of the legislation I have offered that says you could lose your SCAAP funding, which isn't a lot of money, but lose that funding if you have an overt policy against enforcing or coordinating with INS, what about these sanctuary cities? I mean, most people in America don't know there is a sanctuary city. Can you tell us what the cities you have mentioned and what it means to be a sanctuary city?

Ms. MALKIN. Well, basically, you are creating safe havens, not just for your garden-variety otherwise law abiding illegal aliens but

for terrorists and criminal aliens, as well, and we saw that in New York City.

Senator SESSIONS. The cities don't allow enforcement, or what is it that makes it—

Ms. MALKIN. I talked about the San Jose Police Department and its policy, and that is not just in police departments but also in cities, as well. Professor Kobach had mentioned Los Angeles, where Special Order 40 has been in place for a long time. A lot of the city employees that I have talked to basically think of it as a gang order, that they cannot proactively contact Federal immigration authorities to let them know if they suspect someone of being an illegal alien.

Senator SESSIONS. Thank you. Thank you, Mr. Chairman.

Chairman CHAMBLISS. Thank you, and to each of our witnesses, thank you very much for being here. This has been very enlightening, been very informative. You folks are the experts. That is why we have got you here. We value your opinions very highly, and as we move through this process, we very likely will be back in touch with you formally or informally to continue a dialogue.

The record will remain open for 7 days for any additional statements or materials. This hearing is now adjourned.

[Whereupon, at 4:52 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

[Additional material is being retained in the Committee files.]

SUBMISSIONS FOR THE RECORD

April 20, 2004

Re: Problems Inherent in Enlisting State and Local Police to Enforce Federal Civil Immigration Law

Dear Members of the Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims:

We, the undersigned advocates for immigrant survivors of domestic violence, sexual assault, trafficking and other crimes committed against immigrant victims in the United States, are alarmed by recently introduced legislation that would deputize local police to enforce federal civil immigration law. The "Homeland Security Enhancement Act"[1] (HSEA) will not serve the purpose implied by its title. HSEA will, however, endanger already vulnerable immigrant populations, particularly immigrant victims of domestic violence, rape and sexual assault, and their children, who will not call the police for help out of fear of deportation.

By cutting immigrant victims of violent crime off from police protection, HSEA seriously undercuts the comprehensive scheme of federal protections Congress provided immigrant victims in the Violence Against Women Act of 1994 ("VAWA") and its successors. Congress passed VAWA, including its protections for immigrant victims, because it understood that if immigrant victims of domestic violence, sexual assault and trafficking cannot call the police for help, perpetrators of crimes against immigrant victims go free and continue to commit crimes that endanger not only immigrant victims and their children but also everyone in our communities. In 1994, 1996, 1997 and again in 2000, Congress repeatedly expressed its commitment to ensuring battered immigrant and immigrant crime victim access to police protection. We urge you to work to defeat HSEA and any related initiatives so that victims on whose behalf Congress has unequivocally acted will not be silenced.

Battered immigrant women and children often face special problems when they try to escape abuse. The isolation that battered immigrants already experience due to language difficulties or cultural differences is turned to cruel advantage by their abusers, who feed them misinformation about the legal system and their rights. If they call the police, these victims fear that they, or their children, will be turned over to the Department of Homeland Security (DHS) and deported.[2] Many also fear that they will lose custody of their children to their abusive husband if they are deported.[3]. Abusers of immigrant

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[1] The "Homeland Security Enhancement Act" (S. 1906) was introduced November 20, 2003 by Senator Jeff Sessions (R-AL).

[2] Mary Ann Dutton, Leslye Orloff, & Giselle Aguilar Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO J. POVERTY L. & POL'Y 245 (SUMMER 2000).

[3] See e.g., Howard A. Davidson. *The Impact of Domestic Violence on Children: A Report to the President of the American Bar Association.* American Bar Association Center on Children and the Law. (1994). Such a custody award would be contrary to state family laws that award custody to the non-abusive parent in the best interests of children.

victims are increasingly reporting their victims to the DHS to avoid criminal prosecution or in retaliation for the victim contacting law enforcement. Even for women whose immigration status is stable, this threat can be an effective means for abusers to exert their control.

To overcome these barriers, Congress passed the Violence Against Women Act of 1994 ("VAWA") and the Violence Against Women Act and the Trafficking Victims and Violence Protection Act of 2000 ("VAWA 2000"). Together these Acts offer immigration relief and access to life-saving public benefits to many immigrant victims of domestic violence, sexual assault and trafficking, including specific immigration protections for undocumented victims. VAWA's self petitioning provisions help victims abused by their citizen and lawful permanent resident spouses and parents obtain legal immigration status. VAWA 2000's U and T visa provisions offer protection for immigrant victims of domestic violence, sexual assault and trafficking who have suffered substantial physical or emotional injury and are cooperating with law enforcement in the investigation or prosecution of the crimes. *Collectively, the provisions of VAWA and VAWA 2000 seek to encourage immigrant victims to report crimes and access victim protections without fear of deportation.*

The Homeland Security Enhancement Act and any related initiatives would eviscerate the public policy interests of VAWA and VAWA 2000 and erase hard-won gains by law enforcement of the trust of immigrant communities. Immigrant victims and witnesses who have only recently been willing to help prosecute criminals and their abusers will no longer be willing to come forward to help in criminal investigations and prosecutions. Already, our colleagues across the country have witnessed the damage that opportunistic batterers can do in the current anti-immigrant environment. In a number of recent cases, immigrant women with DHS-approved VAWA self-petitions have nonetheless been deported, while many others are fighting deportation. For example, abusers have even had approved self-petitioners detained by DHS on the courthouse steps, to avoid criminal prosecution or win custody of their children.

By causing law enforcement's focus to revert from the victim's safety to the victim's immigration status, HSEA would only exacerbate this disturbing trend. *The chilling effect that the Homeland Security Enhancement Act will have on the reporting of crime by immigrant victims and witnesses will be immediate and severe.* Domestic violence victims will once more be forced to make an impossible choice between deportation – and the abrupt separation from and danger to their children that this could entail – and continued abuse. HSEA thus very effectively enhances the power of the batterer and strengthens the weapons in his arsenal.

Immigration laws, including those that offer protection to victims, are highly complex. If the Homeland Security Enhancement Act or related initiatives become law, local law enforcement officials untrained in the intricacies of immigration law will easily become tools that perpetrators of crimes against immigrant victims can use to avoid arrest and criminal prosecution. Aggressive mandates that police become immigration law enforcers will not only undermine the justice system's ability to prosecute crimes against immigrants, but precious law enforcement resources will be turned away from fighting

crime generally in our communities. Inquiries into the immigration status of victims and witnesses significantly erode immigrant community cooperation with the police and confidence in the judiciary, and can only result in less safe communities for us all. For victims of domestic violence, this practice can be lethal, driving an immigrant victim who has finally found the courage to turn to the police or the courts for protection back into an increasingly violent home – quashing any hope of help for the immigrant victim or her children.

Your vocal opposition to the Homeland Security Enhancement Act is critically needed. Thank you for your attention to this important matter.

Sincerely,

National Network to End Violence Against Immigrant Women, by its co-chairs:
Immigrant Women Program of the NOW Legal Defense and Education Fund
Family Violence Prevention Fund
National Immigration Project of the National Lawyers Guild
Tahirih Justice Center (Falls Church, VA)

AND

National Organizations
National Organization for Women (NOW)
National Coalition Against Domestic Violence
National Alliance To End Sexual Violence
National Organization of Sisters of Color Ending Sexual Assault (SCESA)
National Center on Domestic and Sexual Violence
American Immigration Lawyers Association (AILA)
National Center on Poverty Law
Stop-Traffic
Church Women United
National Center for Victims of Crime

Organizations by State

California
Asian & Pacific Islander Institute on Domestic Violence (San Francisco)
Asian Pacific Islander Legal Outreach (San Francisco)
Asian Pacific American Legal Center of Southern California (Los Angeles)
Immigration Law Project, La Raza Centro Legal, Inc. (San Francisco)
Child Care Law Center (San Francisco)
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Riley Center: Services for Battered Women and their Children (San Francisco)
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Coalition to Abolish Slavery and Trafficking (CAST) (Los Angeles)
International Institute of San Francisco
Community United Against Violence (San Francisco)

Shimtuh: Korean Domestic Violence Program of the Korean Community Center of the East Bay (Oakland)
Korean American Coalition to End Domestic Abuse (Oakland)
Catholic Charities Refugee and Immigrant Services (San Diego)

Colorado
Colorado Coalition Against Domestic Violence (Denver)
Fuerza Latina (Fort Collins)
Rape Awareness and Assistance Program (Denver)
Boulder County Safehouse (Boulder)

District of Columbia
Capital Area Immigrants' Rights Coalition
AYUDA Inc.
Break The Chain Campaign
Women Empowered Against Violence, Inc. (WEAVE)

Florida
GALATA, Inc. (Florida City)
Florida Council Against Sexual Violence (Tallahassee)
Coalition of Immokalee Workers (Immokalee)

Georgia
Raksha Inc. (Atlanta)

Hawaii
Na Loio - Immigrant Rights & Public Interest Legal Center (Honolulu)

Illinois
Midwest Immigrant & Human Rights Center (Chicago)
Heartland Alliance for Human Needs & Human Rights (Chicago)
Metropolitan Family Services, Family Violence Intervention Program (Chicago)
Latinos Progresando (Chicago)
Illinois Coalition for Immigrant and Refugee Rights (Chicago)

Iowa
Asian Coalition Against Domestic Violence and Sexual Assault (ACADVSA)
Iowa Coalition Against Domestic Violence (Des Moines)[4]

Kansas
Law Offices of Sarah J. Schlicher (Overland Park)

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[4] On September 15, 2003, the Iowa Coalition Against Domestic Violence also separately sent a letter opposing related legislation, the CLEAR Act, to Sen. Tom Harkin on its own behalf as well as on behalf of the Iowa Coalition Against Sexual Assault and the 31 projects in Iowa assisting victims of domestic and sexual assault.

Maine
Family Crisis Services (Portland)

Maryland
Casa of Maryland Inc. (Takoma Park)

Massachusetts
Political Asylum/Immigration Representation Project (Boston)
Greater Boston Legal Services, on behalf of its clients

Michigan
Domestic Violence Project, Inc./SAFE House (Ann Arbor)
YWCA of Grand Rapids
Michigan Coalition Against Domestic and Sexual Violence (Okemos)
Turning Point (Mt. Clemens)
Relief After Violent Encounter, Inc. (St. Johns)

New Jersey
American Friends Service Committee Immigrant Rights Program of Newark, NJ

New Mexico
Catholic Charities of Albuquerque

New York
Greater Upstate Law Project (Albany, Rochester and White Plains, NY)
Safe Horizon (New York City)
Sex Workers Project at the Urban Justice League (New York City)
Sanctuary for Families (New York City)

Oklahoma
Domestic Violence Intervention Services, Inc. (Tulsa)

Oregon
The Oregon Coalition Against Domestic and Sexual Violence (Salem)

Pennsylvania
CIRCLE - Coalition for Immigrants' Rights at the Community Level (York)
Pennsylvania Immigration Resource Center (York)
Pennsylvania Coalition Against Rape (Enola)
Lutheran Settlement House, Bilingual Domestic Violence Program (Philadelphia)

Tennessee
Tennessee Coalition Against Domestic and Sexual Violence (Nashville)
Abused Women's Services of The YWCA of Greater Memphis

Texas
The Texas Civil Rights Project (Austin)
Texas Council on Family Violence (Austin)

Vermont
Vermont Network Against Domestic Violence & Sexual Assault (Montpelier)

Virginia
Boat People S.O.S. (Falls Church)

Washington
Washington Defender Association's Immigration Project (Seattle)
Eastside Domestic Violence Program (Bellevue)
Broadview Emergency Shelter and Transitional Housing Program (Seattle)
King County Coalition Against Domestic Violence (Seattle)
Northwest Immigrant Rights Project (Seattle)
Law Offices of Carol L. Edward & Associates, P.S. (Seattle)
Chaya (Seattle)

Wisconsin
UNIDOS Against Domestic Violence (Madison)

AMERICAN COUNCIL FOR IMMIGRATION REFORM

P. O. Box 2752
Arlington, VA 22202

Phone: (703) 920-3965 Fax: (703) 920-4291
E-Mail: ancir@erols.com

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Joe Borda **Vice President**
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Chairman, Congressional Immigration Caucus
Kenneth R. Timmermann
Author and Investigative Reporter

June 25, 2003

The Honorable Jeff Sessions
United States Senate
Washington, DC 20510

Dear Sen. Sessions:

I am most grateful that you are about to introduce comprehensive immigration reform legislation. There is a disconnect between federal, state, and local efforts to curb illegal immigration. Your bill, The Homeland Security Enhancement Act of 2003, jointly introduced with Rep. Charles Norwood, will remedy much of this problem.

I am pleased that this bill:

- Affirms the right of states and local governments to catch and detain illegal aliens and ultimately offers financial incentives for doing so.

- Confirms what we always knew, that illegal aliens are criminals — all of whom can be subjected to civil and/or criminal penalties and have their assets forfeited.

- Provides for half of funds obtained through civil penalties and forfeitures to go to the state or local agency that apprehends an illegal alien and compensates state and local agencies for detention costs associated with holding illegal aliens after capture.

- Mandates free exchange of illegal alien enforcement information between federal, state, and local authorities.

- Provides that manuals be developed and funds be appropriated for training state and local officials to identify, arrest, detain, and remove illegal aliens.

I can assure you that you have the support of our organization in this effort and that we will assist you in any way we can.

Sincerely,

Joan Hueter

Joan Hueter, President

Letter from Americans for Tax Reform in Opposition to CLEAR Act

AMERICANS FOR TAX REFORM

Grover G. Norquist President

September 22, 2003

The Honorable George W. Bush
President, United States of America
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

We are writing to express our concern over the July 9, 2003 introduction of H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal Act, or CLEAR Act of 2003. The legislation forces state and local law enforcement personnel to enforce federal immigration laws. It starts the United States on a path towards establishing a National Police Force.

In the wake of the terrorist attacks on September 11th, 2001 and in the name of Homeland Security, some Members in Congress are attempting to force local law enforcement agencies to enforce federal immigration laws. To do this, however, these Members are taking the position that state and local law enforcement agencies have the power and perhaps even an obligation to seek out and to apprehend those who violate federal civil as well as criminal laws.

We are convinced that should the CLEAR Act become law, it will set a dangerous precedent with regard to the authority of state and local law enforcement agencies to enforce civil violations of many federal laws. If, as this bill requires, local police enforce our immigration laws, the next logical step is to require them to seek out and apprehend those who violate any and all federal laws. This would lead to the nationalization of local law enforcement.

This is not just bad policy, it is not really needed. Mechanisms already exist to foster federal-local law enforcement cooperation.

For example, in 1996, Congress amended the Immigration and Nationality Act to provide an appropriate forum for state and federal cooperation in the enforcement of federal immigration laws.

National Immigration Forum 50 F Street NW, Suite 300 Washington, DC 20001
(202) 347-0040 fax (202)347-0058 www.immigrationforum.org

Congress authorized the Attorney General to enter into a written agreement with a state or local, government under which local law enforcement officers could perform the functions of an immigration officer. These agreements would require that the local police officers receive appropriate training in federal immigration law, and that they perform these functions under the supervision of the Attorney General. Operating under this statute, the Attorney General can work with local authorities under conditions that ensure proper training and that preserve the exclusive authority of the federal government over immigration matters.

The CLEAR Act will also place an unmanageable burden on local law enforcement by forcing state and local governments to pay their police forces to do the jobs of federal law enforcement agencies, raising questions, by the way, of the federal Anti-Deficiency Act. Furthermore, in order to ensure that state and local law enforcement agencies comply with the CLEAR Act, the bill includes several financial incentives and penalties for failing to do so. In fact, the legislation will discontinue federal funding to states and localities if they do not implement statutes explicitly authorizing their law enforcement to enforce immigration laws within two years after the bill's enactment.

We believe that the CLEAR Act represents a dramatic shift which is likely to damage local law enforcement, while raising troubling new questions about the intersection of local law enforcement and federal law. We support the efforts of Congress and this Administration to fight terrorism at home and abroad. However, Congress should not implement sweeping and unnecessary policy changes that place us on the path towards creating a Federal Police Force, and which clearly violate principles of federalism on which our Republic was founded.

Sincerely,

Grover Norquist
President, Americans for Tax Reform

David Keene
President, American Conservative Union

The Honorable Bob Barr
Former Member of Congress
American Conservative Union Foundation

cc: The Honorable Charlie Norwood
U.S. House of Representatives
U.S. Senate

National Immigration Forum 50 F Street NW, Suite 300 Washington, DC 20001
(202) 347-0040 fax (202)347-0058 www.immigrationforum.org

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INFORMATION TECHNOLOGY
SAM MENSERG

HONORARY GENERAL COUNSEL
ARNOLD FORSTER

GENERAL COUNSEL AND DEPUTY CHIEF OPERATING OFFICER
MICHAEL A. SALBERG

April 21, 2004

By FAX Machine

Dear Senator:

In advance of tomorrow's Judiciary Subcommittee hearings on **"State and Local Authority to Enforce Immigration Law: Evaluating a unified approach for stopping terrorists,"** we write to urge you to oppose any legislation which would authorize or direct local law enforcement officials to enforce federal immigration laws. State and local law enforcement officials already are empowered to enforce criminal laws – and the Anti-Defamation League has supported both federal and state counterterrorism measures designed to provide these authorities with the tools they need to prevent border incursions and terrorist acts.

Despite ADL's strong and continuing support for anti-terrorism legislation, we oppose legislation, such as H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal Act (CLEAR), which would require state and local jurisdictions to expressly authorize law enforcement authorities to enforce federal immigration laws. We strongly believe that the essential work of policing our borders and enforcing immigration laws is a job best left to federal officials. The involvement of local authorities in these efforts would undermine public trust and obstruct effective community policing.

The protection of immigrant communities may be impeded by the use of local law enforcement authorities in enforcing federal immigration laws. Many immigrants have come to the United States to escape from their oppressive governments and police abuse. Any effort to direct local police to both "serve and protect" the community and pursue and detain illegal aliens may undermine the trust necessary for local law enforcement to perform its job effectively within immigrant communities. The League's long experience with hate crime laws, for example, has proven that close cooperation between local law enforcement and immigrant communities is essential. Requiring local police to enforce civil immigration laws would likely undermine recent strides these authorities have made in dealing with the complex problems of hate crimes and domestic violence within immigrant communities.

The safety of the entire community may be jeopardized by the use of local law enforcement authorities in enforcing federal immigration laws. Unless crime and immigration status enforcement responsibilities remain divided, out-of status persons and their family members may be reluctant to seek police protection, to report crimes committed against them, or serve as witnesses in other crimes. If immigrants and their family members are scared to report crimes, fires, and suspicious activity, the community's safety is compromised.

Local law enforcement lacks appropriate training to enforce immigration laws. Federal immigration enforcement officials undergo extensive training in the complex regime of immigration laws. At this time of budget constraints, with state and local law enforcement authorities pressed to take on additional homeland security responsibilities, it is unlikely that local police officials will

receive training necessary to take on this new mandate. This may well result in problems such as inappropriate racial and ethnic profiling and improper immigration-related detentions.

We urge the Committee to oppose any effort to direct local law enforcement officials to investigate and enforce civil immigration laws – and to support the traditional role of these authorities in the vigorous enforcement of state and local penal laws and in keeping the peace.

Sincerely,

David Schaefer
Chair,
Washington Affairs Committee

Marvin Nathan
Chair,
National Civil Rights Committee

OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

(617) 349-4260
FAX (617) 349- 4269
tty/TDD (617) 492-0235

D. MARGARET DRURY
CITY CLERK

DONNA P. LOPEZ
DEPUTY CITY CLERK

October 27, 2003

Honorable Edward M. Kennedy
SR-315 Russell Senate Office Building
Washington, DC 20510-2101

Dear Senator Kennedy:

Pursuant to the request of the City Council, I am forwarding to you the enclosed resolution submitted by Councillor Brian Murphy and co-sponsored by the entire membership of the Cambridge City Council. The policy resolution expresses the City Council's opposition to passage of the proposed law entitled "Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act of 2003."

As you will note, all members present were unanimous in their support of this resolution.

Thank you for your attention to this matter.

Very truly yours,

D. Margaret Drury
City Clerk

Enc.

CITY HALL, 795 MASSACHUSETTS AVENUE CAMBRIDGE, MASSACHUSETTS 02139

City of Cambridge

O-50
IN CITY COUNCIL
October 20, 2003

COUNCILLOR MURPHY
VICE MAYOR DAVIS
COUNCILLOR DECKER
COUNCILLOR GALLUCCIO
COUNCILLOR MAHER
COUNCILLOR REEVES
COUNCILLOR SIMMONS
MAYOR SULLIVAN
COUNCILLOR TOOMEY

WHEREAS: The United States Congress is currently considering a proposed bill entitled the "Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act of 2003"; and

WHEREAS: The bill would mandate the nation's 600,000 local law enforcement officials to enforce all federal civil immigration laws, in addition to the criminal laws currently enforced - or risk the denial of reimbursement from the federal government; and

WHEREAS: The bill would preempt local laws, impose unfunded mandates on local government and undermine community policing; now therefore be it

RESOLVED: That the City Council go on record opposing passage of the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act of 2003; and be it further

RESOLVED: That the City Clerk be and hereby is requested to send a suitably engrossed copy of this resolution to the Massachusetts Congressional Delegation.

In City Council October 20, 2003
Adopted by the affirmative vote of nine members.
Attest:- D. Margaret Drury, City Clerk

A true copy;

ATTEST:- D. Margaret Drury
D. Margaret Drury, City Clerk

Statement of
The Honorable Saxby Chambliss
United States Senator
Georgia

April 22, 2004

Senator Saxby Chambliss
Opening Statement
Immigration Subcommittee Hearing
April 22, 2004

I'm glad we're able to have this hearing today, and I appreciate Sen. Sessions' efforts in this area, along with the efforts of my Georgia colleagues, Sen. Miller and Rep. Norwood. This is an important topic that covers both our anti-terrorism efforts and the changes needed in our immigration system. In the post- 9-11 world, it is critical for us to think about immigration and national security with a consistent approach.

I think there's a consensus that our immigration laws are in dire need of reform, and today's hearing is another step toward a comprehensive review. The system we have in place today lacks incentives for immigrants to come to the United States following the legal process in place. It also lacks enforcement against those who choose not to follow the legal process. It is my hope we may continue the open dialogue that the President has advanced, and all Senators will continue to work on the policies we've been addressing so far this Congress.

There are some disturbing facts that show just how serious the lack of immigration enforcement can be. Three of the September 11 hijackers were stopped by state or local law enforcement officials in routine traffic stops in the weeks leading up to the attacks on our nation. In August 2001, an Arlington, Virginia police officer stopped Hani Hanjour for going 50 miles an hour in a 30 mile-per-hour zone. He was driving a van with New Jersey license plates and produced a Florida driver's license to the officer. Hani Hanjour was aboard American Airlines flight 77, which crashed into the Pentagon.

On September 9, 2001, Maryland State Police stopped Ziad Jarrah for driving 90 miles an hour in a 65 mile-per-hour zone in a rural section of I-95 near the Delaware state line. A videotape of the stop shows the state trooper approaching the car, obtaining the driver's license and registration, and returning to his patrol car for a radio check of the credentials. Jarrah, who was on a CIA watch list, was given a ticket and allowed to go. The registration showed the car Jarrah drove that night was owned by Garden State Car Rental at Newark, New Jersey's International Airport. The car was found at the airport after the September 11 hijackings with the citation received by Jarrah still in the glove box. Jarrah had

boarded United Flight 93 that crashed in Shanksville, Pennsylvania.

Finally, Mohammed Atta was stopped by police in Tarmac, Florida in July 2001 and was ticketed for having an invalid license. He ignored the ticket and a bench warrant was issued for his arrest. He was stopped a few weeks later in a nearby town for speeding and the officer, unaware of the bench warrant, let him go with a warning. Hijacker Mohammed Atta is believed to have piloted American Airlines Flight 77 into the World Trade Center's north tower.

There is clearly a seriousness to today's discussion. We need the laws to curb illegal behavior and to stop the bad guys. We also need laws that can be enforced and will be enforced. I am eager to begin that discussion and I appreciate our witnesses being here today.

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- RETURN TO HOME

PRINTER FRIENDLY VERSION

Center for Immigration Studies

Backgrounder

April 2003

Officers Need Backup

The Role of State and Local Police in Immigration Law Enforcement

By James R. Edwards, Jr.

In the midst of a war against Islamist terrorists, the United States remains woefully — and frighteningly — at risk. Even with the enactment of new laws such as the USA Patriot Act and the Enhanced Border Security and Visa Entry Reform Act and the reorganization of major parts of the federal government into a cabinet-level Department of Homeland Security, the American homeland is not secure.

Not only are the borders themselves still porous, frequently crossed by criminals, smugglers, terrorists, and other lawbreakers, but the interior has very little federal enforcement presence. The federal immigration service has just 2,000 investigators (the agents engaged in enforcement) out of its 37,000 employees. The Border Patrol is deployed almost exclusively along the border. And the Clinton administration's implicit policy of "we'll make it a little tougher for you to sneak across the border, but once inside our country, we won't touch you" remains in force.

Therefore, while the borders get some attention, the country's interior is its exposed, soft underbelly. Untold hundreds of thousands of illegal aliens live, travel, and quietly undermine U.S. national and economic security within our borders every day.

Among the rogues in the gallery of criminal illegal aliens are Ingmar Guandique, the suspected killer of Chandra Levy; Lee Malvo, the suspected Washington, D.C., sniper; four homeless Mexicans accused of brutally gang-raping a woman in New York last December; Rafael Resendez Ramirez, the serial "Railroad Killer;" and Mohammed Salameh, one of the 1993 World Trade Center conspirator/bombers. Other illegal aliens provide the infrastructure by which the worst ones go about undetected, like the Latin American illegal aliens who assisted some of the September 11 hijackers to exploit loopholes and fraudulently obtain driver's licenses.

Yet, hundreds of thousands of law enforcement officers patrol every community, every mile of road, 24 hours every day. They know their area and can spot people, things, and behavior that are out of the ordinary. But when it comes to enforcing immigration laws, these lawmen largely remain an untapped human resource.

This *Backgrounder* examines the role that state and local law enforcement plays — or does not play — in the enforcement of immigration laws, and its potential for enhancing homeland security. First, it considers the present level of involvement of local police officers in immigration enforcement. Second, the legal authority to enforce federal immigration law is discussed. Finally, a number of recommendations are offered concerning how to improve the part that state and local law enforcement plays in immigration enforcement, were this untapped resource to be made an effective component in homeland security.

State and Local Role

U.S. Attorney General John Ashcroft has called for America's police officers to help secure the homeland. In a speech on October 8, 2002, to the International Association of Chiefs of Police, Mr. Ashcroft pledged that federal agents would respond when local officers notify them of immigration violators

James R. Edwards, Jr., is coauthor of The Congressional Politics of Immigration Reform *and an adjunct fellow with the Hudson Institute.*

in local custody. "We must use all lawful means to prevent terrorism," he said. "There are no second chances."[1]

Indeed, this is the most sensible next step in enforcing immigration laws, not only against Islamist terrorists and their immigrant sympathizers, but concerning immigration lawbreakers of every sort. After all, about 96 percent of all U.S. law enforcement officers work for state and local departments.[2] In 1999, there were about 678,000 state and local police, according to the Justice Department. Their involvement in immigration enforcement would be a tremendous force multiplier.

Frequent Contact. Furthermore, state and local police often come into contact with illegal aliens as officers go about their duties. For example, September 11 ringleader Mohammed Atta, while guilty of overstaying an expired visa, was ticketed in Broward County, Fla., in the spring of 2001 for driving without a license. His accomplice, Ziad Samir Jarrah, received a speeding ticket from a Maryland state trooper two days before the terrorist attack.[3]

And such encounters are an everyday occurrence involving illegal aliens not belonging to Al Qaeda. For instance, a sheriff's deputy in Tulsa, Okla., stopped a van on Interstate 244 the night of July 17, 2002, because it was missing a taillight. The deputy found 18 Mexican illegal aliens in the van.[4]

Police in New York pulled over a battered van on the Manhattan side of the Brooklyn Battery Tunnel the Friday of Memorial Day weekend 2002, just as the Office of Homeland Security issued a terrorism alert. They found seven illegal aliens from the Middle East, with a host of identification documents — one was a fake card obtained in Times Square, another a phony passport.[5] Highway patrolmen in Rogers County, Okla., arrested seven Latino illegal aliens August 5, 2002, on alcohol and drug misdemeanors. They had taken an illegal turn.[6]

Thus, because local police officers routinely encounter illegal aliens of all types, to involve local lawmen in keeping a lookout for immigration violations within U.S. borders makes common sense.

However, three general, practical problems limit the degree to which state and local police authorities are involved in enforcing immigration law. An additional barrier has more to do with attitude than practicality.

Generally, police at the local level often lack clarity about the extent of their authority concerning immigration law. Also, police officers on the beat lack timely access to specific information about aliens with whom they come into contact — revealing whether or not they have a lawbreaker on their hands. And then there is the practical constraint of limited resources — jail space, sufficient funds to hold aliens or transport them to the immigration service, and so forth.

Confused About Authority

Though state and local police officers have the legal authority to enforce federal immigration laws (this is explored more fully in the following section), officers may not realize this. Some people have tried to create a perception of an arbitrary distinction between immigration and other federal laws, and local officers may be uncertain whether the law or the Constitution grants them authority regarding immigration offenses; however, police at the local level often make arrests for other federal offenses.

They may not know whether an illegal alien has committed a criminal immigration offense or not, but most immigration offenses, such as entry without inspection, fraud, and alien smuggling, are felonies. Gray areas exist, however. For example, to enter the country by sneaking across the border is punishable under the federal criminal code (INA Sec. 275), while overstaying a temporary visa is but a deportable offense (INA Sec. 237(a)(1)(C)(i)).

Police officers also may hesitate to scrutinize a suspect too closely for fear of being charged with racial or ethnic discrimination. Such lawsuits as that won against Chandler, Ariz., in 1997, when police questioned about 400 people for proof of citizenship, can have a chilling effect on local law enforcement's getting involved in immigration matters.[7]

Federal authorities do not help the situation any when they add to the confusion. For example, an INS deputy district director in Georgia was quoted, "It's not a crime to be in the U.S. illegally. It's a violation of civil law."[8] An INS spokesman in California referred to aliens unlawfully present as "law-abiding citizens" (they are neither).[9] Such statements, though clearly wrong, serve to muddle local law enforcement's understanding of what the immigration code says and how they should handle suspected violations.

Liberal activists, such as the American Civil Liberties Union, and other high-immigration advocacy groups employ intimidation tactics to dampen local law enforcement's inclination to exercise its authority in immigration matters. For example, the ACLU promptly used this tactic when a Stratford, Wis., policeman arrested an erratic driver who was a Mexican

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alien. This led to the officer's discovery of five other illegal aliens, whom the policeman questioned about their immigration status, resulting in four being removed from the country.[10]

All told, such a situation causes many local law enforcement agents to forego, or at least second-guess, their authority over immigration violations.

Information Is Empowering

Police officers on the beat must have timely information about lawbreakers and fugitives to enforce the law effectively. To help them, the National Crime Information Center (NCIC), maintained by the Department of Justice, lists such information as outstanding warrants and fugitives. This powerful source supplies law officers with ready access to information in a quick, single inquiry and has become part of standard police procedure and Information Age crime-fighting culture.

Unfortunately, NCIC contains few records pertaining to immigration offenses. Only in 2002 did the Department of Justice begin listing absconders on NCIC. Absconders, those who have not left the country under final order of removal, make up an estimated 314,000 of the eight to 10 million illegal aliens. Only a fraction of the total number of absconders has yet been entered on the NCIC database, beginning with Middle Easterners.[11]

The Bureau of Immigration and Customs Enforcement (BICE, formerly the INS) operates the Law Enforcement Support Center (LESC) to assist local law officers. The LESC provides local police with access to BICE data on immigration violators. However, accessing LESC requires a secondary contact in addition to NCIC. LESC checks take much longer to get an answer, perhaps two or more hours (BICE claims most are answered within 20 minutes). It hasn't been available to police in all 50 states and is not part of the law enforcement culture.

Post-September 11, though, information-sharing is on the rise. State and local law enforcement — among the "first responders" — are being brought increasingly into the picture of homeland security. The State Department is making available to local law enforcers its database of sensitive information about overseas applicants for American visas. This database contains records on some 50 million visa applicants and has 20 million photographs.[12] Yet, as useful as this move is in providing detectives nationwide with this investigative tool, it will not be as useful to the officer on the beat for getting quick answers.

More Resources Needed

As with most government agencies, state and local law enforcement departments must cope with limited resources. Most police agencies could always do with more money, more personnel, more equipment, more jail space, and so forth. The same holds when it comes to immigration enforcement.

Local jails may serve as detention space for holding illegal aliens. This gives the BICE additional bedspace where illegal immigrants may be kept following the time local police have captured them and until immigration officers take custody. This short-term custody of illegal aliens is a built-in stopgap measure.

But detaining illegal aliens, even for only a short time, can become costly. And the cost is borne principally at the local level. A 2001 study by the U.S./Mexico Border Counties Coalition estimated the annual cost of law enforcement and criminal justice associated with illegal immigration in those Southwest counties alone at $108.2 million in 1999, or 12 percent of the cost of these counties' related expenditures.[13]

The State Criminal Alien Assistance Program (SCAAP), through which the federal government reimburses a portion of the cost of locally detaining illegal aliens, does not come close to the full amount. One Arizona sheriff said SCAAP pays 23 cents for every dollar an illegal immigrant imposes on his county jail. And Sen. Jon Kyl, (R-Ariz.), said his state spent $305 million housing illegal aliens in 2002, while the federal reimbursement was only $24 million.[14] SCAAP received just $585 million in total funding in 2002, and Congress appropriated just $250 million in the new 2003 spending bill.

Similarly, the costs that aliens impose on American prisons are high. A private analysis found the cost of incarcerating aliens in state and federal facilities was $849.1 million in 1999. It said 54 percent of federal inmates were aliens, while about 5 percent of state inmates were immigrants. The North Carolina legislature has passed a new law allowing alien prisoners to be transferred to their home country's prison, which could save state taxpayers an estimated $3.55 million each year.[15]

Other Burdens. In addition to the financial burden that jailing aliens places on state and local detention facilities, other burdens exist that serve to exclude many local jails from being used at all. According to congressional research, BICE regulations require that any county or municipal jail where aliens are detained must meet absurd, unreasonable standards. These requirements make little sense in most American counties and far exceed the American Correctional Association standards, which 21,000 jail facilities meet.

BICE standards say aliens must have access to law books in their own language. Activist lawyers and advocacy groups must have access to inform detainees about U.S. immigration law and procedures. The BICE rules dictate two hot meals per day, micromanage the contents of cold meals, and demand consideration of detainees' ethnicity in meal planning. Further, the standards require detainee access to resources, services, instruction, and counseling in their religion. The intent of such requirements is to diminish the use of local jails for detaining illegal aliens.

Though the Immigration and Nationality Act provides for civil penalties to be assessed against illegal aliens for many offenses, the general practice of the federal government is to forego assessing fines. That is, the lawbreaker receives virtually no punishment for getting caught for his crime. This means that if an illegal alien is caught, the worst that he or she receives is free transportation home.

The net effects of all this are that lawbreakers suffer no consequences and state and local police are burdened with heavy costs and regulations. Ultimately, state and local taxpayers bear the heaviest costs associated with taking immigration lawbreakers off their streets. Whereas with enforcing drug laws local law enforcement may gain resources — such as the forfeited assets of drug dealers — local police usually get nothing for helping in immigration enforcement.

Attitude Is Everything

Perhaps most detrimental to keeping state and local police sidelined in the battle to secure the homeland is attitude. Some localities adopt policies that constrain police from enforcing immigration law (more on this in the following section). The attitude is, immigration is the federal government's job, not ours. Still, those localities that do wish to exercise their authority in this arena are often met with what appears a lackadaisical, uncooperative attitude from immigration authorities.

The perception among many in law enforcement is that the INS, now BICE, lacks the will to help them enforce immigration law. After Attorney General Ashcroft's appeal for the help of local police regarding aliens, Billings, Mont., Police Chief Ron Tussing's response was not atypical: "Tussing said his past experience with immigration agents makes him skeptical of the new program. Before he was chief of police in Billings, Tussing was superintendent of the Nebraska State Police where officers often encountered illegal immigrants.

"'We'd call them (INS) up and they'd say let them go, we're too busy,' Tussing said."[16] Indeed, the two instances of Oklahoma officers encountering illegal aliens in traffic stops in the summer of 2002, as well as the New York encounter with illegal aliens before Memorial Day 2002, each involved local law enforcement contacting INS and being told INS could not come take custody of the aliens. Similarly, INS officers in Dallas released 25 illegal aliens into the United States after they were caught being smuggled into this country in a tractor-trailer.[17]

The perception INS has created has sparked indignation among many officials, including members of Congress. For example, U.S. Rep. John Sullivan (R-Okla.) met with INS seeking greater support for local law enforcement in such instances.[18] Kittery, Maine, Police Chief Edward Strong became concerned when his department stopped Bulgarian and Colombian visa overstayers, contacted the INS, and was told to release them. Strong held a press conference on October 30, 2002, at which he said "his department often arrests illegal immigrants at the outlet malls for shoplifting and other offenses. These people are turned over to INS, but only to be released."[19]

Little or No Help. Northampton County, Pa., District Attorney John M. Morganelli has cited the INS as being grossly uncooperative in going after immigration violators. "Unfortunately, while the influx of illegal aliens continues at full throttle, as a local prosecutor I can honestly say that there is little to no help from the federal government concerning this issue," Morganelli said. He told of a case involving 12 illegal aliens committing identity fraud using Social Security numbers. Yet immigration agents "discourage this type of investigation," he said.[20]

One of the most prominent cases that further cemented INS's poor reputation was that of Lee Malvo, who was arrested in the Washington, D.C., sniper case. An illegal alien from Jamaica, Malvo and his mother

— also an illegal alien — were encountered by local police in December 2001. Uma Sceon James and John Mohammed were disputing who had custody of Malvo. Police called the Border Patrol, whose agents in Bellingham, Wash., arrested the illegal aliens. The Border Patrol handed James and Malvo over to INS with the understanding INS would hold them in detention until removal, which is what the law requires. However, the INS violated the law and regulations and released the illegal alien pair, who indeed fled.[21]

The INS has consistently fallen behind in its enforcement mission, borne out systematically as well as illustrated in anecdotal evidence. The Justice Department Inspector General recently examined how well INS had improved its performance removing aliens under final order of removal (formerly deportation) and found that the INS had made virtually no progress. Of aliens under final order of removal whom the INS held in detention, the removal rate was 94 percent in 1996 and 92 percent in 2001 (though the fall might possibly be explained by a small sample size). But of aliens under final order of removal who were not detained, the INS removed only 13 percent in 2001 (11 percent in 1996). [22]

Within specific categories of aliens, the Inspector General found INS removed only 6 percent of nondetained aliens from nations that sponsor terrorism. Only 35 percent of nondetained criminal aliens — a class the INS claimed was its first priority for removal — actually got removed. INS failed to remove 97 percent of non-detained removable aliens whose asylum claims were denied, including terrorists and other criminals, such as Hesham Mohamed Hadayet, the Los Angeles Airport gunner of July 4, 2002, Sheik Omar Abdel Rahman, a leader in the 1993 World Trade Center bombing, and Ramzi Yousef, the 1993 World Trade Center mastermind. [23]

Very Few Officers. As much as INS has contributed to its own disrepute, the agency is not entirely to blame. For one thing, the understaffed enforcement side (now combined with Customs and other federal law enforcers in the new Department of Homeland Security) has very few officers to deploy — only about 2,000 for the entire nation. And those are mostly investigators, skilled agents who concentrate on complex cases, such as alien smuggling rings, fraud schemes, and the like. From the standpoint of the best use of limited resources, it does not make sense to pull the equivalent of a detective off his investigation in order to drive across the state and take custody of what may appear to be plain old illegal aliens.

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INS has been cooperative with local law enforcement when it has special resources available. For example, the late 1990s saw the development and congressional funding of Quick Response Teams (QRTs). The job of QRTs is to assist state and local law enforcement agencies in immigration cases. This has been a welcome addition to interior enforcement.

And the Atlanta District INS office established a partnership with law enforcement in Dalton, Ga., in 1995. It successfully coordinated investigations, arrests, and removals of illegal aliens and disrupted the criminal and documentation counterfeiting enterprises that facilitated illegal immigration in Whitfield County.[24]

Part of the INS problem is the continuation of Clinton-era policies that undermine any rigorous enforcement of immigration law. Then-INS Commissioner Doris Meissner, in a November 17, 2000, memorandum that established a lax policy, defined "prosecutorial discretion" in such a way that district personnel were discouraged from being tough on immigration crimes. The memo laid out a game plan for deciding not to proceed at every step in the process. It reads, in part:

> *"In the immigration context, the term [prosecutorial discretion] applies not only to the decision to issue, serve, or file a Notice to Appear (NTA), but also to a broad range of other discretionary enforcement decisions, including among others: Focusing investigative resources on particular offenses or conduct; deciding whom to stop, question, and arrest; maintaining an alien in custody; seeking expedited removal or other forms of removal by means other than a removal proceeding; settling or dismissing a proceeding; granting deferred action or staying a final order; agreeing to voluntary departure, withdrawal of an application for admission, or other action in lieu of removing the alien; pursuing an appeal; and executing a removal order.*
>
> ...
>
> "As a general matter, INS officers may decline to prosecute a legally sufficient immigration case if the Federal immigration enforcement interest that would be served by prosecution is not substantial.

[emphasis in original] . . . A [district director's] or [chief patrol agent's] exercise of prosecutorial discretion will not normally be reviewed by Regional or Headquarters authority.

. . .

[I]mmigration violations are continuing offenses that, as a general principle of immigration law, continue to make an alien legally removable regardless of a decision not to pursue removal on a previous occasion. An alien may come to the attention of the INS in the future through seeking admission or in other ways. An INS office should abide by a favorable prosecutorial decision taken by another office as a matter of INS policy, absent new facts or changed circumstances. However, if a removal proceeding is transferred from one INS district to another, the district assuming responsibility for the case is not bound by the charging district's decision to proceed with an NTA, if the facts and circumstances at a latter stage suggest that a favorable exercise of prosecutorial discretion is appropriate."[25]

In other words, the Meissner doctrine sought to undercut congressional intent in the landmark 1996 immigration reform law. The memo provided a plethora of ways and opportunities for immigration field officers not to pursue illegal aliens, signaled that they should exercise "prosecutorial discretion" freely, and directed that prior decisions not to prosecute an alien further insulate that alien from future prosecution.

[illegible] of course, the government is overwhelmed by the sheer volume of aliens, legal and illegal, present in the United States. Numbering in the tens of millions, lawful permanent residents, legal temporary visitors, and illegal aliens of every kind far exceed the government's ability to ensure that they abide by the law and their visa terms, and otherwise pose no threat.

Legal Authority

State, county, and municipal law enforcement officers are sworn to uphold the law. This includes upholding the U.S. Constitution and implies federal laws. As a 1996 Department of Justice legal opinion put it, "It is well-settled that state law enforcement officers are permitted to enforce federal statutes where such enforcement activities do not impair federal regulatory interests."[26] The current Justice Department Office of Legal Counsel has reportedly read the law and the Constitution even more in accord with the Founding Fathers.

It is important to keep in mind that the states "may be regarded as constituent and essential parts of the federal government," Madison wrote in Federalist 45. The states "retain under the proposed [and adopted] Constitution a very extensive portion of active sovereignty." Federalist 39 makes clear that the U.S. Constitution established a federal, not a national, government.

This element of original intent is essential to understanding the fact that states remain sovereign entities. These sovereigns have broad jurisdiction they may freely exercise. It is worth reviewing the Ninth and Tenth Amendments to the U.S. Constitution, which read, respectively:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

In other words, the sovereign states may exercise their active sovereignty.

Except where expressly prohibited from exercising certain powers, the "permission" the Clinton Justice Department's legal opinion mentions that local police have derives from the Constitution itself. States, as federal constituents, retain police powers apart from what any federal [illegible] may designate. This is basic American government.

In April 2002, news reports told of a draft legal opinion under consideration by the Bush Justice Department, apparently premised on this standard reading of the Constitution. *The New York Times* reported that, "The legal counsel's opinion says that states and localities, as 'sovereign entities,' have the 'inherent authority to enforce civil as well as criminal violations of federal immigration law,' according to officials who have read it."[27] DOJ will not make the opinion available, so it is impossible to know exactly how the opinion is reasoned. Unknown remain the rationale, the argument, the cases and authorities, and what constitutes the draft. However, the Attorney General seems to have been advancing the conclusions of the opinion in such things as his 2002 speech to the police chiefs convention.

The Washington Post erroneously reported that the draft opinion "would give state and local police agencies the power to enforce immigration laws," a

power they inherently possess under a proper understanding of the relation of state to federal government and of the U.S. Constitution.[28] The Justice Department seems to be simply (and properly) recognizing this fact.

However, because the 2002 draft opinion has not been published, as a practical matter the published 1996 opinion remains the operative policy until it is superseded by the new one. Of course, states and localities may certainly exercise their authority absent the new opinion's publication, as the Clinton administration's legal opinion does not supplant the Constitution. But bureaucrats and government lawyers aren't known for relying on the actual Constitution when some recent court opinion or policy statement runs to the contrary.

In contrast to the 2002 draft DOJ opinion, the 1996 DOJ legal opinion narrowly read the legal authority of state and local law enforcement as it pertains to federal immigration laws. It said that state and local police "may constitutionally detain or arrest aliens for violating the criminal provisions of the Immigration and Naturalization [sic] Act," but not "solely on suspicion of civil deportability" and could hold criminal alien suspects "for periods as long as 45 to 60 minutes" to allow Border Patrol to arrive.[29]

The Clinton-era DOJ opinion relied heavily on Ninth Circuit decisions. Nevertheless, the opinion did recognize that certain violations in the INA are in fact criminal violations. It further argued that illegal entry may not be a continuing offense (meaning that, once inside the United States, the offending alien has completed his crime, a misdemeanor under INA Sec. 275). This point was based on a Supreme Court case, INS v. Lopez-Mendoza (468 U.S. 1032 (1984)). In that case, the Court chose not to address the question of whether the presence of an illegal alien who illicitly crossed the border "is a continuing or completed crime." In addition, DOJ specified that "federal law does not require state law enforcement agencies to assist in enforcing the INA."[30]

Two Recent Rulings. Whereas the Ninth Circuit Court of Appeals is not known for sound opinions that respect the rule of law or the Constitution, at least two recent decisions in the Tenth Circuit strengthen the hand of local law enforcement. The U.S. Supreme Court declined to hear an appeal of one of those cases.

In February 1998, an INS agent observed what appeared to be a drug deal outside a restaurant in Edmund, Okla. He called a local police officer and told him what he had seen, as well as suspicion about the immigration status of one of the men. The officer investigated, then arrested the Hispanic suspect, a restaurant employee, because of his being an illegal alien. Later on, the officer learned that the alien "had a history of prior criminal convictions and deportations."[31]

> Federal agents and state and local police must cooperate with one another if the tremendous loopholes that exist are to be plugged.

The appellate court ruled in U.S. v. Vasquez-Alvarez that "statute authorizing state and local law enforcement officials to arrest and detain aliens in certain circumstances if aliens had been deported or had left United States after previous felony conviction did not limit or displace preexisting general authority of state or local police officers to investigate and make arrests of criminal illegal aliens."[32] The court noted Oklahoma's state law as permitting local police to enforce federal law, including immigration law. The Supreme Court denied a writ of certiorari. Thus, while the court rightly affirmed the legal authority of state and local police to arrest and detain immigration violators, it relied on state statute exercising this power explicitly, as well as limiting jurisdiction to criminal violations. Therefore, this decision was in the right direction, but fell short of the vigorous "inherent authority" where civil immigration violations are concerned.

A second case recognized that local police may arrest suspected immigration violators with probable cause of immigration violations. In 2001, the Tenth Circuit held in U.S. v. Santana-Garcia that a Utah state patrolman had such probable cause. The officer stopped a vehicle for a traffic violation. The driver, who did not speak English, had no driver's license. In talking with an English-speaking passenger, the officer learned that the two aliens were traveling from Mexico to Colorado. The state trooper asked if the men were legally in the country, and both admitted they were not.

The appellate court said that the officer had probable cause to hold the aliens based on the exchange about their international travel and admission of being illegally present. The court cited the Utah peace officer statute, which grants authority for warrantless arrest for "any public offense."[33] Here again, this court affirmed a state's right to empower its law officers concerning federal immigration laws. But it remains unclear how the court might have ruled absent the traffic violations and related facts.

Deputizing Local Police. One provision of federal law expands the role of local and state law officers by allowing them to be deputized as federal immigration agents. Section 133 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (INA Sec. 287(g)) is in addition to any inherent or existing state statutory authority over immigration matters. Section 133 allows states or localities and the U.S. Attorney General to enter an agreement. Under such an agreement, a cadre of local or state officers is trained as immigration specialists. That is, the police officers become more or less deputized as immigration officers after undergoing intensive special training.

Florida entered a Section 133 agreement with the Justice Department in 2002. South Carolina and Alabama number among other states that have expressed interest in a similar agreement. Florida trained 35 officers in order that they may work on regional security task forces around the state.[34] In any event, Section 133 arrangements are specialized, rather than general usage of state and local police to enforce immigration laws in the course of their carrying out their duties.

Additionally, Section 372 of IIRIRA grants the Attorney General the authority to call upon state and local police in an immigration emergency. In case "an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response," state or local law officers could be granted "any of the powers, privileges, or duties" of a federal immigration officer (INA Sec. 103(a)(8)). The Justice Department has recently changed the rule that implements this provision, waiving or lowering onerous training requirements in certain extreme emergency situations. [35]

Prohibiting Cooperation. Finally, whereas states have the power inherently under the Constitution to enforce federal immigration laws, states and localities sometimes adopt policies that limit their own officers' authority in this area. A number of places have enacted such policies. However, to do so violates 1996 federal laws intended to ensure that state and local government personnel assist immigration authorities.[36]

For example, New York City has such a sanctuary policy. Then-Mayor Edward Koch issued an executive order (E.O. 124) in 1989 that prohibited city employees from reporting illegal aliens to the INS. The policy was continued under his successors, including Rudy Giuliani and Michael Bloomberg post-September 11. This despite federal court rulings against the city's policy.[37] At a recent House hearing, a witness from the New York City government claimed the city now is in compliance with federal immigration laws. He repeatedly asserted that though the law "forbids state and local governments from prohibiting or placing restrictions on the reporting of immigration status information to the INS, it does not . . . [impose] an affirmative duty on police officers to report."[38]

The Seattle City Council recently adopted a policy restricting city police and employees from questioning anyone about immigration status. This ordinance appears to violate federal immigration and welfare laws; it prohibits city workers from "engag[ing] in activities designed to ascertain the immigration status of any person." However, police officers may inquire about "immigration status if they have 'reasonable suspicion' to believe the person has previously been deported and has committed a felony" and may help the immigration service as the law requires.[39] This exception has yet to play out in practical terms. This policy follows such localities as Chicago, San Francisco, Los Angeles, and Houston.[40]

Some local law enforcement officials keep their officers from enforcing immigration violations that are not connected to another crime. For instance, Denver has such a policy.[41] St. George, Utah, and San Diego and Stockton, Calif., police officials also demand that their police officers not enforce the law regarding immigration offenses.[42]

Thus, the Constitution reserves to the states the right to enforce federal laws, including immigration laws, within their jurisdictions. Federal laws enacted in 1996 limit state and local power to restrict immigration enforcement. While courts have generally upheld state prerogative to engage actively in immigration enforcement, additional tools such as Section 133 give even greater abilities for states and localities to become more involved in this area. Though some law enforcement authorities and local politicians have shirked their responsibility regarding immigration law, and the Clinton Justice Department policy statement sought to minimize state and local involvement, this strain runs counter to the facts. The Ashcroft Justice Department has rightfully recognized this and appears to be taking steps to set the matter right. It remains to be seen whether the new Department of Homeland Security follows suit or falls into the Clintonian model of wink-and-nod "enforcement."

Recommendations

Federal agents and state and local police must cooperate with one another if the tremendous loopholes that exist are to be plugged. Those loopholes frustrate the rigorous enforcement of immigration law violations. The solution dovetails with the main sources of the problem. A seamless system for immigration enforcement will address authority, information, and resources.

Authority. There should be no question in anybody's mind that authority exists for state and local law officers to enforce federal immigration laws, criminal and civil. The Justice Department has made a valuable contribution with the development of its "inherent authority" theory. It should publish this opinion without delay and supersede the former, narrow interpretation from the previous administration.

However, because administrations change, it is not sufficient to rely on a DOJ legal opinion or to place faith in the courts. A clear, statutory statement in federal law should affirm that state and local law enforcement have authority to enforce immigration laws — not in the sense of a special cadre of deputized immigration agents, but in the sense of every police officer while carrying out his normal duties. Also, states should be urged to grant explicit authority to enforce immigration laws in their peace officer statutes.

Information. Second, the police officer on the beat must have access to information about immigration violators. The most practical measure would be to build on the current system. Therefore, all available files on immigration violators should be placed in the NCIC system. The addition of absconders should be completed as quickly as possible, with other immigration offenders added after that. This measure would get the information in officers' hands quickly and would not necessitate a secondary inquiry to a totally different system.

Another step could be to require "no bail" status be placed on every immigrant offender's record. Illegal aliens should be viewed as flight risks because of the nature of their offense. "No bail" status would alert local police of the risk of flight and keep the person from posting bail and disappearing.

Information-sharing works best when it goes in both directions. Even if a state or locality does not have its officers enforcing immigration violations apart from other offenses, every police agency should report to the federal government its officers' encounters with illegal aliens. Such reporting would create a record to help track illegal aliens and to unveil patterns of travel, trafficking, and operations.

Resources. Resources must be provided to fund this enhanced activity at the state, local, and federal levels. The best place to look for money would be illegal aliens themselves. A system of fines and penalties would hold individuals personally responsible for their lawbreaking. Fines that exist in current law should be imposed routinely and waived rarely. Individual responsibility would restore meaningful consequences to the breaking of U.S. immigration laws. The worst offenders should face the forfeiture of their assets.

Grant programs such as the State Criminal Alien Assistance Program, whose funding was halved in the latest federal budget for fiscal year 2003, should instead be raised to at least $1.5 billion per year (the approximate cost of detaining criminal aliens) and steadily increased from there.

In addition to clear authority, information, and resources, several more changes must be enacted for a smooth, efficient system. First, every type of immigration violation must be considered a criminal violation. Arcane distinctions and discrepancies in the law create gray areas, cause uncertainty in the minds of law enforcers, and dampen the inclination to enforce the law.

Also, additional means of detention, processing, and taking custody are necessary. While immigration investigators should not be pulled off their important work, there still needs to be some way to get captured illegal aliens into the hands of federal immigration authorities. A separate force of, say, uniformed BICE officers charged with detention and removal in cooperation with and response to local law enforcement would be one solution. Simplifying detention standards and making greater use of local jail space for alien detention would be another solution. Establishing a circuit-riding system, whereby federal officers regularly come by and take illegal aliens off the hands of local police, might be another. Yet another approach is to contract out the transportation of illegal aliens to private security or corrections firms, or for the federal government to contract with sheriff's departments, the U.S. Marshals Service, or the Federal Bureau of Prisons to transport illegal aliens. Perhaps a combination of all these solutions could be used, depending on which works best in a given area of the country.

Improved use of technology, such as videoconferences to remote areas for expansion of the Institutional Removal Program or mobile access to databases such as the IDENT system, would enhance

local immigration enforcement in an effective manner. Creation and deployment into interior states of additional Quick Response Teams would boost needed human resources that have proven effective.

The federal government must change its policies so as to encourage, not discourage, immigration enforcement. Authorities should only release an alien if there are extenuating circumstances, as used to be the standard practice, not automatically release unless concerns exist. This will require better usage of local jails, perhaps detaining illegals on military bases, and contracting out to private prison companies. The government must inculcate a culture of enforcement among its people and creatively address the needs so the new culture and procedures succeed.

Finally, a system by which federal enforcement agencies can be held accountable is necessary. Bureaucracies respond best when their funding is at stake. A means to ensure that federal agencies are enforcing immigration laws vigorously and cooperating with states and localities is essential.

Conclusion

State and local law enforcement belong on the team fighting immigration crimes. They must become engaged in immigration enforcement if the country is serious about achieving homeland security. State and local police officers are the eyes and ears on the home front. They know their territory. They should be en- [illegible] they go after those who violate other laws.

Equally, America must begin to view immigration offenses as "precursor crimes." For that is what they often are. Illegal entry precedes unlawful employment in the United States, for instance, which distorts the economy and disadvantages the law-abiding. Overstaying a visa precedes and gives rise to the commission of such offenses as benefit or document fraud. Failing to depart the country following an order of removal sends an alien into an underworld of false identification, illegal employment, and the like.

Illegal immigration and its accompanying criminal enterprises have fostered foreign terrorist cells within America, smuggling rings that combine drug and alien trafficking, money laundering operations that support al Qaeda and Hamas, drug gangs, and identity fraud schemes. *The Washington Post* several years ago reported the dangers of laxity in immigration enforcement, particularly in the interior: "'[A]lien criminals and terrorists manipulate the [immigration] benefit application process to facilitate expansion of their illegal activities, such as crimes of violence, narcotics trafficking, terrorism and entitlement fraud.' For example, Mir Aimal Kansi, a Pakistani terrorist wanted for fatally shooting two CIA employees outside the agency's headquarters in 1993, had obtained two green cards, one through a political asylum application and the other through the amnesty program."[43] This criminal infrastructure, combined with a mythologized view that projects on illegal immigrants pure motives, love of liberty, and commitment to working hard and making it in America, puts every single American at risk.

Some claim that involving state and local law enforcement in immigration matters would set up a police state. But the alternative to local police enforcing immigration law comes much closer to that outcome. A distinction between citizens and aliens exists, and aliens should face greater scrutiny. Otherwise, citizens as well as aliens would have to submit to increased security requirements at every turn. Better to preserve liberty for our citizens by demanding more of the foreigners within our midst.

Others claim that localized immigration enforcement would curb cooperation by ethnic communities. If police took on immigration enforcement, illegal aliens would not report crimes and police departments would lose their trust, they say. However, no one contemplates police rounding up illegal aliens or mass deportations. Rather, what is proposed here envisions local officers, as they come into contact with suspects in their daily routines, pursuing immigration-related indicators during traffic stops or other normal encounters. Besides, there are some circumstances in which an officer might decide not to ask about immigration status, such as when someone calls for help in an emergency. But police should be able to exercise authority in immigration matters when circumstances dictate.

The combination of confusion over whether authority exists for local police to enforce immigration law, lack of timely access to information and incomplete records, strained resources at all levels, and an overwhelmed immigration agency that has given the impression of indolence and uncooperativeness, all told, have resulted in a major security threat.

Local law enforcement's involvement in enforcing immigration violations would increase homeland security. It would raise the stakes of illegal immigration. It would increase the chances of an illegal alien getting caught. And it would help protect public safety at all levels.

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CAIR

Council on American-Islamic Relations
453 New Jersey Avenue, S.E.
Washington, D.C. 20003-2604
Tel: 202-488-8787
Fax: 202-488-0833
E-Mail: cair@cair-net.org
URL: http://www.cair-net.org

Honorable Edward Kennedy
Subcommittee on Immigration, Border Security, and Citizenship
Committee on the Judiciary
317 Russell Senate Office Building
Washington, D.C. 20510
Attn: Immigration LA

April 21, 2004

Dear Senator Kennedy:

I am writing to urge you as a member of the Immigration, Border Security, and Citizenship subcommittee to oppose S.1906, or the Homeland Security Enhancement Act (HSEA), which will be reviewed during a subcommittee hearing on Thursday, April 22nd. As the largest American Muslim civil liberties and advocacy group, we represent over seven million Muslims living in America. Although most American Muslims are born or naturalized citizens, some Muslims are temporarily visiting the U.S., studying in our top-quality universities, or working in our competitive industries. We are deeply concerned that public safety and national security *will not* be enhanced, but rather it will be jeopardized should HSEA become federal law. We are equally concerned that implementation of HSEA will unreasonably burden state and local police with enforcing immigration law, allow state and local police to enforce immigration law with little or no training, and encourage racial and religious profiling. Our image in the Muslim world would also take a dive should we implement such egregious measures. These bills lack any real solution to the illegal immigrant question and only serve as "feel-good legislation" that would ultimately cost taxpayers more than its worth.

HSEA compels local police to enforce federal civil immigration laws or lose federal funds. According to the House bill sponsor Rep. Charlie Norwood (R-GA), the goals of the CLEAR Act, HSEA's House counterpart, are to avoid arresting and re-arresting illegal aliens committing crimes and to help the Bureau of Immigration and Customs Enforcement (BICE) capture alien absconders with standing deportation orders. However, HSEA goes much further than prosecuting criminals. In section 101, local law enforcement is entrusted with the job of BICE agents. HSEA ignores the road-tested benefits of community policing in favor of a "police state" for immigrants. Muslims and Arabs who might otherwise be helpful in security investigations and assisting law enforcement by reporting suspicious or unusual activity will now be reluctant to come forward, for fear of immigration consequences, such as the negative effects of the National Security Entry-Exit Registration System (NSEERS) program. If Arab and Muslim immigrant communities are alienated rather than valued for their contribution to society, authorities will lose important allies and relationships that can lead to information they might not otherwise have access to.

34 million Americans, or 12% of the population of the United States, are foreign born. Most immigrants are non-white individuals, who under the incentives and procedure built into HSEA, would be treated as foreigners and second-class citizens. HSEA would give immigrants no other option to avoid profiling than to carry "papers" to prove their citizenship status. HSEA encourages race and ethnicity-based profiling because police are ill-equipped to determine who has violated a civil immigration law. Some officers will inevitably stop and question people of certain ethnic or religious backgrounds, who speak certain languages, or who have accents in English. CAIR has received complaints from American-born Muslims who are asked about their immigration status. Section 109 anticipates profiling and grants civil immunity from lawsuits for officers who enforce immigration laws. The results of HSEA will be completely contrary with President Bush's stated goal to eradicate racial profiling from U.S. law enforcement.

HSEA strikes a direct blow at the efforts of police to win the trust and confidence of many of the communities they serve. HSEA ensures that more immigrants will avoid contact with local law enforcement, putting entire communities at risk. Word will spread like wildfire among immigrant communities that if they-as victims, witnesses, or concerned residents-have any contact with police, they or their family members will risk deportation. This is evidenced by the round-ups of immigrant communities subsequent to September 11, 2001. Experience shows that this fear will extend not only to contact with local police, but also to the fire department, hospitals, and the public school system.

HSEA requires local police to add a large and complex set of federal laws to their already long list of duties. Suddenly, local police would have to investigate businesses for hiring undocumented workers, and probe the immigration status of every person they come across who "looks foreign" or speaks with an accent. This bill would also impose significant new reporting requirements on these critically under-staffed and under-funded agencies. Although section 108(b) authorizes the Department of Homeland Security to offer training programs for local police, HSEA offers no additional funding for this training. The responsibilities of state and local police have increased immensely after the September 11th terrorist attacks, and they simply do not have extra time on their hands to take on what is rightly a federal duty.

Moreover, HSEA stands to make the police's primary job—investigating, solving, and preventing the crimes of dangerous criminals—even harder. A major tool used by state and local law enforcement to identify criminals is the FBI's National Crime Information Center database. Section 104 expands the scope of this database significantly, loading potentially millions of names of people with technical/administrative law violations into NCIC and undermining its integrity.

We appreciate your willingness to take our perspectives into consideration and utilize us as a resource.

Nihad Awad

Executive Director

U.S. Department of Homeland Security

STATEMENT

OF

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
COORDINATION WITH
STATE AND LOCAL LAW ENFORCEMENT

BEFORE THE

SENATE SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY AND CITIZENSHIP
COMMITTEE ON THE JUDICIARY

April 22, 2004
2:00PM
226 DIRKSEN SENATE OFFICE BUILDING

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE, U.S. Immigration and Customs Enforcement (ICE) commends Congress for its historic efforts in creating the Department of Homeland Security. Thank you for the continued support Congress and this Subcommittee have given to the Department's 22 component agencies as they merged to create a single, unified, dedicated team. Together, with our federal, state and local law enforcement partners, we have established a strong national defense against terrorism and other criminal activities that threaten the safety and security of the American people and their communities.

ICE is pleased to submit this statement for the record today concerning the important work that is being accomplished by U.S. Immigration and Customs Enforcement (ICE) in partnership with state and local law enforcement. ICE is very aware of the critical role state and local law enforcement has in the broad homeland security mission. State and local law enforcement officers are not only the first responders when there is an incident or attack against the United States, but, also, during the course of their daily duties they may encounter foreign-born criminals and immigration violators who would threaten our national security or public safety. ICE recognizes that critical role and partners with state and local law enforcement agencies nationally and locally through a variety of arrangements that increase the overall effectiveness of federal, state and local law enforcement and our joint ability to protect the homeland.

ICE Special Agents at 27 ICE investigative field offices throughout the United States coordinate the ICE response when notified by state or local officials of ongoing criminal

activity within ICE's enforcement jurisdiction. ICE's law enforcement jurisdiction is broad, allowing it to pursue its mission of protecting the US and its people by deterring, interdicting and investigating the movement of people and goods into and out of the US, while simultaneously addressing vulnerabilities to our nation's borders and transportation systems. ICE's law enforcement jurisdiction encompasses enforcement priorities that directly contribute to national security and public safety, such as *Operation ICE Storm,* an initiative that targeted violent human traffickers in the Southwest, and was a predecessor to the current Arizona Border Control (ABC) Initiative. In its first 180 days, *ICE Storm* resulted in more than 700 criminal and administrative arrests, 90 indictments and the seizure of 46 assault weapons and nearly $2 million. Local police credited *ICE Storm* with more than 30 percent drop in homicides in Phoenix area in the last quarter of 2003, compared to the same period the previous year. Another ongoing ICE priority is *Operation Predator,* a comprehensive, nationwide initiative that has resulted in the arrest of over 2,300 dangerous sex offenders. *Operation Predator* has strong linkage to state and local law enforcement interests inasmuch as many of the criminals arrested have been registered sex offenders on state sex offender registries, or were required to register and did not. Coordination of ICE enforcement actions with state and local law enforcement and their assistance substantially contributed to the success of both *Operation ICE Storm and Operation Predator* and as a result enhanced public safety in the affected communities.

In order to provide even greater assistance to state and local law enforcement, ICE has 45 Quick Response Teams (QRTs) of ICE Special Agents and Detention and Removal

Officers strategically deployed to locations across the United States. These are locations where historically there had been a need for greater immigration enforcement. The QRTs work directly with state and local law enforcement officers to identify, apprehend and remove illegal aliens who have been encountered for violations of state or local laws. ICE officers assigned to QRTs are responding daily to requests for assistance from state and local law enforcement officers. This close coordination with state and local law enforcement since deployment of the QRTs has resulted in thousands of administrative arrests for immigration violations and hundreds of federal prosecution presentations for criminal violations of immigration law, such as re-entry after deportation.

The QRTs also provide briefings for state and local law enforcement officers on ICE's authority and law enforcement mission, the functions of the QRTs, and QRT response policies. Police officers from over 400 law enforcement agencies have been briefed and certain agencies are now including this important information in their law enforcement academy training programs.

ICE agents also assist state and local law enforcement agencies address specific, local law enforcement concerns using ICE's unique authorities in the context of task force or other operations. An example of this level of cooperation is a joint investigation ICE agents coordinated with local law enforcement agencies that resulted in dismantling a significant alien prostitution ring operating in multiple locations in Georgia and Tennessee.

Recognizing that combating terrorism is best accomplished from a multi-agency task force approach that encompasses Federal, state and local resources, skills and expertise, the Department of Justice established Joint Terrorist Task Forces (JTTF) in key locations across the country. ICE Special Agents assigned to the JTTF work closely with state and local law enforcement officers as well as FBI and other Federal agents. Drawing on the investigative expertise and authority of the participating agencies, JTTFs investigate suspected and known terrorists, terrorist organizations and terrorist support mechanisms. State and local law enforcement officers perform vital functions in the investigative efforts of the JTTFs side by side with ICE and other Federal officers.

Similarly, ICE and other Federal agents work closely with state and local partners in Organized Crime Drug Enforcement Task Forces (OCDETF) and in task forces targeting violent gang and other criminal activity throughout the United States.

Sharing information with our state and local partners in law enforcement is a critical component of the vision of the DHS and ICE to ensure the safety of the United States and the American people. ICE maintains a vast store of immigration related information, appropriate parts of which it shares with all of our partners in law enforcement. In fiscal year 2003, the ICE Law Enforcement Support Center (LESC) in Williston, Vermont provided immigration related information requested by our state and local law enforcement partners and federal colleagues on nearly 600,000 occasions. This represents an increase of over 175,000 responses from the previous fiscal year. Last

month, March 2004, the LESC responded to over 62,400 queries in a single month, the largest monthly query total ever.

The LESC is the vital ICE point of contact with the entire law enforcement community. The LESC is on the cutting edge of the federal effort to share critical enforcement information with state, county, local and even international law enforcement officers. It is a national, single point of contact, law enforcement center that provides timely immigration status and identity information and real-time assistance to local, state and federal law enforcement agencies on aliens suspected, arrested or convicted of criminal activity. The LESC operates 365 days a year, 24 hours a day, 7 days a week assisting law enforcement agencies with information gathered from 8 ICE immigration databases, the National Crime Information Center (NCIC), the Interstate Identification Index (III) and other state criminal history indices. Access to the LESC is fully electronic and uses the same telecommunications system – NLETS – familiar to and used by all of law enforcement for over three decades. Responses to requests for information sent to the LESC are routinely returned within 5 to 7 minutes. Since the LESC was established in 1994, the primary user has been the state or local law enforcement officer seeking information about an alien encountered in the course of their daily duties. The rapidly growing number of queries submitted and answered by the LESC demonstrates its acceptance and effectiveness in the law enforcement community.

The merging of 22 agencies and bureaus into the Department of Homeland Security provides new access to law enforcement databases that will now be used by the LESC to

greatly broaden its enforcement capabilities. For example the LESC now has access to intelligence information from the former INS, Customs and the Federal Protective Services databases. New DHS databases such as SEVIS, NSEERS and US VISIT will also be accessible through the LESC. This will improve the LESC's ability to provide timely, critical information to state and local law enforcement agencies around the nation.

The LESC is also the focal point for the ICE NCIC program and has a permanent NCIC unit dedicated solely to receiving, resolving, entering and maintaining every record deemed eligible for entry into NCIC. ICE is committed to utilizing NCIC as a way to inform state and local law enforcement about wanted and fugitive aliens. ICE has entered over 140,000 immigration records in NCIC. At the present time, the majority of those records are deported felons, but they also include persons with outstanding ICE criminal warrants for alien smuggling and re-entry after deportation, a small number of National Security Entry-Exit Registration System (NSEERS) violators and a rapidly growing number of absconders.

There is significant law enforcement information value in the records that ICE is entering in NCIC. That information value goes directly to issues of public and, specifically, officer safety. The ICE NCIC information may be key in assisting state and local law enforcement officers make the real time critical decisions that they are required to make every day.

ICE has recently consolidated and enhanced its response to state and local law

enforcement agencies seeking assistance in immigration related enforcement matters, including requests for NCIC hit confirmations, status and identity information and assistance in instances of suspected over the road alien smuggling. Just since the beginning of February 2004, the LESC has lodged over 4,200 detainers with state and local law enforcement agencies against individuals wanted by ICE or of law enforcement interest to ICE. In February and March 2004, the LESC facilitated ICE assistance to state and local law enforcement officers from 9 states in 17 over the road alien smuggling cases involving 214 individuals.

Additionally, the LESC provides training to state, local and other federal law enforcement officers on how to access its information and on ICE roles and responsibilities. The LESC uses its own law enforcement staff to provide training to other law enforcement officers. The LESC is currently developing an Office of Law Enforcement Liaison that will have among its responsibilities providing training to law enforcement nationwide. In the last 18 months, LESC agents trained Federal, state and local law enforcement officers in Alabama, Arkansas, Arizona, California, the District of Columbia, Florida, Georgia, Idaho, Maryland, Minnesota, Mississippi, Nevada, New York and Texas.

ICE and DHS coordination with law enforcement around the country has expanded significantly since September 11. As additional resources become available, the LESC will have an even more critical role in law enforcement and national security investigations.

Another unique ICE asset, the ICE Forensic Documentary Laboratory (FDL) also serves the needs of state and local law enforcement and our Federal colleagues. The FDL provides a wide variety of forensic and intelligence services in support of the ICE mission to enforce immigration laws and combat document fraud. The FDL is unique among Federal crime laboratories both in its sole dedication to the forensic examination of documents, and its integration of an operational intelligence and training capability. In addition to directly supporting DHS field officers, it also offers its services to other Federal, foreign, and state and local governmental entities. For example, the FDL has performed forensic document and fingerprint examinations for numerous state and local police agencies, Departments of Motor Vehicles, and local prosecutors' offices. The FDL has also provided training in fraudulent document recognition to the International Association of Chiefs of Police (IACP), state and local police agencies, and motor vehicle departments. The FDL developed the Guide to Selected U.S. Travel and Identity Documents (M-396), a highly instructive pocket guide for state and local law enforcement and other governmental personnel who encounter immigration and other U.S. documents.

ICE has provided a wide variety of training opportunities for state and local law enforcement officers. Before the formation of the Department of Homeland Security, the Immigration and Naturalization Service cooperated with the International Association of Chiefs of Police (IACP) to provide a two-day field-training course "Responding to Alien Crime." This course provided information concerning criminal aliens to law enforcement

agencies throughout the United States. In 2003, ICE produced a new video training course in cooperation with the IACP. Over 250 law enforcement officers in Phoenix and Sierra Vista, Arizona; Dallas, Texas; Philadelphia, Pennsylvania and Miami, Florida have attended the new course. Also in 2003, ICE provided a basic block of instruction in immigration law and procedures to 654 Alabama State Troopers. Sixteen classes were held in seven different locations. That instruction was given in preparation for implementation of a Section 287(g) agreement with the State of Alabama to allow certain State Troopers to perform immigration enforcement functions.

Under Section 287(g) of the Immigration and Nationality Act (INA) the Secretary of Homeland Security has the authority to enter into formal written agreements with state and local political jurisdictions to authorize state and local law enforcement officers to perform immigration enforcement functions. The law requires that a written Memorandum of Understanding be signed between the parties. All selected law enforcement officers must receive the appropriate training in immigration law and procedure and must be individually certified. ICE must supervise all selected officers when they are using their immigration authority under Section 287(g). Properly constructed, mutually agreed upon Section 287(g) agreements are a dynamic, yet closely monitored force multiplier for ICE in its work to protect America's communities.

The written agreement in the form of a Memorandum of Understanding is the keystone to the effective execution of Section 287(g). It must be comprehensive and define the scope and limitations of each authority to be exercised under Title 8. It mandates a rigorous,

multi-week training program addressing the specific immigration authorities requested by the state. It establishes the supervisory structure over the officers with authority under Section 287(g) and prescribes an agreed-upon complaint process governing officer conduct during the life of the agreement.

After September 11, Florida officials were increasingly concerned about the number of terrorist related cases in Florida, many involving foreign nationals, and established seven Regional Domestic Security Task Forces throughout the state. In 2002, the Florida Department of Law Enforcement entered into the first Section 287(g) agreement. Thirty-five officers assigned to the regional task forces participated in an extensive training program, graduated and were certified to perform the duties of immigration officers. This agreement has been very successful and productive. The Florida task forces have conducted over 170 investigative cases and recorded numerous arrests.

Building on the success of the Florida agreement, ICE and the State of Alabama signed a written agreement in September 2003 to provide immigration enforcement authority to a selected group of 21 Alabama State Troopers. Like their Florida colleagues, those troopers received extensive training in immigration and nationality law and procedure at the DHS Center for Domestic Preparedness in Anniston, Alabama. They are now certified and have the authority to perform immigration enforcement functions incidental to their normal duties as patrol officers or at driver licensing stations. They are also trained and certified to transport and detain aliens unlawfully present in the United States.

In closing, we assure you of ICE's commitment to establishing and maintaining effective partnerships and information sharing with state and local law enforcement agencies. Such partnerships are essential to carrying out ICE's mission of deterring criminal alien activity and threats to national security and public safety in the United States. We are very grateful for the work of the many state and local law enforcement officers who assist ICE daily in its mission and we are pleased to be able to assist them.

October 29, 2003

The Honorable Dennis Moore
House of Representatives
431 Cannon House Office Building
Washington, DC 20515

Dear Representative Moore:

This letter is written requesting you to oppose the CLEAR Act and to urge others to also vote against this proposed legislation. The Clear Law Enforcement for Criminal Alien Removal Act of 2003 (CLEAR) would require local law enforcement officers to assume responsibilities presently accomplished by the Immigration and Naturalization Service. The act would mandate that police officers enforce civil immigration laws.

This proposed legislation is of great concern to me personally, the City of Overland Park, and the Overland Park Police Department. Our City and our Police Department have taken the lead in establishing a meaningful relationship with our minority communities, especially the Hispanic community. If the CLEAR Act is voted into law, it will have a devastating effect on how we provide law enforcement/police service. It will diminish the positive strides we have made to embrace minority group members. We have accomplished so much, and this proposed legislation would certainly reverse our success.

Our city is struggling with budget issues. The CLEAR Act would place a substantial and unrealistic strain on finances. If the legislation is passed, we would need additional and specific training, officers, equipment, and housing facilities. All this would require funding that is not available.

This act could easily place us in a racial profiling environment. This is not acceptable, and it would destroy the credibility we have worked so hard to establish. We also know that members of minority groups, especially Hispanics, because of past experience, have not reported crimes or come forward as witnesses, because they were fearful of law enforcement. Through various means, we have helped to turn this attitude around; this, too, could all be destroyed if the CLEAR Act is passed into law. The CLEAR Act would be a detriment to all who live work and visit Overland Park. We want all to know that the police are available to protect them no matter whom they are or where they come from.

We ask you to oppose the CLEAR Act and urge your colleagues to vote against this legislation.

Sincerely,

John M. Douglass
Chief of Police

jjw

FEDERAL HISPANIC LAW ENFORCEMENT
OFFICERS ASSOCIATION
3767 West 18th Place
Yuma, Arizona 85364
www.fhleoa.org

September 30, 2003

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

Dear Mr. President:

This letter serves to transmit to you the position of the Federal Hispanic Law Enforcement Officers Association (FHLEOA) with regard to the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671) introduced by Representative Charles Norwood (R-GA) last July.

FHLEOA joins the countless other citizens, groups, associations, and law enforcement professionals who have vigorously opposed the CLEAR Act.

The CLEAR Act jeopardizes public safety, undermines the role of local police in enhancing national security, and also undermines federal law enforcement priorities. The Act piles more into the already full platters of State and Local police officers by requiring them to add a large and complex set of federal laws to their already long list of duties, and will make their primary job investigating, solving, and preventing real crimes—even harder.

The CLEAR Act bullies and burdens State and Local governments by coercing them into participating, even though it means burdensome new reporting and custody requirements, because failure to do so means further loss of already scarce federal dollars. This legislation is a perfect example of unnecessary law making because mechanisms already exist within current law to foster cooperation between local law enforcement and federal immigration agents.

If enacted, the CLEAR Act would encourage race and ethnic based profiling. Because local police are ill equipped to determine who has violated a civil immigration law, some will inevitably stop and question people of certain ethnic backgrounds, who speak certain languages, or who have accents when speaking English.

The Bill grants civil immunity from lawsuits for officers who enforce immigration laws. This would set back the U.S. civil rights movement back decades, and introduces a slippery slope in the quest to eradicate racial profiling from U.S. law enforcement.

On behalf of FHLEOA I strongly urge you to oppose the CLEAR Act.

Respectfully,

Sandalio Gonzalez
National President

cc: Members of Congress
League of United Latin American Citizens
National Council of La Raza

FRIENDS OF IMMIGRATION LAW ENFORCEMENT
110 6TH ST S.E. 2ND FLOOR, WASHINGTON, D.C. 20003

FILE ENDORSES S. 1906

In recognition of the fundamental duty owed to the American people by the government of the United States to pursue conscientiously and vigorously every available means to ensure U.S. immigration laws are respected abroad and obeyed at home, Friends of Immigration Law Enforcement (FILE) endorses S.1906, the *Homeland Security Enhancement Act of 2003*.

As a not-for-profit association of attorneys, legislators, federal, state, and local law enforcement personnel, judges, academics, and others troubled by widespread disregard for U.S immigration law, FILE recognizes:

- the right and the responsibility of the American people to set legal limits and controls on immigration;
- the grave consequences, especially in light of the events of 9/11, of failing to enforce those laws;
- the enormous challenges posed to the reestablishment of the rule of law by years of official neglect;
- the immorality of saddling future generations with even worse difficulties if we fail to act prudently today;
- the near impossibility of reestablishing the rule of law if enforcement is needlessly restricted to a small and overwhelmed fraction of the law enforcement community;
- the vastly improved prospects of attaining enforcement goals through the participation of the entire American law enforcement community as provided for in S. 1906.

In supporting S. 1906, Friends of Immigration Law Enforcement stands with the "85 percent of Americans [who] agree and 62 percent [who] strongly agree that Congress should pass a law requiring state and local governments, and law enforcement agencies, to apprehend and turn over to the INS illegal immigrants with whom they come in contact." (*Roper/ASW Poll, 2003*)

Craig Nelsen, Exec. Dir.,
Friends of Immigration Law Enforcement
Washington, DC
April 26, 2004

SENATE JUDICIARY COMMITTEE, SUBCOMMITTEE ON IMMIGRATION
HEARINGS ON THE CLEAR ACT
Senator Saxby Chambliss, Chair
April. 22, 2004

THE HOMELAND SECURITY ENHANCEMENT ACT: THE WRONG WAY TO PUBLIC SAFETY

TESTIMONY OF PROFESSOR DAVID A. HARRIS
Balk Professor of Law and Values and Soros Senior Justice Fellow
University of Toledo College of Law
David.Harris@utoledo.edu
(419) 530-2877

Senator Chambliss, Ranking Member Senator Kennedy, and Member of the Subcommittee, I am grateful for the chance to present to you my views on the Homeland Security Enhancement Act of 2003.

Immigration enforcement is a matter of great concern to all Americans, and to every level of government in our nation. It implicates national security, our economy, and our law enforcement priorities. The federal government has always had the role of enforcing immigration law. This is, frankly, as it should be; the policing of the national borders should be a national matter. And in our system of government, that means the

federal government. Anything else poses a grave threat not just to our national security, but to the right to be safe from violent crime – the right of every person walking the streets of every city and town in our nation.

The Homeland Security Enhancement Act of 2003, well intentioned though it may be, puts all of this in jeopardy. Police officers and administrators, those first responders who have served the public for generations in the fight to make our neighborhoods safer, know this better than anyone. That is why so many of them have spoken out against having their departments enforce immigration law.

In my comments today, I will briefly describe the basic problems with the Homeland Security Enhancement Act.

The Homeland Security Enhancement Act of 2003 aims to force local law enforcement to take actions that will destroy the all-important relationships of trust that police have painstakingly built with immigrant communities. In big cities, small towns, and suburban and rural areas all over America, our population has become increasingly diverse over the last two decades. The fastest-growing Hispanic populations, for example, are found not in the California, American Southwest or Florida, but in places like Arkansas, North Carolina, and Georgia. Police in these towns and cities know this; they see it up close every single day on every beat they walk or drive. They know that their jurisdictions are much different than they were even a few short years ago.

This increasing diversity of people, and the backgrounds, experiences, languages, and cultures that they bring with them to our country, have tremendously important

implications for community policing. Over the last twenty years, community policing has become the mantra for successful police departments all over the United States. It brings the police together with the communities that they serve, in order to undertake together the task of building safe, secure neighborhoods. The experiences of police departments in the era before community policing, as well as extensive criminological research, taught police that they could not make the streets safe alone; to make genuine progress, they would have to work together with the public, sharing information, responsibility, and decision making. Police adopted community policing not because they found it a convenient set of tasks or a catchy slogan, but because it worked. It helped cut crime in cities across the country, as it simultaneously strengthened the crucial relationships between police and those they served. It is no accident that community policing is the one policing strategy that can be found in more American towns and cities than any other.

Community policing presents a particularly daunting task vis a vis immigrant communities, because it forces police officers to confront languages, cultures, and history that is often different from their own. Indeed, police know that in immigrant communities, people often come from societies in which the police were untrustworthy and violent. Nevertheless, police have always known that they could do no less to connect with residents in immigrant neighborhoods than they did in others. Police departments therefore applied themselves to the task of building relationships of trust with special vigor in immigrant communities. All of community policing depends on building partnerships with the community. And partnerships require that partners trust

each other. Without that trust, there would be no sense of shared ownership of problems and solutions, and community policing would wither and eventually die.

The biggest problem with the Homeland Security Enhancement Act is that in any community with a significant number of immigrants, the Act will destroy this foundation of trust upon which not just community policing, but all of local law enforcement, is predicated. Police depend on people for information, for cooperation, and for help. If local police are forced to become de facto immigration agents, people in their neighborhoods will simply stop talking to them. They will fear officers and hide from them, instead of communicating with them about the problems, the issues, and the wrongdoers in their neighborhoods. Even worse, when they are victims of crimes, they will fear reporting these offenses. This can lead only to increased fear and less safe streets, as predators exploit this fear and repeatedly prey on not only immigrants, but anyone in these neighborhoods.

This is why local police have almost uniformly opposed any involvement on their part in immigration enforcement. It can do little but drive a wedge between them and their communities – to the great detriment of the victims of robbery, sexual assault, and domestic violence, for example, who will fear the police too much to come forward. In this sense, the Homeland Security Enhancement Act represents a huge step backwards for law enforcement and public safety.

The Homeland Security Enhancement Act requires no training for local police who will enforce immigration law. Immigration law is one of the most complicated areas of American law. Governed by a complex set of statutes and hundreds

of court decisions that interpret them, immigration law represents a specialty every bit as insular and difficult to master as the law governing mergers and acquisitions or the death penalty.

The Homeland Security Enhancement Act recognizes this, mandating preparation of a training manual pocket guide, and discussing how training could be provided. But, incredibly, the Act goes on explicitly to make training in immigration law an option and not a requirement. According to Section 108 (d) of the Act, "Nothing in this Act…shall be construed as making any immigration-related training a requirement for or prerequisite to any State or local law enforcement officer to enforce Federal immigration laws in the normal course of carrying out their law enforcement duties." In other words, the federal government is saying to local law enforcement, "Here is a very complex, powerful new tool, and we insist you use it. But there's no need for you to actually know anything about how to use it before you start using it." The absurdity of this is plain on its face. The shortsightedness it shows will doom local police agencies to suffer adverse consequences for years to come.

The Homeland Security Enhancement Act makes asset forfeiture a part of immigration enforcement. Over the past fifteen to twenty years, laws have made asset forfeiture a part of the war on drugs and crime. It is only in the last few years that we have recognized the great damage this has done; forfeiture has rightly been recognized as one of the worst abuses of the drug war. Just a few years ago, some of this damage was corrected by reforms sponsored by Representative Henry Hyde, then the Republican chairman of the House Judiciary Committee. While many, including Representative

Hyde, did not feel that the bill that eventually emerged from the legislative process went far enough, it at least pointed the law in the right direction and corrected some of the worst abuses.

The Homeland Security Enhancement Act takes us down this same failed path, threatening to reprise the worst abuses of the last twenty years. Before we go that direction, we ought to remember where it leads: to unchecked government power over private property, to strong financial incentives to abuse the law, and to questions about the enforcement objectives and legitimacy of the government's effort.

The Homeland Security Enhancement Act penalizes police departments that disagree with the policy it expresses with loss of funds at time when first responder agencies are desperately short of cash. We have all heard the many reports concerning the great strains now on state and local budgets. Deficits exist everywhere, and total in the billions of dollars. The situation is so bad that even agencies that perform the bread and butter of public safety functions, such as police departments, face large budgetary cutbacks. A threat to withhold federal funds these departments now get for an explicitly federal function – incarcerating prisoners awaiting deportation – would be a particularly cruel blow at this moment. Given the dire economic situation in which police departments find themselves, this threat amounts to nothing less than a federal knife at local agency's throats if they refuse to see the "wisdom" of the federal approach.

The Homeland Security Enhancement Act writes into law a secret, unreleased policy of the U.S. Department of Justice. In 2002, the Department of Justice first put

forth a policy that states had "the inherent authority" to enforce all immigration laws. To those familiar with the intersection of immigration law and local law enforcement, this came as something of a shock. The new policy represented the reversal of longstanding policy of the Department: local law enforcement agencies, it had said, could only enforce the most serious violations of immigration law – those that were criminal in nature. The vast majority of immigration offenses were not criminal, but civil. These civil offenses were the place that most frequently caused people to become deportable – common offenses such as overstaying a visa. Absent special arrangements with the federal government that included explicit, written permission and extensive training for local police, local law enforcement was to leave immigration matters to the federal government. This position had been reaffirmed as recently as 1996. Thus the change brought about by the Department of Justice's new policy was, indeed, dramatic.

Nevertheless, the Department has refused, to this day, to make the policy public. The Attorney General and his spokesmen have restated the conclusion of the policy, time after time, but have refused to reveal any of the reasoning behind it. This leaves the public and the Congress in the uncomfortable position of being unable to assess the correctness or the wisdom of the change.

The Homeland Security Enhancement Act compounds this problem. The Act's first section would affirm the Department of Justice's new policy and write it into law – regardless of the fact that the government has pulled a veil of secrecy over this 180-degree turn in the law. At the very least, the Congress should not consider any such change unless and until the Department of Justice explains its reasoning and makes a convincing case for the change.

Thank you for the opportunity to offer my views on the Homeland Security Enhancement Act of 2003. I am available to answer your questions, and would be glad to answer any future questions via the contact information on the first page.

News Release

JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

April 22, 2004 Contact: Margarita Tapia, 202/224-5225

Statement of Chairman Orrin G. Hatch
Before the United States Senate Committee on the Judiciary
Subcommittee on Immigration, Border Security, and Citizenship
Hearing on

"STATE AND LOCAL AUTHORITY TO ENFORCE IMMIGRATION LAW: EVALUATING A UNIFIED APPROACH FOR STOPPING TERRORISTS"

I wish to thank Chairman Chambliss for holding this important hearing. Immigration enforcement has always been on the front line of our national defense. Now more than ever, we understand the need to take immigration and border security very seriously. Violations of civil immigration laws are no longer just harmless, victimless offenses. Indeed, to protect our nation's territorial integrity, and to guard against further cowardly acts of terrorism, we must vigilantly enforce our immigration laws at the border and within in the interior of our country.

I further wish to commend Senators Sessions and Miller for addressing the important issue of immigration enforcement resources through the introduction of the Homeland Security Enhancement Act (S. 1906). Although there are many legitimate arguments for and against that bill, one thing is certain: We need more resources if we are to make a serious effort in enforcing our immigration laws. Presently, there are, as estimated, ten to twelve million illegal aliens in our country, some of whom have serious criminal convictions, and many even have outstanding warrants of deportation. It is obvious that law enforcement is outnumbered, and is not perceived as a threat by the illegal immigrants, especially criminal aliens. The absconding rate for aliens with deportation orders can be as high as 87% according to some reports. That is, or should be, alarming to all of us. Federal immigration officials need more resources to enforce the laws.

I have heard too many stories of how the lack of state and local police cooperation has frustrated the federal government's efforts to enforce immigration laws. I know of unfortunate instances where police officers who came upon undocumented victims of human trafficking had to leave these victims to the mercy of their abusers simply because there were no immigration officials available to take these trafficking victims into custody. I have also heard that police in border states have had to release truckloads of illegal aliens who were smuggled into the United States by organized crime and who face abuse by their smugglers, also because there was no effective federal immigration response. I point out these incidents not to unduly criticize our immigration officers, but to illustrate the resource problem that our immigration officers face each day.

Of course, we need answers to several questions before this Committee can determine the most appropriate way to utilize state and local law officials to enforce immigration laws. First, we need to adequately train the local officers. Enforcement of civil immigration laws is different

from enforcement of criminal laws. The standard for making arrests is different, and non-federal officers need to be taught that difference. Second, we absolutely must steer clear of racial profiling. Racial profiling is wrong. The mistrust that it creates in the minority or legal immigrant communities is destructive and divisive. We must not tolerate any improper immigration arrests based upon appearance alone. Third, we need to make sure that participation is voluntary. States should not be coerced into participation, and the federal government must not commandeer state resources for the purpose of performing a federal function. Fourth, we need to know what additional authority, if any, must be delegated via statute in addition to section 287(g) of the Immigration and Nationality Act. Lastly, we need to pave the way to good community relations. State and local participation in immigration enforcement must not have a chilling effect on the reporting other crimes for fear of deportation. I look forward to getting answers to these questions from our witnesses today.

Even before we find answers to these questions, it already is abundantly clear that state and local participation is absolutely vital in the fight against terrorism. Information sharing among federal agencies is important, but we cannot overlook the importance of integrating our state and local partners in the fight to protect our national security. If the existing law is inadequate in any way or leaves any holes at all in the net that we cast on the terrorists, Congress needs to mend those holes. In order to reduce the risk of another terrorist attack we need to pool all available resources, at every level of government.

Finally, I want to point out another immigration enforcement problem that should trouble all of us on this Committee. Presently, there are many illegal aliens with serious criminal convictions and deportation orders who routinely delay their deportation by filing frivolous petitions in the federal court system. Instead of departing the United States expeditiously as mandated by Congress, they engage in dilatory tactics and in effect stay their deportation by many months or even years. I intend to take a serious look at that problem and will work with my colleagues on this Committee to end that abusive practice by criminal aliens who have no right to remain in our country, and who have no right to exploit our court system in order to delay their lawful deportation.

Thank you Mr. Chairman.

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Executive Memorandum

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No Need for the CLEAR Act: Building Capacity for Immigration Counterterrorism Investigations

James Jay Carafano, Ph.D.

The recent hearings of the 9-11 Commission are a powerful reminder of the need to build up national capacity for domestic counterterrorism. This means both more law enforcement and increasing capacity in a manner that respects civil liberties and the roles and responsibilities of federal and state authorities.

- Increasing national capacity to conduct counterterrorism investigations should be a priority.
- The CLEAR Act is seriously flawed and the wrong approach to improving federal, state, and local cooperation.
- Congress should appropriate funds to expand §287(g) initiatives.

The proposed Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act takes exactly the wrong approach, inappropriately burdening state and local enforcement and providing insufficient protections for civil liberties. Furthermore, it is unnecessary: Adequate authorities already exist. Instead, Congress should promote the use of Section 287(g) of the Immigration and Naturalization Act (INA) as a better mechanism for enabling state and local law enforcement to join in the global war against terrorism.

A War Without Fronts. About 40 million people come to the United States each year by legal and illegal means. The overwhelming majority pose no threat to America or its citizens. On the other hand, not every foreign visitor—as all 19 of the September 11 hijackers amply demonstrated—is harmless. Future terrorists will follow their path, entering the U.S. by any means they can and hiding in American communities. Thus, enforcement of immigration laws and related investigations must be important tools in the domestic counterterrorism fight.

The federal government lacks the capacity to pursue aggressively all immigration violations that represent serious criminal and national security threats. The Department of Homeland Security (DHS) does not even have sufficient resources to deport criminal aliens released from federal and state prisons. Not only does the department need help, but effective domestic counterterrorism operations also require federal, state, and local investigators to work closely together.

The Wrong Approach. State and local assistance in enforcing federal immigration laws has long been a controversial issue. As proposed, the CLEAR Act would authorize state law enforcement "to investigate, apprehend, detain, or remove aliens in the United States." The CLEAR Act contains at least four serious flaws:

- The act has the potential to shift police priorities so that officers spend their time tracking down immi-

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Produced by the Kathryn and Shelby Cullom Davis Institute for International Studies

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214 Massachusetts Ave., NE Washington, D.C. 20002–4999
(202) 546-4400 heritage.org

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gration violations instead of solving and preventing crimes within their communities. It could also undermine the immigrant communities' trust and confidence in law enforcement. Fear of deportation may make immigrants and aliens less likely to report crimes and suspicious activity. Furthermore, foreign nationals may refuse to assist in security investigations because of concerns about the immigration consequences.

- The bill may hinder law enforcement by undermining the usefulness of the FBI's National Criminal Information Center (NCIC) database. Including entries for immigrants with minor violations, whose statuses change frequently, will make it hard to keep the database current. Filling the database with records of minor immigration violators could also distract or impede police officers from using the database to obtain information about violent criminals and terrorists. The NCIC should be reserved for serious, significant immigration violations.
- It provides broad immunity protection for those who may violate an alien's or citizen's rights, thus giving the victim no recourse.
- The proposed legislation is unnecessary. Police already have the authority to arrest aliens who commit crimes, and state and local authorities can help fight terrorism using already established statutory tools.

The Right Approach. That said, homeland security is not just a federal mission. State and local governments must play an important role, particularly in the area of immigration investigations. At the very least, in the normal course of criminal investigations, state and local law enforcement should neither ignore immigration law nor hesitate to cooperate with federal immigration officials. In the case of counterterrorism, more concerted effort is needed.

Section 287(g) of the INA provides adequate authority for state and local enforcement to investigate, detain, and arrest aliens on civil and criminal grounds, and it is structured far more thoughtfully than the proposed legislation. Officers governed by a §287(g) agreement must receive adequate training and operate under the direction of federal authorities. In addition, in a civil lawsuit, the state law enforcement officers would be considered to have been acting under federal authority, thereby shifting liability to the federal government and providing additional immunity for the state law enforcement officers enforcing federal laws.

The existing §287(g) pilot program with the State of Florida could serve as a national model. Under §287(g), Florida signed a memorandum of understanding (MOU) in 2002 to allow a small group of Florida law enforcement officers to conduct federal immigration investigations. Florida specifically limits its officers' civil immigration enforcement to situations in which they are part of a security or counterterrorism operation that is supervised by Immigration and Customs Enforcement officers (ICE).

The Florida MOU outlines the criteria for selecting the officers, including requiring U.S. citizenship, three years of law enforcement experience, and at least an associate degree. Once selected, officers go through intensive training and must pass a final competency exam. Those who meet these criteria are certified to participate in the program. The MOU also establishes ways for people to file grievances against the program and its officers.

As the Florida MOU demonstrates, §287(g) provides more protection to states and their law officers while requiring that well-trained officers conduct immigration investigations. It also allows states to tailor the use of their officers to essential domestic counterterrorism missions. This is a superior alternative to the CLEAR Act and its unfunded requirements.

What Should Be Done. Three things would enhance state and federal counterterrorism efforts:

- **The DHS** should encourage other states to adopt programs based on the Florida model.
- **Congress** should appropriate funds for the DHS to expand §287(g) initiatives.
- **States** should use the Florida initiative as a model for expanding their own domestic counterterrorism programs and improving cooperation with federal authorities.

—James Jay Carafano, Ph.D., is Senior Research Fellow for National Security and Homeland Security in the Kathryn and Shelby Cullom Davis Institute for International Studies at The Heritage Foundation.

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Phone: 212-290-4700
Fax: 212-736-1300
Email: hrwnyc@hrw.org
Website: http://www.hrw.org

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April 21, 2004

Re: Homeland Security Enhancement Act of 2003 (HSEA)

Dear Senator:

Human Rights Watch opposes Senate bill, S. 1906, "the Homeland Security Enhancement Act of 2003" (hereinafter "HSEA") and its companion bill, H.R. 2671, the "Clear Law Enforcement for Criminal Alien Removal Act of 2003," (hereinafter the "The CLEAR Act"). Human Rights Watch is a non-governmental organization dedicated to the protection of human rights throughout the world, including in the United States. Both acts jeopardize those rights.

The CLEAR Act and HSEA require state and local jurisdictions to pass laws or otherwise authorize state and local police forces to investigate, apprehend, detain, or remove non-citizens for civil violations of U.S. immigration law. States that refuse to ensure that state and local police forces are so authorized will be denied federal immigration funds. Under the terms of these bills, handing state and local officials such powers will yield:

- Arbitrary and erroneous arrests and detentions because state and local officers will be required to imprison and/or fine non-citizens they determine to be "unlawfully present" – a complex term that non-immigration officers will have enormous difficulty enforcing;
- Arbitrary deportations that arise because on its face the CLEAR Act provides state and local officers with an unfettered power to deport non-citizens. This power could potentially be used to deport non-citizen refugees who have entered the country without valid documents to a place where they fear persecution – a serious violation of such refugees' rights;
- Disproportionate fines imposed on undocumented immigrants that are draconian given the impoverished conditions of most such immigrants;
- Unjust and arbitrary deprivations of property since the CLEAR Act and HSEA allow state and local officials to take the property of persons who they have decided are unlawfully in the United States;
- Increased vulnerability of immigrant women and children to violence since the CLEAR Act and HSEA will cause immigrants to refrain from contacting police about abuses they have suffered for fear that they – or undocumented relatives who may live with them – will be arrested on immigration charges.

Given these and other concerns discussed in detail below, these bills cannot be squared with the United States' obligation, as a party to the International Covenant on Civil and Political Rights (ICCPR) to protect the rights of all

persons in the country, citizen and non-citizen alike. Those rights include the right to liberty and freedom from arbitrary detentions (art. 9) and the rights to due process safeguards and remedies in deportation proceedings (art. 13).

The CLEAR Act and HSEA allow for arbitrary arrests and detentions of non-citizens

Under the CLEAR Act or HSEA state and local officers are required to imprison and/or fine non-citizens apprehended who are determined to be unlawfully present in the United States. Encouraging state and local officers who will have little or no training in the complexities of federal immigration laws to enforce those laws will undoubtedly result in legally and factually unsound arrests and detentions. While Section 109 of the CLEAR Act and Section 108 of HSEA require the Attorney General or Department of Homeland Security to create training manuals and to make other training "available through as many means as possible," the Acts do not make training a prerequisite to the enforcement of federal immigration laws by state and local officers.

The ease with which state and local officials acting under these laws could subject non-citizens to arbitrary and groundless arrests cannot be overestimated. A variety of documents are involved in regulating the presence of non-citizens in the United States, which are difficult to understand for any official not involved in the administration of those documents. For example, a foreign student's passport may contain an expired visa, but he or she may have filed a valid I-20 form, which grants permission to remain in the country for another year. Moreover, other non-citizens may be in the midst of regularizing their status through marriage or adjustment, or maintaining their lawful presence after filing change of address forms, all of which the untrained local officer may not know about or understand. Yet they will be empowered to arrest non-citizens based on their on the spot assessments of those complicated technical documents.

In addition, in the federal system non-citizens detained on immigration charges are brought for bond hearings before judges familiar with immigration cases. This policy, although often problematic in practice, certainly places the letter of U.S. federal law in line with the ICCPR, which requires that any detainee "shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention" (art. 9). The CLEAR Act and HSEA do not address the issue of whether non-citizens arrested and detained for their unlawful presence would be afforded an opportunity for an independent hearing, and if so, who in the state and local system would hear these cases. While HSEA does provide a mechanism by which apprehended aliens could be turned over to federal authorities, this is not a requirement. By not addressing this issue, the CLEAR Act and HSEA appear to create a two-tiered system of justice: one for aliens in the federal system, who are afforded due process guarantees, and one for aliens arrested by state and local officials with far fewer, if any, protections.

Finally, the CLEAR Act and HSEA require local and state officials to incarcerate non-citizens they determine to be unlawfully present alongside prisoners, including those accused or convicted of violent crimes in state and local jails and prisons. Such incarcerations would contravene the ICCPR, which requires unconvicted persons to be "segregated from convicted persons and...[to] be subject to separate treatment appropriate to their status as unconvicted persons" (art. 10). Moreover, it would contradict several years of work on the part of federal immigration authorities to attempt to improve the conditions under which non-citizens are

detained in the United States. The Act not only allows state and local authorities to incarcerate non-citizens who have committed no crime alongside potentially violent criminals: it also allows them to be imprisoned in facilities with conditions falling far below federal minimum standards for other immigration detention facilities.

The CLEAR Act grants unfettered power of deportation to state and local authorities

In addition to the power to arrest and imprison non-citizens, the CLEAR Act states that state and local law enforcement officials "are fully authorized to...remove [i.e. deport] aliens in the United States. . .in the enforcement of the immigration laws of the United States." On its face, this provision appears to confer authority on state and local officials to remove non-citizens from the United States, a power heretofore conferred only on the federal government acting through the deportation (now called removal) process in the federal immigration courts. Under the CLEAR Act, however, state and local officials would be authorized to carry out removals of non-citizens without following even the most basic procedures and checks on decision making required in the federal system. State and local officials are thereby granted an extraordinary power, which far exceeds that enjoyed by traditional federal immigration authorities. Not only is this extreme measure in contradiction to the federal system of immigration, but it also threatens fundamental principles of human rights.

Under Article 13 of the ICCPR and constitutional law, the United States is required to give non-citizens facing deportation access to review by an independent tribunal in order to determine whether the decision to deport is lawful. However, Section 101 does not require that removal decisions by state or local officers to detain or remove be subjected to any form of independent scrutiny. Indeed, the CLEAR Act does not even require state or local officials to provide the Department of Homeland Security or any other federal agency with any oral or written statement of the immigration grounds upon which the decision to detain and remove a person was based.

One of the categories of persons state and local enforcement officials could detain and potentially remove from the United States under the CLEAR Act are those who have entered the country without valid documents. However, such a person may have a valid claim to asylum. According to U.S. immigration law, as well as the 1951 Refugee Convention and its related Protocol (the "Refugee Convention") refugees must be protected against deportation to a place where they are likely to face persecution. Under the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (the "Convention against Torture"), no person may be returned to a country where there are substantial grounds for believing they would be tortured. The United States has ratified both the Refugee Convention and the Convention against Torture; these treaties create international legal obligations for state and local officials as well as national authorities. Unfortunately the CLEAR Act does not require state and local officials to make asylum seekers aware of their rights, or to put federal immigration authorities in contact with possible asylum seekers, or to ensure that asylum seekers can submit their claims to adjudicators. As a result, the CLEAR Act does not prevent state and local authorities from sending a refugee or any non-citizen who might face torture back to a country where he or she is likely to face serious abuse, an egregious violation of such a person's most basic human rights.

The CLEAR Act and HSEA increase the risk of violence against immigrant women and children

By requiring state and local officials to detain and remove non-citizens, the CLEAR Act and HSEA further endanger some of the most vulnerable members of immigrant communities in the United States: battered, trafficked, or sexually abused women and children. Many immigrants, even if they are in the United States legally, will refrain from contacting police about abuses they have suffered for fear that they – or undocumented relatives who may live with them – will be arrested on immigration charges. Indeed, in many immigrant communities today, batterers and traffickers often use the threat of deportation against their victims in order to prevent them from reporting the crimes they have suffered. The CLEAR Act and HSEA will simply give those criminals new confidence in their ability to act with impunity.

Even where limited relief for these victims may be available through new special visa categories, the CLEAR Act and HSEA risk harming these victims by making their recourse to justice and protection even more unlikely. Local law enforcement officers should protect women and children who are victims of trafficking and of domestic and sexual violence. But if local officials are also required to enforce federal immigration laws, traffickers and abusers will have greater power to trap their victims in violent or exploitative situations. Not only will women and children suffer serious abuse, but law enforcement will encounter much greater difficulty in identifying and prosecuting traffickers and other violent criminals. Passage of the Acts would undermine the United States' ability to make good on its responsibility to provide a remedy to victims under article 2 of the ICCPR since victims of trafficking and domestic or sexual violence have had their rights violated under articles 7 (banning torture and cruel and inhuman treatment) and 8 (prohibiting slavery, servitude, and forced labor) of the ICCPR, respectively.

The CLEAR Act and HSEA will arbitrarily deprive persons of their property

The Universal Declaration of Human Rights as well as due process guarantees in the U.S. Constitution recognize that no one may be arbitrarily deprived of his or her property. In the United States, property forfeiture is most often imposed when individuals have been convicted of or when there is probable cause to prosecute them for (usually drug-related) crimes. In the immigration and civil law context, forfeiture is rarely imposed. Contrary to these traditions of law enforcement practice, as well as the fundamental prohibition on arbitrary deprivation of property, Section 103(e) of the CLEAR Act and 103 of HSEA allow state and local officials to take the property of persons who they have decided are unlawfully in the United States. The decision that their presence is unlawful, making them subject to property forfeiture, would be without judicial review. In addition, such an unfettered power to deprive individuals of property is likely to result in local and state officials subjecting lawful aliens or even U.S. citizens to forfeiture because of their marriage relationships with non-citizens determined to be unlawfully present.

The CLEAR Act and HSEA deny individuals a remedy for abuses suffered

Section 110 of the CLEAR Act and Section 109 of the HSEA grant state and local law enforcement officials complete personal immunity and state and local agencies immunity against

lawsuits brought in connection with their enforcement of immigration laws. In so doing, it effectively denies noncitizens a civil remedy for any violations of their rights. Allowing civil rights violations to go unpunished will contravene the right of victims to a remedy for abuses suffered, which is affirmed in the ICCPR (arts. 2 & 9). The remedy provisions in the ICCPR supplements U.S. law because U.S. constitutional law does not explicitly prohibit certain forms of discrimination (such as nationality-based discrimination), which are addressed in more detail in the ICCPR. The treaty also requires remedies for specific violations that U.S. civil rights and constitutional law do not prohibit: for example the ICCPR's prohibition against incarcerating convicted and unconvicted individuals together and the ICCPR's requirement of an "enforceable right to compensation" for "unlawful arrest or detention."

The CLEAR Act and HSEA will have negative and disproportionate policy consequences

Section 103(a) of the CLEAR Act and Section 103 of HSEA increase the penalties for common immigration law violations to levels that are nothing less than draconian given the impoverished conditions of most undocumented immigrants. For example, migrant farm workers typically enter the United States repeatedly because of the seasonal nature of their work. Yet these workers, whose earnings place them among the poorest in the country, would face a $10,000 fine for illegally entering the United States three or more times under the CLEAR Act. In addition, also under the CLEAR Act, those non-citizens who fail to depart the United States within 30 days of a final order of removal, and who have entered illegally three times previously, would be fined $50,000 – a stunning fine that many non-citizens could not pay even if given decades to do so. Such severe fines are both unnecessary and disproportionate.

Finally, the CLEAR Act and HSEA are intended to promote the national effort against terrorism. Instead, the measures will exacerbate the isolation and fear immigrant communities often face during their interactions with law enforcement personnel and thus undermine cooperative efforts between state and local officials and such communities. As a result, state and local police will be less likely to garner support for law enforcement from immigrant communities, or gain the trust of such communities to cooperate in criminal investigations. Non-citizens who might otherwise be helpful to investigations and crime prevention will be reluctant to report to local and state officials, for fear of immigration consequences. By further isolating and disempowering immigrant communities, the CLEAR Act and HSEA will undermine the anti-terrorism efforts it allegedly seeks to bolster.

For all of these reasons, Human Rights Watch urges the Senate to vote against the HSEA.

Sincerely,

s/
Alison Parker
Senior Researcher
U.S. Program

s/
Wendy Patten
U.S. Advocacy Director

Statement of Edward M. Kennedy
Senate Judiciary Committee Hearing
"State and Local Enforcement of Immigration Law"
April 22, 2004

Mr. Chairman, thank you for calling today's important hearing. In the past two years, Congress has done much to respond to the terrorist attacks of September 11th. We have authorized the use of force against terrorists and those who harbor them. We have enacted legislation to strengthen the security of our airports, seaports and borders, and have given law enforcement and intelligence officials greater powers to investigate and prevent terrorism.

State and local law enforcement agencies are working closely with federal agencies to protect our cities and towns, our water systems, our nuclear power plants, and many other vulnerable targets of potential attacks. At considerable expense to communities, state and local officials have improved plans for emergency preparedness, purchased state-of-the-art equipment and technologies and devoted significant hours of overtime work to meet their responsibilities in a post-9/11 world.

But not every measure or action proposed after September 11 has been effective, or legal, or fair. The Attorney General has used the fear of terrorism to justify actions that affect the most basic rights in our society.

We have seen searches and detentions without warrants, incarcerations without hearings or counsel, secret criminal proceedings, secret deportation hearings, and arbitrary immigration orders. Many of us continue to be very concerned about this Administration's failure to protect civil liberties.

One of the most controversial and counterproductive policies the Justice Department has proposed is the use of state and local law enforcement agencies to enforce the immigration laws. Shortly after September 11th, the Attorney General announced that state and local police possessed "inherent authority" to enforce these laws.

We were told that this change in policy – which clearly violated longstanding legal precedents – was based on a new Office of Legal Counsel opinion that still remains secret today.

Since this reversal in policy, and the introduction of legislation to require local police to enforce the immigration laws or lose their federal funding, we have heard strong objections from state and local officials around the country who believe such a policy

will seriously jeopardize, not enhance, their efforts to fight crime and protect us from future terrorist attacks.

I will submit for the record copies of the many letters my office has received from law enforcement agencies and other organizations opposing this policy.

Requiring local and state authorities to enforce immigration law would unreasonably burden local law enforcement, irreparably damage community policing, impose heavy financial costs on state and local governments, and undermine the safety of our neighborhoods.

It will clearly undermine national security. Since 9/11, security experts have repeatedly stated that good intelligence is the key to national security. Helpful information comes from all sources, including immigrants. If local communication shuts down because immigrants are afraid to approach local law enforcement officials for fear of being deported or for any other reason, we will forfeit important information and jeopardize the security of our nation. At this critical time, we must keep all lines of communication open. We cannot afford to undermine the trust of entire communities.

This defective policy also destroys the successes that police departments throughout the United States have achieved through community policing, which depends on building local partnerships. The task is already particularly daunting in immigrant communities because so many immigrants have come from countries where the police are perceived to be hostile and abusive.

We know police departments in immigrant communities have a difficult time building relationships of trust. These difficulties will be compounded if police officers are seen as immigration agents. Communities will be put at needless risk if immigrants avoid contact with local authorities for fear of deportation.

We have already heard reports of cases around the country in which immigrants refused to report crimes, notify the fire department of emergencies, or failed to seek needed medical attention. Criminals are well aware of this vulnerability and often use it to prey upon immigrants. Without the assurance that their immigration status will not be used against them, immigrants will not come forward with critical and timely crime-fighting information.

Battered immigrants would also be seriously hurt by such a policy. Victims of domestic violence need to trust the police to seek assistance.

Developing trust is especially difficult for battered immigrants, since their abusers often use their immigration status as a weapon. Fear of being reported to immigration officials is one of the most significant factors preventing immigrant victims of domestic violence from seeking help. Any legislation that ends trust and causes battered immigrants to fear the police exposes these victims to even greater peril.

Such a policy will also divert needed resources from the primary goals of local and state law enforcement -- to prevent and investigate crime.

Even before this current budget crisis and their new post-9/11 responsibilities, local police agencies have struggled with limited resources to meet the needs of their communities. Adding immigration law enforcement to their already overwhelming responsibilities will divert scarce resources and jeopardize public safety. States and municipalities cannot afford to take on this new and complex burden.

State and local enforcement of immigration laws also invites discrimination and racial profiling, since local police do not now receive adequate training to understand our complex and ever-changing immigration laws.

In fact, none of the bills pending in Congress mandate such training. Local police will not be able to distinguish between an immigrant who is here legally and another who is not. Instead, they are likely to rely on national origin, race, or other characteristics in determining which person to question, or detain, or arrest.

More than 10 million naturalized U.S. citizens live in America today. These citizens are not required to carry proof of their citizenship status with them, and police officers will not be able to tell who is here illegally, based upon how persons look or the language they speak.

The new policy is very likely to produce lawsuits against state and local authorities by U.S. citizens and legal residents whose rights have been violated. Few states or local agencies might be willing to take such a risk.

Current law already provides ways to create effective partnerships between local law enforcement offices and federal agents. In 1996, Congress established a process that enables states and localities to enter into memorandums of understanding with the federal government to confer civil immigration law enforcement powers on their local officers.

Such MOUs are currently in place in Florida and Alabama. They contain important safeguards and mandate extensive training in immigration law. The pending bills would essentially destroy the MOU process and enable local police to enforce immigration laws without critical training and safeguards.

We know that state and local law enforcement and federal immigration authorities currently share information about persons arrested or convicted of crimes. This sharing is facilitated by the Bureau of Immigration and Custom Enforcement's Law Enforcement Support Center, established in 1994, which helps state and local police verify the immigration status of individuals who are arrested or convicted of crimes. The Center operates 24 hours a day and provides local law enforcement officials with information from eight different databases. Reports indicate that the Center is very successful. In FY03, it responded to close to 600,000 investigative inquiries.

Additionally, the Department of Homeland Security operates the Institutional Removal Program, a partnership with local correctional facilities to deport removable felons. The goal of the program is to identify deportable convicts while they are incarcerated, and deport them after their sentences are served.

I commend the Chairman for calling this important hearing and I look forward to the testimony of our witnesses. We need to achieve the right balance between protecting our country from terrorism and respecting the rights of our citizens and immigrants. I'm confident we can strike a fair and effective balance without mandating state and local enforcement of federal immigration laws.

State and Local Cooperation with Immigration Authorities: Myth and Reality

Statement submitted to the Senate Judiciary Committee,
Subcommittee on Immigration, Border Security and Citizenship

Regarding the Hearing on
"State and Local Authority to Enforce Immigration Law:
Evaluating a Unified Approach for Stopping Terrorists"

by
Mark Krikorian
Executive Director
Center for Immigration Studies
1522 K St. NW, Suite 820
Washington, DC 20005
(202) 466-8185
www.cis.org

April 22, 2004

I do solemnly swear (or affirm) that I will faithfully execute the duties of a Police Officer of the City of Irving, Dallas County, Texas, and will to the best of my ability preserve, protect and defend the Constitution and Laws of the United States, and of this State, and of this City. . .

Oath of Office for Irving, Texas, police officers[1]

Immigration control is the keystone of homeland security. In the war against militant Islam, the Home Front is no longer a metaphor, as in World War II, but the very focus of the war, which all our other efforts serve. The objective of al Qaeda is, literally, to kill our children in their beds; thus keeping the enemy out of our country, and uncovering those already here, must be among the chief objectives of the war.

To continue the analogy with World War II, our immigration-control infrastructure is still where our armed forces were in 1941 – small, held in low regard, and inadequate to the task. Immigration control has three layers – overseas (visa issuance), at the borders (the Border Patrol and inspectors at ports of entry), and inside the country (immigration special agents and adjudicators). Much remains to be done overseas and at the border, but the most woefully inadequate security layer is in the interior of the United States. There are more than eight million illegal aliens living in the United States, with 800,000 more settling here each year.[2] Enforcement of the ban on hiring illegal aliens all but stopped four years ago, and was never very energetic or coordinated even before that. Many states and localities, in fact, are implementing de facto amnesties for illegal aliens, and several major amnesty proposals have been introduced in Congress.

But whatever this body and other levels of government decide with regard to amnesty for illegal aliens, there is no substitute for muscular immigration enforcement in the interior of the country – an adequately funded, comprehensive, *permanent* system of enforcement that treats immigration lawbreakers with at least the same seriousness as tax violators, drunk drivers, and deadbeat dads.

This is where state and local cooperation with immigration authorities comes in. There are the full-time equivalent of only about 2,000 special agents in the Department of Homeland Security devoted to enforcing the immigration law, but there are more than 700,000 state and local police officers who encounter immigration lawbreakers every day in the normal course of their business.[3] These officers represent an essential force-multiplier for the Department of Homeland Security. In a sense, the change in the meaning of the "Home Front" makes this inevitable; in past wars, police officers were sometimes exempt from the draft because they fulfilled a vital role maintaining order at home. In this war, the police already serve on the front lines, and promoting cooperation

between them and federal immigration authorities is as vital as cooperation between air and ground forces in a conventional conflict.

There has been a flood of misinformation on the matter of state and local cooperation with federal immigration authorities. Clearing up the resulting misunderstandings is essential if our country is to make any progress in controlling immigration and securing the safety of our homes and communities. Allow me to briefly dispel some of the myths that surround this issue.

Myth: State and local police departments can only enforce immigration law if authorized to do so by the federal government.

Reality: Police officers swear an oath to uphold the Constitution and laws of the United States. This is because under our federal system, states (and thus their political subdivisions – counties, cities, towns, etc.) have, as sovereign entities, the power to enforce federal laws, including immigration laws.[4] The Attorney General said as much in a speech last year, when he acknowledged that "arresting aliens who have violated criminal provisions of Immigration and Nationality Act or civil provisions that render an alien deportable" is "within the inherent authority of the states."[5]

And his words merely echoed a 1996 Department of Justice legal opinion: "It is well-settled that state law enforcement officers are permitted to enforce federal statutes where such enforcement activities do not impair federal regulatory interests."[6]

The federal government does, of course, have the power to preempt the inherent state authority to make arrests for violations of federal law, but Congress has never done so with regard to immigration matters.

Myth: Cooperation by state and local law enforcement with federal immigration authorities represents a departure from past practices.

Reality: Such cooperation was routine in the past and continues today. Agents from the former Immigration and Naturalization Service – whose enforcement personnel are now part of the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection within the Department of Homeland Security – have long worked closely with police officers on initiatives that were of common interest.

One example is the Quick-Response Teams (QRTs), made up of immigration special agents detention and removal officers, which assist state and local law enforcement agencies that encounter problems with illegal immigration. The federal teams work in tandem with police and sheriff's offices, providing information on the immigration status of suspects in custody and taking action if they prove to be deportable. In addition, QRTs provide briefings for state and local law enforcement.[7]

Another example of ongoing cooperation between immigration authorities and state and local police is the Law Enforcement Support Center.[8] The LESC, established in the mid-1990s by the INS, aids in the process of identifying criminal aliens at their initial encounter with police by providing officers with information on the suspect's immigration status. Currently, jurisdictions in 46 states employ LESC capabilities, and the remaining four plan to gain access soon.

Likewise, there are ongoing joint federal/state/local task forces that include immigration agents: Joint Terrorism Task Force, the Anti-Terrorism Task Force, the Organized Crime Drug Enforcement Task Force, the Joint Drug Intelligence Group, the Violent Crimes/Fugitive Task Force, the Multi Agency Gang Enforcement Consortium, the Trafficking in Persons and Worker Exploitation Task Force, the Nevada Emergency Operations & Notification Network, and others.

In addition to participating in joint task forces, there has been other, more systematic cooperation. In the Institutional Removal Program, for instance, immigration officers work with state prison systems to identify alien criminals and process their deportation while they are still serving their sentences, allowing them to be removed immediately upon their release from prison.[9]

Also, after the success of a pilot program in the Anaheim and Ventura County jails in southern California, President Clinton signed into law in 1997 a permanent program to place immigration agents in local jails. The agents take over illegal aliens who have been arrested but will not be tried and also identify candidates for the Institutional Removal Program.

The biggest problem, of course, is that state and local police are unable to get the help they are already asking for, and expect to receive, from immigration authorities. It has become commonplace to read newspaper reports of officers encountering illegal aliens in traffic stops or elsewhere, only to be told by the immigration service to let them go because there was no way to take them into custody. The most notorious case of this kind happened in May 2002 when officers in New York City stopped a van full of Middle Eastern illegal aliens, most from Pakistan.[10] When the INS did not respond to the initial phone call, the District Attorney's office was forced to let several of the men go, because their IDs appeared genuine. The following day an immigration officer called with instructions to release the remaining illegal aliens. The frustration of one local police officer was palpable: "What's the point of stopping vans and risking your life when the one agency with power blows you off?"

Myth: If cooperation is facilitated, state and local police will simply become immigration officers, neglecting their other responsibilities.

Reality: The whole purpose of facilitating cooperation is to enhance the ability of federal and local authorities to do their *respective* jobs. Police can serve as additional eyes and

ears for immigration agents, while federal immigration law can be an invaluable addition to the toolkit used by police to fight crime.

Even officers who have received immigration training under Sec. 133 of the 1996 immigration law, and are deputized to serve as immigration officers, don't simply fill in for immigration agents.[11] The program is for a limited number of officers who will become, in a sense, the immigration specialists for their departments. Alabama just launched such a program last month, with 21 troopers who completed a five-week course on federal immigration law. But rather than launching raids on chicken-processing plants, these officers have returned to their duties on highway patrol or at driver license offices, empowered to do their jobs more effectively and to better identify immigration problems they run across.[12]

Broader cooperation between federal and local agencies would not require Sec. 133 agreements, but rather could entail expedited training for a much larger number of people, perhaps Internet-based, and would not need to actually deputize the local officers as immigration agents.

And in many cases no training in immigration law would be required at all. After all, officers are already trained in law enforcement – what they need most from immigration authorities is quick, usable information about criminal suspects who turn out to be aliens violating immigration laws. In addition, they need follow-through from immigration authorities so that aliens arrested in the normal course of police business are actually picked up and removed from the country.

Myth: State and local police can do their jobs without getting involved in immigration matters.

Reality: After the arrests last month of dozens of members of the Latin American gang Mara Salvatrucha 13 in Charlotte, N.C., U.S. Attorney Bob Conrad said authorities would use "every weapon in our state and federal arsenal to eradicate gang violence," including deportation of illegal and criminal aliens.[13] This incident and many more like it across the country highlight the fact that it is simply no longer possible for state and local police to do their jobs properly without making use of the immigration law.

This isn't simply a parallel to prosecuting Al Capone for tax evasion, though it is also that. The crime that police face is increasingly related to immigration. In 1980, there were fewer than 9,000 criminal aliens in state and federal prisons. Today, fully 29 percent of the inmates in Federal Bureau of Prisons facilities are not U.S. citizens.[14] To take another example, more than half the members of the violent 18th Street Gang, southern California's largest, are believed to be illegal aliens.[15]

In the modern world, immigration inevitably brings with it increased crime. This is not because immigrants are inherently prone to criminality – in fact, the limited research that has been conducted suggests that immigrants are slightly *less* likely than the native-born

to be involved in crime.[16] Rather, the link between immigration and crime has three elements: One, crime is simply more prevalent among the poor and the less educated, and immigrants are disproportionately poor and less-educated, and make up an increasingly large share of the poor population in the United States. Two, immigrants are by definition outsiders, on the margins of society, and thus their communities are ideal incubators, hiding places, and hosts for criminals and criminal organizations – this was true when the Irish were new to this country, likewise with the Sicilian Mafia, and now with Russian, Chinese, Jamaican and other immigrant gangsters. And three, the advances in transportation and communications make crime (including terrorism) increasingly transnational, accentuating the importance of immigration law in combating it. In the 19th century, Irish criminals had essentially no contact with the old country; in the 20th, the Mafia used Sicily as an occasional hideout; but in the 21st century, criminal organizations are genuinely multinational and cannot be successfully combated by state and local police without active cooperation with federal immigration authorities, among others.

Local cooperation with immigration authorities can bring other benefits, apart from the unique circumstances of immigrant communities. With more information about immigration violations, local police will have more opportunities to bring appropriate charges against the criminals in their custody and use immigration charges as a lever, if appropriate, to extract information. After all, criminals seldom violate only one law and police are more likely to be successful if they can come at criminals from every possible direction.

What's more, state and local cooperation will provide different perspectives on the same case – a local officer may see one aspect of a case, while an immigration special agent will see a different aspect that the officer wouldn't know about. Also, by accessing information available only in a suspect's immigration file, police will be more likely to identify the suspect's associates and family members, further assisting the investigation of crime.

Myth: Cooperation by state and local law enforcement will lead to racial profiling.

Reality: Profiling is the result of a mismatch between the size of the problem and the amount of resources devoted to it. If manpower is limited, then the only way to focus your resources on a large problem is to narrow the pool of suspects through profiling. In an immigration context, profiling is actually *less* likely if cooperation is promoted between federal and local authorities. There are only 2,000 special agents devoted to interior enforcement of the immigration law (some 5,000 or so Customs investigators are now also part of BICE, but since the Bureau is now responsible for Customs issues as well, it is not inconceivable that the number of agents doing immigration enforcement is actually *lower* than before). By using the 700,000 state and local police as a force-multiplier, the mismatch between resources and mission shrinks, making profiling less likely.

Profiling based on race in particular is prohibited and police are increasingly receiving training to curb inappropriate profiling. In some cases, when police have been involved in racial profiling of immigrant groups, the misconduct didn't have anything to do with immigration law at all. For instance, the Rampart Division scandal in Los Angeles included charges of racial profiling by officers – but immigration was incidental to the police misconduct, which included perjury, planting evidence, excessive use of force, and more. None of these problems stemmed from, or were exacerbated by, cooperation with immigration authorities, nor could they have been avoided by putting up further barriers to cooperation.

The only major ethnic profiling incident actually related to immigration was the 1997 Chandler Roundup in Arizona. The city police, with help they had requested from the Border Patrol, arrested more than 400 illegal aliens during a five-day sweep, but also temporarily detained some U.S. citizens and legal residents, leading to recriminations and litigation. This incident actually is a useful object lesson for future local cooperation with federal immigration authorities –given the fallout from what the city's own investigation identified as a poorly planned and coordinated action, this is not going to happen again. It cost the city more than half a million dollars in legal settlements (though it is significant that the lawsuit against the INS was dismissed) and now the city government is actually *promoting* illegal immigration, by facilitating the establishment of a day-labor center for illegal aliens and accepting the Mexican government's illegal-alien ID card. As unfortunate as the whole fiasco was for everyone involved, it's almost good that it happened before an expansion in state and local cooperation on immigration, so it serves as a model of how not to do this.

Myth: Even if there's no racial profiling, police cooperation on immigration will sour police relations with local immigrant communities, undermining community policing efforts.

Reality: As a general rule, lawbreakers are going to be less likely to approach the authorities than the law-abiding. If any involvement with immigration taints police outreach, the logical conclusion is the abolition of immigration law altogether, so that no one would be dissuaded from approaching the police. This is not going to happen, and should not.

That having been said, police officers have always used discretion in dealing with the public. Common sense would dictate that officers actually interested in fighting crime will use their discretion in pursuing immigration matters. Police aren't arresting illegal-alien workers at Wal-Mart, nor will they be insisting that a rape victim show them her green card. Officers who do otherwise present a discrete management problem for supervisors, not a broader policy problem related to cooperation with federal authorities.

Myth: State and local police don't want the authority to enforce immigration law.

Reality: Florida and Alabama are already using Sec. 133 to get immigration training. Many state and local police departments have worked with INS in the past and continue to work with BICE now.

But opponents of immigration law enforcement have compiled impressively long lists of police chiefs who seem to oppose local cooperation with immigration authorities. Upon examination, though, these statements are less than they appear. Almost without exception these police chiefs are speaking out against something which has not been proposed. Washington, D.C.'s police chief, Charles Ramsey, for instance, said in the Washington Post last year, "To begin in earnest checking immigration status, I can see where that could cause some tremendous strain. Unless there's some reasonable suspicion of a crime occurring, we need to be careful about the role we play."[17] Well, that's all true – no police department is interested in its officers randomly questioning people about their immigration status. That does not, however, have anything to do with the issue at hand.

Likewise, a spokesman for the Nashville police department is quoted as saying, "We don't have any desire for all 1,300 members of the Police Department to be quasi-INS agents."[18] Neither does anyone else.

And the police chief of Glenwood Springs, Colo., said "We have enough on our plates right now. It's not as if we're out looking for extra things to do."[19] And rightly so, which is why the proposals for greater cooperation actually represent an expansion in the abilities and resources of local police, not an expansion in responsibility.

It would seem that most law enforcement spokesmen opposing measures to expand cooperation on immigration have simply misunderstood what is at issue, partly due to [illegible] by opponents of immigration law enforcement.

And in those cases where police have genuinely come out against cooperation, their position cannot be understood apart from the political context. To get an idea of the political environment, look at former Salt Lake City police chief Ruben Ortega, who was the first law enforcement officer in the nation to request Sec. 133 training from the Immigration and Naturalization Service. The city council angrily rejected his request and he was later forced out of office. This lesson is not lost on police chiefs around the country who, of course, hold their jobs at the pleasure of their city's political officials.

Myth: Facilitating state and local cooperation with federal immigration authorities represents yet another unfunded mandate imposed by Washington.

Reality: There are indeed many unfunded mandates imposed on the states and localities, but this is not one of them. In fact, there is no "mandate" at all, since the proposals for federal/state/local cooperation on immigration are not mandatory. The proposals would facilitate cooperation between levels of government, not require the expenditure of new

money. It would be difficult to describe this objection as anything other than deliberate misrepresentation of the facts.

There is an unfunded mandate here, but it stems from the federal government's unwillingness to enforce the immigration laws, resulting in huge costs for states and localities, which are the levels of government most likely to provide the services which illegal aliens use. (see below)

Myth: Even though it's not mandatory, cooperation with federal immigration authorities will result in huge extra costs for states and localities.

Reality: Illegal immigration will always entail costs. Either government – federal, state, or local – spends money to enforce the immigration law, or government – in this case, mainly states and localities – will have to pick up the enormous costs generated by illegal immigrants.

And the costs imposed on state and local governments are significant. Incarceration of criminal aliens cost the states an estimated $624 million in 1999, only a small (and rapidly shrinking) portion of which is reimbursed by Washington through the State Criminal Alien Assistance Program.[20] In California, fully 14 percent of people in jail were non-citizens.[21]

Nor is criminal justice the only cost; primary and secondary education for illegal aliens is estimated to cost states and localities $7.4 billion per year.[22] And in 2000, border hospitals spent more than $200 million to provide emergency medical care to illegal aliens.[23]

Detaining and processing illegal and criminal aliens also costs money, and those jurisdictions that choose greater cooperation with federal authorities may well face some increased expenditures. But two factors offset this spending. First, new funding streams need to be opened up, such as fining immigration lawbreakers and seizing their assets, however modest they may be. These funds should then be returned to local law enforcement, as is the case with narcotics cases.[24] By the same token, the State Criminal Alien Assistance Program must be fully funded.

Second, the investment in better enforcement, and even the attempts to defray the costs through fines and asset seizures, will save money in the long run. Part of the payoff from consistent, comprehensive immigration law enforcement will be a reduction in the number of illegal aliens – both through deportation and voluntary departure of illegals already here, and a reduction in future arrivals.

In fact, given the enormous costs of permitting illegal immigration, it is almost certain even if cities and states bore *all* the costs of additional immigration law enforcement, they would still be getting a bargain. If California spent just half the $8 billion it spends providing services to illegal immigrants (an estimate from the 1990s that is almost

certainly higher today[25]) it would radically reduce the number of illegal immigrants residing there, thus avoiding the costs they entail.

It would seem incumbent on the federal government to decide what it wants to fund – either fully reimburse all costs borne by states and localities because of the presence of illegal aliens or provide local law enforcement with financial compensation for their role in enforcing the immigration law, a role they assume simply in the normal course of their business.

Notes

[1] http://www.irvingpd.com/ptchbdg.htm
[2] http://www.cis.org/articles/2003/illegalsrelease.html
[3] http://www.ojp.gov/bjs/sandlle.htm#personnel
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TESTIMONY OF KRIS W. KOBACH
PROFESSOR OF LAW, UNIVERSITY OF MISSOURI—KANSAS CITY
APRIL 22, 2004

STATE AND LOCAL AUTHORITY TO ENFORCE IMMIGRATION LAW: EVALUATING A UNIFIED APPROACH FOR STOPPING TERRORISTS

The terrorist attacks of September 11, 2001, underscored for all Americans the need to restore the rule of law in the immigration arena. Terrorists were able to enter the country undetected, overstay their visas with impunity, and move freely within the country without interference from local law enforcement officers. Each of these realities created a vulnerability that the hijackers of September 11 exploited.

Enforcing our nation's immigration laws is one of the most daunting challenges faced by the Federal Government. With an estimated 8-10 million illegal aliens already present in the United States and fewer than 2000 interior enforcement agents at its disposal, the Bureau of Immigration and Customs Enforcement (BICE) has a Herculean task on its hands—one that it simply cannot accomplish alone.

The assistance of state and local law enforcement agencies can mean the difference between success and failure in enforcing the immigration laws. The more than 650,000 police officers nationwide represent a massive force multiplier.

I will briefly summarize the legal authority upon which state and local police may act in rendering such assistance and then describe the scenarios in which this assistance is most crucial. I will not cover the provisions of Section 287(g) of the Immigration and Nationality Act (INA), since the scope of such delegated authority is evident on the face of the Act. Rather, I will discuss the inherent arrest authority that has been possessed and exercised by state and local police since the earliest days of federal immigration law.

It has long been widely recognized that state and local police possess the inherent authority to arrest aliens who have violated *criminal* provisions of the INA. Once the arrest is made, the police officer must contact federal immigration authorities and transfer the alien into their custody within a reasonable period of time. Bear in mind that the power to arrest, and take temporary custody of, an immigration law violator is a subset of the broader power to "enforce." This is an important distinction between inherent *arrest* authority and 287g authority to *enforce*—which includes arresting, investigating, preparing a case, and all of the other powers exercised by BICE agents.

Where some confusion has existed in recent years is on the question of whether the same authority extends to arresting aliens who have violated civil provisions of the INA that render an alien deportable. This confusion was, to some extent, fostered by an erroneous 1996 opinion of the Office of Legal Counsel (OLC) of the Department of Justice, the relevant part of which has since been withdrawn by OLC. However, the law on this question is quite clear: arresting aliens who have violated either criminal provisions of the INA or civil provisions that render an alien deportable "is within the inherent authority of the states."[1] And such inherent arrest authority has never been preempted by Congress.

This conclusion has been confirmed by every court to squarely address the issue. Indeed, it is difficult to make a persuasive case to the contrary. That said, I will proceed to offer my personal opinion as to why this conclusion is correct. I offer this legal analysis purely in my private capacity as a law professor and not as a representative of the Bush Administration.

THE INHERENT ARREST AUTHORITY POSSESSED BY STATES

[1] *See* ATTORNEY GENERAL'S REMARKS ON THE NATIONAL SECURITY ENTRY-EXIT REGISTRATION SYSTEM, Washington, D.C., June 6, 2002.

The preliminary question is whether the states have inherent power (subject to federal preemption) to make arrests for violation of federal law. That is, may state police, exercising state law authority only, make arrests for violation of federal law, or do they have power to make such arrests only insofar as they are exercising delegated federal executive power? The answer to this question is plainly the former.

The source of this authority flows from the states' status as sovereign entities. They are sovereign governments possessing all residual powers not abridged or superceded by the U.S. Constitution. The source of the state governments' power is entirely independent of the U.S. Constitution. See *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193 (1819). Moreover, the enumerated powers doctrine that constrains the powers of the federal government does not so constrain the powers of the states. Rather, the states possess what are known as "police powers," which need not be specifically enumerated. Police powers are "an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people...." *Manigault v. Springs*, 199 U.S. 473, 480 (1905). Essentially, states may take any action (consistent with their own constitutions and laws) unless there exists a prohibition in the U.S. Constitution or such action has been preempted by federal law.[2]

It is well established that the authority of state police to make arrests for violation of federal law is not limited to those situations in which they are exercising delegated federal power. Rather, such arrest authority inheres in the States' status as sovereign entities. It stems from the basic power of one sovereign to assist another sovereign. This is the same inherent authority that is exercised whenever a state law enforcement officer witnesses a federal crime being committed and makes an arrest. That officer is not acting pursuant to delegated federal power. Rather, he is exercising the inherent power of his state to assist another sovereign.

There is abundant case law on this point. Even though Congress has never authorized state police officers to make arrest for federal offenses without an arrest

[2] *See* Eriwin Chemerinsky, CONSTITUTIONAL LAW: PRINCIPLES AND PRACTICE 166, 282 (1997).

warrant, such arrests occur routinely; and the Supreme Court has recognized that state law controls the validity of such an arrest. As the Court concluded in *United States v. Di Re*, "No act of Congress lays down a general federal rule for arrest without warrant for federal offenses. None purports to supersede state law. And none applies to this arrest which, while for a federal offense, was made by a state officer accompanied by federal officers who had no power of arrest. Therefore the New York statute provides the standard by which this arrest must stand or fall." 332 U.S. 581, 591 (1948). The Court's conclusion presupposes that state officers possess the inherent authority to make warrantless arrests for federal offenses. The same assumption guided the Court in *Miller v. United States*. 357 U.S. 301, 305 (1958). As the Seventh Circuit has explained, "[state] officers have implicit authority to make federal arrests." *U.S. v. Janik*, 723 F.2d 537, 548 (7th Cir. 1983). Accordingly, they may initiate an arrest on the basis of probable cause to think that an individual has committed a federal crime. *Id.*

The Ninth and Tenth Circuits have expressed this understanding in the immigration context specifically. In *Gonzales v. City of Peoria*, the Ninth Circuit opined in an immigration case that the "general rule is that local police are not precluded from enforcing federal statutes," 722 F.2d 468, 474 (9th Cir. 1983). The Tenth Circuit has reviewed this question on several occasions, concluding squarely that a "state trooper has general investigatory authority to inquire into possible immigration violations," *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301 n.3 (10th Cir. 1984). As the Tenth Circuit has described it, there is a "preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws," *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1295 (10th Cir. 1999). And again in 2001, the Tenth Circuit reiterated that "state and local police officers [have] implicit authority within their respective jurisdictions 'to investigate and make arrests for violations of federal law, including immigration laws.'" *United States v. Santana-Garcia*, 264 F.3d 1188, 1194 (citing *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1295). None of these Tenth Circuit holdings drew any distinction between criminal violations of the INA and civil provisions that render an alien deportable.

Rather, the inherent arrest authority extends generally to both categories of federal immigration law violations.

THE ABSENCE OF CONGRESSIONAL PREEMPTION

Having established that this inherent state arrest authority exists, the only remaining question is whether such authority has been preempted by Congress. In conducting preemption analysis, courts must look for (1) express preemption by congressional statement, (2) field preemption where the federal regulatory scheme is so pervasive as to create the inference that Congress intended to leave no room for the states to supplement it, or (3) conflict preemption, where compliance with both state and federal law is impossible or state law prevents the accomplishment of congressional objectives. *See Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (plurality opinion). In all three categories, there must exist manifest congressional intent for preemption to exist.

Moreover, in the context of state arrests for violations of federal law, there is a particularly strong presumption against preemption. Normal preemption cases involve: (1) state legislation or regulation (2) that is at odds with federal purposes or statutes. However, state arrests for violations of federal law involve: (1) state *executive* action (2) that is intended to *assist* the federal government in the enforcement of federal law. The critical starting presumption must be that the federal government did not intend to deny itself any assistance that the states might offer. This presumption was explained in 1928 by Judge Learned Hand, who stated that "it would be unreasonable to suppose that [the federal government's] purpose was to deny itself any help that the states may allow." *Marsh v. United States*, 29 F.2d 172, 174 (2d Cir. 1928).

In 1996, Congress expressly put to rest any suspicion that it did not welcome state and local assistance in making immigration arrests. Congress added section 287(g) to the INA, providing for the establishment of written agreements with state law enforcement

agencies to convey federal immigration enforcement functions to such agencies. In doing so, Congress reiterated its understanding that states and localities may make immigration arrests regardless of whether a 287(g) agreement exists. Congress stated that a formal agreement is *not necessary* for "any officer or employee of a State or political subdivision of a state . . . to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States," or "otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10).

Consequently, it is hardly surprising that no appellate court has expressly ruled that states are preempted from arresting aliens for civil violations of the INA. The only case that even comes close is the 1983 opinion of the Ninth Circuit in *Gonzales v. City of Peoria*, 722 F.2d 468 (9th Cir. 1983). In *Gonzales*, the Ninth Circuit held that local police officers have the authority to arrest an alien for a violation of the criminal provisions of the INA if such an arrest is authorized under state law. In that instance, a group of persons of Mexican descent challenged a policy of the City of Peoria, Arizona, that instructed local police to arrest and detain aliens suspected of illegally entering the United States in violation of the criminal prohibitions of section 1325 of title 8. *See* 722 F.2d at 472-73. Observing that local police generally are not precluded from enforcing federal statutes and that concurrent enforcement authority is authorized where local enforcement would not impair federal regulatory interests, the court engaged in a preemption analysis to determine whether Congress had precluded local enforcement of this criminal provision of the INA. The court concluded that no such preemption had occurred. *See id.* at 475. In passing, the Ninth Circuit "assume[d] that the civil provisions of the [INA] ... constitute . . . a pervasive regulatory scheme" that suggested a congressional intent to preempt local enforcement, *id.* at 474-75. However, this possibility of field preemption was merely an *assumption*, asserted without any analysis, and made in *dictum*—entirely outside of the holding of the case (which concerned a criminal offense). It does not constitute binding precedent. And even if the Ninth Circuit had squarely reached this conclusion in 1983, such a holding would have been fatally

undermined by the court's failure to apply the strong presumption against preemption discussed above. In addition, the subsequent actions of Congress in 1996 made such a holding unsustainable.

In contrast, the case law supporting the conclusion that Congress has *not* preempted state arrests of aliens for violations of civil provisions of the INA is solid and on point. The Tenth Circuit has issued several opinions on the subject, all pointing to the conclusion that Congress has never sought to preempt the states' inherent authority to make immigration arrests for both criminal and civil violations of the INA. Its 1984 ruling in the case of *United States v. Salinas-Calderon*, 728 F.2d 1298 (10th Cir. 1984), confirmed the inherent arrest authority possessed by the states. The defendant in that case was the driver of a pickup who had been arrested for the criminal violation of transporting illegal aliens. He had been stopped by a state trooper for driving erratically. The driver and his wife were in the cab; and six passengers, none of whom spoke English, were in the back of the pickup. The defendant claimed that a state trooper did not have the authority to detain the transported passengers while he questioned them about their immigration status. In rejecting this claim, the Tenth Circuit held that a "state trooper has general investigatory authority to inquire into possible immigration violations." 728 F.2d at 1301 n.3. The court did not differentiate between criminal and civil violations. Indeed, because there is no indication in the opinion that there was any reason to believe that the alien passengers had committed any criminal violations, the court's statement appears to apply fully to civil as well as criminal violations.

The Tenth Circuit's most salient case on the preemption question is *U.S. v. Vasquez-Alvarez*, 176 F.3d 1294 (10th Cir. 1999). In that case, an Oklahoma police officer arrested the defendant because he was an "illegal alien." The officer did not know at the time whether the defendant had committed a civil or criminal violation of the INA. *Id.* at 1295. It was later discovered that the alien had illegally reentered the country after deportation, in violation of 8 U.S.C. § 1326, a criminal violation. When the government indicted the defendant, he moved to suppress his post-arrest statements, fingerprints, and identity, arguing that he was arrested in violation of 8 U.S.C. § 1252c. The defendant

claimed that a local police officer could arrest an illegal alien only in accordance with the conditions set forth in section 1252c and that because his arrest was not carried out according that provision it was unauthorized. Section 1252c authorizes state and local police to make a warrantless arrest and to detain an illegal alien if (1) the arrest is permitted by state and local law, (2) the alien is illegally present in the United States, (3) the alien was previously convicted of a felony in the United States and subsequently was deported or left the country, and (4) prior to the arrest the police officer obtains appropriate confirmation of the alien's status from federal immigration authorities. 8 U.S.C. § 1252c.

The Tenth Circuit's conclusion was unequivocal: section 1252c "does not limit or displace the preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws. Instead, section 1252c merely creates an additional vehicle for the enforcement of federal immigration law." *Vasquez-Alvarez*, 176 F.3d at 1295. The court rejected the alien's contention that all arrests not authorized by section 1252c are prohibited by it. The court reviewed the legislative history of section 1252c and analyzed that the comments of Representative Doolittle, who sponsored the floor amendment containing the text that would become section 1252c. The court concluded that the purpose of the amendment was to overcome a perceived federal limitation on this state arrest authority. However, neither Doolittle, nor the government, nor the defendant, nor the court itself had been to identify any such limitation. *Id.* at 1298-99.

The interpretation of 1252c urged by the defendant would have grossly perverted the manifest intent of Congress, which was to encourage more, not less, state involvement in the enforcement of federal immigration law. Reading into the statute an implicit congressional intent to preempt existing state arrest authority would have been entirely inconsistent with this purpose. Moreover, such an interpretation would have been inconsistent with subsequent congressional actions. As the Tenth Circuit noted, "in the months following the enactment of section 1252c, Congress passed a series of provisions designed to encourage cooperation between the federal government and the

states in the enforcement of federal immigration laws." *Id.* at 1300 (citing 8 U.S.C. §§ 1103(a)(9), (c), 1357(g)). Put succinctly, the "legislative history does not contain the slightest indication that Congress intended to displace any preexisting enforcement powers already in the hands of state and local officers." *Id.* at 1299.

The Fifth Circuit has also rejected the notion that Congress has preempted the inherent arrest authority possessed by the states. In *Lynch v. Cannatella*, 810 F.2d 1363 (5th Cir. 1987), the court considered whether 8 U.S.C. §1223(a) defined the sole process for detaining alien stowaways, thereby preempting harbor police from detaining illegal aliens as occurred in that case. The Fifth Circuit's conclusion was broad and unequivocal: "No statute precludes other federal, state, or local law enforcement agencies from taking other action to enforce this nation's immigration laws." *Id.* at 1371.

Finally, on the subject of preemption, it must be noted that the distinction between arrests by state police for criminal violations of the INA and arrests by state police for civil violations of the INA is utterly unsustainable. Any claim of field preemption would have to establish that the civil provisions of the INA create a pervasive regulatory scheme indicating congressional intent to preempt, while the criminal provisions do not. No court has ever attempted to justify such a conclusion. The INA is not separated neatly into criminal and civil jurisdictions. Nor have the regulations promulgated pursuant to the INA or the executive agencies charged with its enforcement attempted such a separation. The structure of the INA, with its numerous overlapping civil and criminal provisions, simply cannot support such a distinction.

THE VOLUNTARY NATURE OF STATE AND LOCAL ASSISTANCE

It bears reiterating that any assistance that state or local police provide to the federal government in the enforcement of federal immigration laws is entirely voluntary. There is no provision of the U.S. Code or the Code of Federal Regulations that obligates local law enforcement agencies to devote any resources to the enforcement of federal

immigration laws. This fact seems to escape those who assert that the federal government has by statute or policy imposed costly enforcement burdens on state and local government. This assertion is false. Indeed, when local law enforcement agencies do arrest and detain aliens for violations of immigration law prior to transfer to federal immigration authorities, it has been the regular practice of the federal government to reimburse such agencies for any detention costs incurred.

SITUATIONS IN WHICH ARRESTS BY LOCAL LAW ENFORCEMENT OFFICERS ARE ESSENTIAL

The two-and-a-half years that have passed since September 11, 2001, have yielded a wealth of cases in which the arrest of an alien by a state or local police officer was crucial in securing the capture of a suspected terrorist, a career criminal, or an absconder fleeing a final removal order. The role that state and local police officers play simply cannot be overstated. They are the eyes and ears of law enforcement that span the nation. They are the officers who encounter aliens in traffic stops and other routine law enforcement situations. Federal law enforcement officers simply cannot cover the same ground. The following are the most important scenarios in which state and local assistance in the enforcement of immigration law occurs.

(1) Observations of suspicious activity potentially connected to terrorism. I cannot describe the details of actual cases in this testimony. But I can offer hypothetical fact patterns that illustrate the point. For example, suppose that a police officer learns that a university student from a country that is a state sponsor of terrorism has made several purchases of significant quantities of fertilizer. He may also learn from other university students that the alien has not been attending classes. Neither of these actions constitutes a crime. However, from these circumstances, the officer may reasonably suspect that the alien has violated the terms of his student visa. His arrest and questioning of the alien, founded on the immigration violation but reflecting larger concerns about terrorist activity, would be lawful and would serve the security interests of the United States. Without the immigration violation, the officer would possess no

legal basis to make the arrest. In this type of situation, the authority to make the immigration arrest is a powerful tool that the local police officer can use when necessary to protect the public.

(2) Arrests of suspected terrorists listed on the National Criminal Information Center (NCIC) system. One of the most disturbing aspects of the story of the September 11 terrorists is the fact that three of the hijackers were accosted by local police in routine law enforcement encounters. Had the federal government possessed information regarding their possible terrorist connections, and had that information been distributed to police officers via NCIC, the terrorist plot might have been derailed. Now, the federal government does possess information that should be disseminated to state and local police officers through NCIC. For example, the National Security Entry-Exit Registration System (NSEERS) allows the federal government to determine when a high-risk alien overstays his visa or fails to report his address and activities after 30 days in the United States. The names and details of some of these NSEERS violators are now being entered into the NCIC. It is absolutely essential that state and local police officers have access to this information and that they act upon it when encountering an NSEERS violator in a traffic stop. If the alien is actively avoiding contact with law enforcement, this may be the only opportunity to stop a terrorist attack. In order for this system to work effectively, three things need to happen: (1) The vast majority of NSEERS violators need to be entered into NCIC, not just a small subset. This will require that the Compliance Office of BICE be allocated adequate resources to do the job. (2) The 30-day reporting requirement of NSEERS must be maintained. Without the 30-day requirement, the potential of the system to identify terrorists would be dramatically reduced. Indeed, many of the most important national security leads that have been generated by NSEERS were triggered by the failure of the aliens to report in after 30 days. (3) The Departments of State and Homeland Security must enter the names of aliens in the TIPOFF terrorist database into NCIC (something that has not yet occurred). (4) State and local law enforcement agencies must not adopt ill-considered policies barring their officers from making immigration arrests.

(3) Arrests of absconders. There are now more than 400,000 absconders at large in the United States. These aliens have had their day in immigration court and have disobeyed a final order of removal. The absconder problem has made a mockery of the rule of law in immigration. A substantial number of absconders have engaged in serious criminal activity in addition to their immigration violations. Most absconders have committed criminal violations of the INA. Others have committed civil violations only, if the underlying immigration violation was of a civil provision and the refusal to obey the order of removal was not willful. At the end of 2001, the Department of Justice and the INS launched the absconder initiative, which has continued under the Department of Homeland Security. Under this initiative, the process of listing absconders in NCIC was begun. Although the initiative has yielded many valuable arrests with the cooperation of state and local law enforcement, the effort has been hamstrung by the fact that the entry of names into NCIC has occurred at an alarmingly slow rate. Indeed, the number of absconders is growing faster than the entry of absconders into NCIC.

(4) Interception of alien smuggling. In recent years, the country has witnessed a number of truly horrific deaths as a consequence of alien smuggling. Victims of the trade have died from exposure in the desert, from heat and suffocation in railroad cars, and in highway accidents in overloaded and unsafe vehicles. It is often the case that smuggling activities become evident far from the border, where the only law enforcement officers likely to observe them are state or local police. Smuggling will not decrease until and unless enforcement abilities increase. State and local police can provide a critical boost to federal enforcement activities. For this to occur, officers across the country need to be made aware that they have the authority to initiate immigration smuggling arrests; and alertness to the activity of smugglers needs to be encouraged.

(5) Immigration enforcement in remote or under-served areas. Because BICE's interior enforcement agents are spread so thinly across the country, there are states that experience substantial illegal immigration but do not receive adequate enforcement attention from BICE agents. Such communities may be ill equipped to bear the costs of illegal immigration (e.g., in health care expenses and the provision of other social

services). When local law enforcement agencies can undertake limited enforcement actions in coordination with BICE officials, the resulting deterrent effect can alleviate these local costs and enable BICE to extend its enforcement reach.

In summary, it is clear that state and local police possess substantial inherent authority to make immigration arrests, in addition to the delegated powers available through section 287(g). It is also clear that the potential for closer cooperation with state and local law enforcement has not been fully exploited. Consequently, there has been a cost in the national security of the United States, as well as in the enforcement of immigration laws. I appreciate the efforts of this committee to address the issue and the opportunity to share my perspective.

Statement of Senator Patrick Leahy
Senate Judiciary Committee
Subcommittee on Immigration, Border Security and Citizenship
Hearing on "State and Local Authority to Enforce Immigration Law: Evaluating a Unified Approach for Stopping Terrorists"
April 22, 2004

The Committee today will explore whether Congress should add to the ever-increasing burdens on local law enforcement by expecting these local officers to enforce Federal civil immigration law. This is a bad idea and Congress should reject it.

We should be clear at the outset that law enforcement officers *already* have the authority to detain and arrest aliens who violate the criminal provisions of the Immigration and Nationality Act, or who violate any other criminal law. Indeed, the Law Enforcement Support Center in my state of Vermont operates 24 hours a day, seven days a week to provide criminal history information regarding aliens to state and local law enforcement officers around the nation.

I think that if you polled local law enforcement officers, most would say they do not want the additional authority of detaining and arresting aliens who have overstayed their visas but are doing no harm in their communities. I know that police chiefs and sheriffs across the country have opposed this additional authority, in places as varied as High Point, North Carolina; Putnam County, Tennessee; Cobb County, Georgia; and Lenexa and Overland Park, Kansas. The California Police Chiefs Association and the Los Angeles, San Diego, New York, Houston, San Antonio, Boston, Philadelphia, Chicago and Washington, D.C. police departments, among many others, have also spoken out against enlisting state and local authorities to enforce civil immigration laws.

The widespread opposition to this concept should come as no surprise. Many police departments have spent years building trust among immigrant communities so that all residents in their communities – including those who are not here legally – will feel free to report and assist police in solving crimes. They have gone about the business of protecting their communities, and left the Federal government to enforce civil immigration laws. This division of labor makes a great deal of sense, and the burden faced by those who would change it should be awfully high.

It is particularly absurd to add this burden to local law enforcement at a time when the Republican Congress and the Bush Administration are failing to provide sufficient aid to first responders. Estimates show that the U.S. will fall more than $98 billion short of meeting critical emergency responder needs over the next five years if current funding levels are not increased. Clearly, the domestic preparedness funds available are still not enough to protect from, prepare for and respond to future domestic terrorist attacks anywhere on American soil, let alone take on the additional burden of enforcing civil immigration laws.

Beyond the burden this would place on local law enforcement, immigrant victims of crime could suffer tremendously if the responsibility for enforcing our immigration laws shifts to states and localities. How often will crime victims who are here illegally come forward to the police? This concern is particularly acute in the case of battered immigrant women, whom Congress has taken great steps to protect under the Violence Against Women Act. We will undo the progress we have made in that area if immigrant women who are beaten by their husbands are afraid to contact police officers. For that reason, the Vermont Network Against Domestic Violence and Sexual Assault opposes the legislation we will discuss today.

In a related question, how will police gain the cooperation of undocumented aliens who witness or have information about a crime? The chilling effect of adopting this new policy could be widespread and deeply harmful to law enforcement and immigrants alike. Moreover, we cannot even be confident that this chilling effect would impact only illegal aliens, since many immigrants who are here legally may be confused about their status or about the law itself.

In conclusion, I have deep reservations about heading down this path, and I hope that Congress will not do so.

POLICY
and Legislation

The CLEAR Act: A Slippery Slope

by LULAC National Director of Policy and Legislation Dr. Gabriela D. Lemus

The Clear Law Enforcement for Criminal Alien Removal ("CLEAR") Act (H.R. 2671), currently under discussion in the House of Representatives, proposes to enlist state and local police officers to assist in the enforcement of civil immigration laws. Many fear that this would start a slippery slope which would lead to the further erosion of civil liberities in our country. Through a combination of carrots and sticks, state and local governments would be preempted by virtue of the federal government's lack of adequate staff and funding to its agencies to alter the general mandates of their law enforcement departments. Should the CLEAR Act be passed, local law enforcement personnel and resources would be over-extended and it would potentially open the door for racial profiling as state and local law enforcement would be forced to target anyone who looked or seemed like an immigrant, whether they are a criminal or not.

The CLEAR Act would impose serious penalties on local law enforcement should they fail to enforce civil enforcement of immigration laws. For example, local jurisdictions could potentially lose federal State Criminal Alien Assistance Program (SCAAP) funding that allows local law enforcement precincts to be reimbursed for detaining deportable criminals. Alternatively, if the local law enforcement jurisdictions are successful in making arrests by enforcing federal civil immigration laws they would be able to split half of the money collected from any civil penalties or forfeitures with the state. However, if the experience of the splitting of assets between federal, state, and local law enforcement is similar to the way it is done in drug cases, we can expect to see disagreements among agencies as competition increases between them.

Under the current law, state and local law enforcement are able to enforce criminal laws against any person, irrespective of their immigration status. The CLEAR Act pushes this ability one step further by placing state and local law enforcement in the position of first responders in the area of civil immigration law enforcement. Additionally, the state and local law enforcement officers would not require any training and would have immunity from any civil rights violations that arise out of pursuing undocumented immigrants who have committed no crime save lacking documentation.

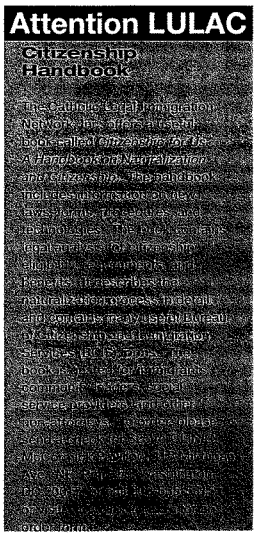
A series of problems occur when local law enforcement becomes involved in the enforcement of federal civil immigration laws. In the case of the proposed CLEAR Act, there is a strong likelihood that communities would witness an increase in racial profiling which could have unexpected consequences in Latino communities. For example, battered immigrant Latinas may be too afraid to report abuse because they would fear deportation by local law enforcement. A survey by the National Organization of Women (NOW) Legal Defense Fund confirmed the prevalence of this fear of deportation was the most significant reason why battered immigrant women do not report their abusers.

In order for public safety to be assured, it is critical that local law enforcement officers gain the trust of the communities that they serve. There have been multiple examples throughout the country of situations where the fear of local law enforcement has lead to either outright increases of abusive patterns in Latino communities or whereby cases cannot be resolved because witnesses will not come forward. Instances of Latinos being targeted for crime and harassment would invariably increase should the CLEAR Act be passed, and police departments would be hard-pressed to solve the crimes. Police officers would be placed in a situation that contradicts their primary job, which is to ensure the public safety of the communities they serve.

It is virtually inevitable that the way the CLEAR Act is currently worded, it would create an environment of distrust in communities of color, particularly in Latino neighborhoods. Police departments would have a difficult time gaining the confidence of immigrants and their families, as well as of those who simply look or seem like immigrants. The National League of Cities and numerous police departments, ranging from Los Angeles to Washington, D.C., have clearly stated that they oppose the CLEAR Act for precisely those reasons.

"Battered immigrant Latinas may be too afraid to report abuse because they would fear deportation by local law enforcement."

It is indisputable that the American public must be safeguarded by the government from terrorism. It is also indisputable that towns and cities across the nation must be safeguarded against common criminals. There are clear distinctions between the role of federal, state, and local government roles in public safety. Creating and reinforcing an environment where each has a clear delineation of their duties and safeguarding civil rights will better enhance the ability of the United States to protect the residents within its borders.



Statement of Michelle Malkin, Investigative Journalist and Author
Senate Judiciary Subcommittee on Immigration, Border Security, and Citizenship
April 22, 2004

Mr. Chairman and members of the subcommittee, thank you for the privilege of testifying before this subcommittee. Senate Bill 1906, the Homeland Security Enhancement Act, closely tracks many of the recommendations I made in my recent book *Invasion* on how to fix systemic failures to detect, detain, and deport immigration violators who undermine our safety and our values.

I approach today's topic from two levels – as an investigative journalist who has reported extensively on the consequences of lax immigration enforcement, and as a second-generation American whose immigrant parents arrived legally in this great country three decades ago. My professional interest has been the exposure of weaknesses, lapses, loopholes, and obstacles in our immigration system that imperil public safety and national security. My personal interest—shared by untold numbers of naturalized Americans and their families—is in seeing these problems remedied effectively so that the American dream remains accessible to those who embrace freedom and respect the rule of law.

The "Other Wall"

There has been much public debate over the past few weeks about the "wall" of separation between the CIA and FBI. This bureaucratic barricade between agencies prevented crucial information-sharing about potential terrorist threats. Three thousand innocent men, women, and children paid for this policy with their lives on September 11,

2001. The USA PATRIOT Act tore down this infamous wall, but there is another dangerous barrier that impedes communications between investigators and undermines our safety and security: the perceived wall between federal immigration authorities and state and local law enforcement officials. Terrorists and criminal aliens alike have benefited directly and indirectly from this barrier.

When September 11 hijackers Hani Hanjour and Khalid Almihdhar needed help getting fraudulent government-issued photo IDs before embarking on their suicide mission, they hopped into a van and headed to the parking lot of a 7-Eleven store in Falls Church, Va. That's where scores of migrant day laborers – often erroneously referred to as "undocumented" -- ply bogus identity papers to other illegal aliens from around the world. During my research, I visited this 7-Eleven. It is a stone's throw from the Pentagon, where Hanjour and Almihdhar deliberately crash-landed American Airlines Flight 77. The parking lot was, as usual, filled with "undocumented" day laborers. Local cops I interviewed suspect that most of these men are here illegally and that they continue to facilitate trade in fake identification documents. But nobody arrests them.

This is an all-too-familiar scene from the border states to the heartland. Public officials talk tough about the need for improved cooperation among local, state and federal authorities to secure the homeland. Yet, several areas of the country serve as safe havens for criminal aliens -- and as magnets for immigration outlaws with even more nefarious aspirations.

The overwhelming majority of illegal aliens, of course, have no connection to terrorism. But they *are* breaking the law. And one of the key lessons of 9/11 was that our continued

high tolerance for massive illegal immigration gives terrorists and criminal aliens deadly cover. Remember: More than half of the 48 Islamic radicals convicted or tied to recent terrorist plots in the United States over the past decade either were themselves illegal aliens or relied on illegals to get fake IDs. Immigration violators participated in the first attack on the World Trade Center, the Los Angeles Millenium bombing plot, and the New York subway bombing conspiracy. Three of the 9/11 hijackers were here illegally; two had previous immigration violations.

Many of these operatives who were here in violation of our immigration laws were not under investigation for terrorism at the time they hatched and carried out their plots. Three 9/11 hijackers – Mohammed Atta, Hani Hanjour, and Ziad Jarrah—came into contact with state and local police before the attacks for speeding. Atta and Hanjour were visa violators. How many lives might have been saved if there had been collaboration between local or state law enforcement officers and the feds to detain them on immigration charges?

Victims of the Other Wall

The dangerous public-safety impact of the Other Wall reaches beyond terrorism. Illegal aliens, some with long criminal records, were the perpetrators of the savage gang-rape of a Queens mother in Flushing Meadows-Corona Park last December. The NYPD had previously arrested three of the illegal aliens numerous times for such crimes as assault, attempted robbery, criminal trespass, illegal gun possession, and drug offenses. But in keeping with the tradition of the Other Wall, local cops never notified the then-INS. If a

local/federal cooperation scheme had been in place, some of the accused might have been turned over to federal immigration authorities for deportation before the rape occurred.

Last spring, I reported on the case of David Montiel Cruz a.k.a. Enrique Sosa Alvarez, an illegal alien from Mexico who dragged a 9-year-old girl from her San Jose, Calif., home in broad daylight, and is charged with kidnapping and raping her over three days. Cruz is scheduled to stand trial later this summer. The case stands out as a textbook example of the continued failures of interior immigration enforcement. According to the San Jose Police Department's official policy manual, under section L7911 of the line and operations procedure, officers may not "initiate police action when the primary objective is directed towards discovering the alien status of a person." Translation: San Jose cops are prevented from proactively contacting federal immigration authorities if they suspect violations of immigration law in the course of their duties.

"Our department is very lenient" when it comes to illegal aliens, San Jose Police Department spokeswoman Katherine Unger told me. In fact, San Jose is one of the police departments that refused to cooperate with the Justice Department's effort to interview thousands of illegal aliens from terror-friendly and terror-sponsoring nations in the wake of the Sept. 11 attacks. "We don't do anything on immigration," Unger lamented. "It's not, you know, politically correct. It's frustrating."

It's important to note that the Other Wall is not just a one-way obstruction. In untold instances, cops have risked punishment by their politically correct superiors and reached out to federal immigration authorities—only to be ignored or rebuffed. On Memorial Day weekend 2002, for example, with the nation on high alert, NYPD officers contacted the

then-INS and attempted to turn in seven illegal aliens from the Middle East who had been arrested with false IDs in a dilapidated van near a major tunnel. The agency ordered furious cops to release the men who were all admitted illegal aliens. Just this week, four illegal aliens from Mexico suspected of felony crimes walked free in White County, Arkansas, after federal immigration officials explained to local law enforcement officers that they cannot automatically expel the men just because they are illegal. "I had to hand this guy his car keys and allow him to walk out the door," Detective Randy Rudisill said. "He is not even supposed to be in this country, and he admitted he was here illegally, but we can't do a thing about it. Our hands are tied."

Even if every state were to enter into cooperative agreements with the federal government to train the nation's 600,000 state and local law enforcement officers to enforce immigration law, little would change without an effective system of detention and deportation that puts an end to the standard procedure of "catch and release." This policy undermines homeland security and has cost lives:

-- Victor Manuel Batres Martinez a.k.a. Maximiliano Silerio Esparza, an illegal alien from Mexico, was convicted a year ago on charges of brutally raping two nuns who were praying on a walking path in Klamath Falls, Ore. -- and then strangling one of them to death with her own rosary beads. Esparza had been detained twice last year by the U.S. Border Patrol, but was released both times. Martinez/Esparza was let loose under the federal government's cost-saving catch-and-release policy. He previously served time in jail in California, had been arrested later in Portland on drug charges, and had an outstanding warrant for his arrest at the time of the alleged rapes and murder. Federal law

mandates that immigration authorities detain criminal aliens with extensive rap sheets such as Martinez/Esparza's until their deportation outside the U.S. But following standard procedure, Esparza was set free in violation of the law.

-- Two years ago next week, Los Angeles sheriff's deputy David March pulled over Armando Garcia for a routine traffic stop in a San Gabriel Valley suburb. Garcia walked toward the officer, pulled out a 9 mm semiautomatic pistol, and fired at close range several times before fleeing. The deputy died of gunshot wounds to the head. Garcia was an illegal alien from Mexico who had been previously deported three times in 1992, 1994 and 2001 and convicted of two felonies while in America. Garcia had an extensive criminal history, from drug dealing and weapons violations to suspected murder. Following "standard procedure," neither the INS nor the U.S. Attorney's Office in Los Angeles took any measures to keep Garcia off the streets and enforce a federal law requiring criminal prosecution for illegal re-entry into the United States. Garcia remains a fugitive.

-- In August 2002, Miguel Angel Heredia Juarez, an illegal alien from Mexico, was convicted for viciously raping and beating a 19-year old North Bend, Wash., woman. Juarez was on probation at the time, after serving time in prison for threatening to kill someone. Juarez had been previously convicted of four other felonies, including theft and assault, since illegally crossing the Mexican border five years ago. Criminal aliens are supposed to be taken immediately into INS custody after serving their sentences, but as the Justice Department's Inspector General reported, the INS lets tens of thousands of them run loose. In fact, following "standard procedure," federal immigration authorities'

failure to track foreign-born inmates led to the release of 35,318 criminal aliens into the general population in 2000 -- roughly one-third of whom went on to commit serious crimes.

Finally, for aliens actually ordered deported in Immigration Court, who were not granted relief from removal, and who exhausted all of their lengthy appeals, the Justice Department's inspector general found that:

- 97 percent of *all asylum-seekers from ANY country* who were released from immigration custody were never apprehended again by the federal government, and were never deported;
- 94 percent of *aliens from terrorist-supporting countries* who were released from immigration detention were never found again, and were never deported;
- and 87 percent of *all aliens released from immigration custody* were never caught again, and were never deported.

Even when deportation absconders are tracked down, for example, they are often let go because there's nowhere to put them. One official of a bonding company said the feds were freeing 50 percent of the aliens he had been ordered to track down and turn in since September 11.

Arresting and detaining illegal aliens and criminal alien residents is long overdue. But as long as catch-and-release is the order of the day, all the help in the world from local and state officers won't help federal immigration authorities control the problem. The bottom line is that increased enforcement and collaboration cannot succeed without greatly expanding the federal government's current 20,000-bed detention capacity.

Breaching the Other Wall: The Malvo Case

What happens when the wall between federal immigration authorities and local law enforcement officers is surmounted? In at least one case, the decision likely saved untold lives. A year and a half ago, I reported on the extraordinary circumstances surrounding convicted D.C.-area snipers Lee Malvo and John Mohammed.

On Dec. 19, 2001, Bellingham, Wash., police detective Al Jensen called the Border Patrol for assistance during a domestic dispute involving Malvo, his mother, and Mohammed. The detective suspected that Malvo and his mother were illegal aliens; Olson and Ruiz confirmed their unlawful status and processed them as deportable aliens. Malvo and his mother were fingerprinted and photographed (and later released pending deportation proceedings against the recommendation of the Border Patrol).

As we all know now, Malvo and Mohammed went on to carry out a bloody rampage that terrorized the greater Washington, D.C. area and took the lives of ten innocent people. The toll probably would have been higher if not for police detective Jensen's decision to call the Border Patrol and have Malvo processed as an illegal alien. Malvo's prints, taken by the Border Patrol and filed in the former INS/now-BICE database called IDENT, were found at an Alabama liquor store crime scene. The prints were critical in unraveling the sniper case.

Neither Det. Jensen nor the Border Patrol agents could have foreseen the havoc Malvo helped create. But in the course of doing their jobs together, one local cop and two federal immigration officers may have averted an even greater public-safety disaster by just doing their jobs. This kind of unimpeded collaboration is especially necessary in a post-September 11 era when the Department of Homeland Security's interior

enforcement forces remain woefully understaffed and rampant illegal immigration remains unchecked. According to the former INS' statistical yearbook, the federal government sent home 184,775 illegal aliens and criminal alien residents in the year 2000. But over 800,000 illegal aliens were entering the country illegally *every year* during the late 1990s. BICE's 2,000 interior enforcement agents are no match for this onslaught.

The Malvo case underscores the importance of basic, routine cooperation between local and state police and federal immigration authorities. Police officers are sworn to uphold the law and to enforce it when they have reason to believe that the law is being broken. Local police do not sit back and watch bank robbers escape because they lack jurisdiction over a federal crime. A state trooper wouldn't look the other way if he spotted someone breaking into a US Postal Service mailbox or committing arson in a national forest. Just because immigration law enforcement is not a local cop's primary responsibility does not mean that he must or should ignore indications that these federal laws are being broken.

Senate Bill 1906, the Homeland Security Enhancement Act, would help break down the "Other Wall" by affirming the inherent authority of states and their political subdivisions to apprehend, arrest, detain or transfer illegal aliens to federal custody. It would increase criminal penalties for illegal entry into the US; improve information-sharing among local, state, and federal law enforcement officials on immigration violators; and it would address the federal detention space crunch. These steps all reflect a fundamental principle that must be adopted to make homeland security meaningful—namely, that immigration law-breaking must carry real consequences in a post-September 11 world.

MALDEF

Mexican American Legal Defense and Educational Fund 1717 K St., NW, Suite 311 Washington, D.C. 20036, (202) 293-2828, (202) 293-2849 FAX

TESTIMONY

Submitted to the Senate Judiciary Committee

Immigration, Border Security and Citizenship Subcommittee

Hearing

On the

Coordinated Enforcement of Immigration Laws to Stop Terrorists

By

KATHERINE CULLITON

Legislative Staff Attorney

Mexican American Legal Defense and Educational Fund

April 22, 2004

MALDEF Opposes Using First Responders To Enforce Federal Civil Immigration Laws

Proponents of the Clear Law Enforcement for Criminal Alien Removal Act (H.R. 2671) and its Senate counterpart, the Homeland Security Enhancement Act of 2003 (S. 1906) (collectively "CLEAR" Act) tell horror stories alleging that local police are not empowered to catch criminals who happen to be undocumented immigrants. None of the cases being put forward to justify the CLEAR Act would be solved by state and local police enforcing civil immigration laws. State and local police already have all the legal power needed to make the arrests necessary. We do not need a change in the laws for the criminals described in these horror stories to have been arrested and prosecuted for their crimes and any of their immigration law violations.[1]

The CLEAR Act and similar proposals would have state and local police target all immigrants, criminals and non-criminals alike. There are approximately eight million undocumented immigrants in the U.S. It is a civil violation to be living in the U.S. without legal authorization. The overwhelming majority of these immigrants are hard-working families trying to make a better life for themselves. They are not criminals.

If the CLEAR Act were enacted, first responders would have to use precious national and local security resources to reign in immigrants instead of doing the police work needed to keep America safe. Police across the country are opposed to such policies, because such policies would lead to a decrease in trust between police departments and immigrant communities and an increase in vulnerability to crime and harassment in immigrant communities, for immigrants and those who "look like" immigrants, decreasing security for everyone.[2] MALDEF, a national, nonpartisan, nonprofit organization that has been defending the civil rights of Latinos for 35 years, is also opposed to the CLEAR Act and similar proposals, for very many of the same reasons, as set forth in the legal and factual analysis below.

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[1] See Discussion of 1996 Department of Justice Office of Legal Counsel Opinion, at notes 24-25, infra.

[2] National Immigration Forum, Law Enforcement, State and Local Officials, Community Leaders, Editorial Boards, and Opinion Writers Voice Opposition to Local Enforcement of Immigration Laws (July 31, 2003). Here are some representative quotes: Sgt. John Pasquariello, Los Angeles Police Dept.: "Because of our immigrant population here and our diverse communities, we don't want to alienate anybody, or give anyone fear... That's just not our policy. Hasn't been for twenty years." Cpt. Maria Alvarenga-Watkins (ret.), Metropolitan Washington (DC) Police Dept.: "Our government has an important responsibility to act on the very real threats of terrorism that are of concern to all of us. But I, and many others in the law enforcement community, strongly believe that deputizing police officers to be INS agents will not help this fight against terrorism but will make our communities less safe and our country no more secure." Lt. Bill Schwartz, Miami (FL) Police Dept.: "We will not function in an INS capacity. It's not our job. Our job is to solve crimes. We have way too much to do to be acting as INS agents."

Immigrant/Minority Communities Would Be Less Safe

Latinos know from tough experience that when local police enforce federal civil immigration laws, neighborhoods become less safe. Crime victims are further victimized by being unable to safely report the crimes against them. Witnesses of crimes committed against immigrants and citizens are afraid to come forward for fear they will be deported. Some examples of these situations are:

- Mexican national Petra Martinez was murdered along with her two-year-old son, Urel Martin, on July 19, 2003, in their home in a heavily-immigrant neighborhood in Clearwater, Florida. Local police believe that some members of the community have information, but are afraid to come forward for fear of immigration repercussions.[3]
- "Jorge" is a sixteen-year-old boy who went to the police after escaping a kidnapping situation, in which he was held captive and tortured by a gang of boys for days. Instead of helping Jorge, the police turned him over to immigration and although he was a crime victim with no criminal record himself, he was sent to a maximum-security juvenile facility in Spokane, Washington.[4]
- In Maine, a Honduran-American victim of robbery called the police. The police then tried to determine if he was legal and turned him over to the former Immigration and Naturalization Service ("INS"). He was eventually released, but he was also living with several other immigrants who were out of status, and were taken into INS custody. Such practices have an extreme chilling effect.[5]
- On February 27, 2003, Lesley Orloff, Director of the National Organization for Women's ("NOW") Legal Defense Fund's Immigrant Women Program testified that battered immigrant women's fear of reporting abuse for fear of retaliation by their abusers is compounded by fear of deportation, and that: "These issues preclude many battered immigrant women from requesting the help they need to counter the domestic violence they are experiencing in their lives."[6]
- The NOW Legal Defense Fund survey demonstrated that fear of deportation was the most significant reason that battered immigrant women are much less likely to report abuse. This reality is exacerbated by state and local police threatening to enforce

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[3] Clearwater Police Department's Hispanic Outreach officer William Farias said he "wasn't surprised people were hesitant to talk. . . . [C]ultural differences and fear of deportation often keep undocumented immigrants from coming forward." N. Gregoire, "Police Appeal For Clues In Slaying Of Mom, Son," Tampa Tribune (July 22, 2003).

[4] National Immigration Forum, State and Local Police Enforcing [Civil] Immigration Laws, Stories from Around the Nation (Aug. 5, 2003) at p. 7.

[5] Id. at p. 4.

[6] L. Orloff, Safety Implications of Police Response to Calls for Help from Battered Immigrants, Testimony Before the House Judiciary Committee, Subcommittee on Immigration, Border Security and Claims, New York City's "Sanctuary" Policy and the Effect of Such Policies on Public Safety, Law Enforcement, and Immigration (Feb. 27, 2003) at p. 26 (www.house.gov/judiciary/85287.PDF).

civil immigration laws, and is in direct contradiction to the legal protections for immigrant women set forth in the Violence Against Women Act.[7]

Because community policing, i.e., building trust between police officers and the communities they patrol, is such a valuable tool for public safety, numerous police departments across the country have made public statements against becoming involved in civil immigration enforcement.[8]

Increased Racial Profiling is Foreseeable

Not only is safety compromised for Latinos and other minority/immigrant families and communities; to make matters worse, law enforcement's use of racial profiling increases when state and local police think they are charged with enforcing federal civil immigration laws. For example:

- This past May in Riverside, California, local police officers demanded to see documents of all Latinos working in an avocado grove, harassing citizens, legal residents and undocumented immigrants alike and threatening to turn them over to the Border Patrol. One undocumented immigrant ran and was then assaulted by the local police.[9] The Riverside Sheriff told the press that his department policy was that his officers should not be enforcing civil immigration laws, but the officers were confused by the statements of Attorney General Ashcroft.
- Prior to 9/11, Latino civil rights groups reported a national trend of case after case of racial profiling of Latinos (including citizens and legal residents from all walks of life) when state and local police became involved in enforcement of federal civil immigration laws. For example, in Chandler, Arizona, police tried to assist the INS in raids and the Arizona Attorney General later found that residents were stopped repeatedly "for no other reason than their skin color or Mexican appearance or use of Spanish language."[10] In a Katy, Texas joint police-INS operation, local police stopped individuals in vehicles and in street sweeps based on Hispanic appearance only. This type of discrimination is prohibited by the U.S. Constitution.[11]

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[7] Id. at pp. 30-38.
[8] See, e.g. Statements cited at note 2, supra.
[9] "Sheriff Brutality Case Renews Call for Police Conduct Guidelines; MALDEF Opposes CLEAR Act," MALDEF Newsletter for Fall 2003 (Sept. 2003).
[10] National Council of La Raza ("NCLR"), Immigration Enforcement by Local Police: The Impact on the Civil Rights of Latinos, Issue Brief No. 9 (Feb. 2003), at pp. 11-13. Selective enforcement of immigration laws by federal entities is also unconstitutional, and the problem is worse when state and local police, with no training in immigration and no federal oversight or accountability, try to enforce civil immigration laws. Leadership Conference on Civil Rights ("LCCR"), Justice on Trial: Racial Disparities in the American Criminal Justice System (LCCR, 2000) at Ch. I, Race and Police, 4.
[11] Id.

- Since 9/11, across the South, state and local police have been stopping Latinos and demanding their immigration papers, through the practice of racial profiling.[12]
- When state and local police think they can enforce federal civil immigration laws, racial profiling of those who "look like" immigrants is highly foreseeable.[13]

Racial profiling is foreseeable because the CLEAR Act would have local police performing a role for which they are ill-equipped and have little or no training. When state and local police interact with immigrants, their actions are subject to strict scrutiny.[14] Despite this high standard, many local police rely on race and national origin in determining who to detain, question, or arrest.

Local police cannot properly discern between who is an asylum seeker,[15] who has been the victim of human trafficking and is entitled to the new T-visa,[16] who is out of status because their papers were mis-processed or lost by the former INS, which was notorious for the inaccuracy of its records,[17] who has valid immigration appeal rights,[18] and who is

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[12] MALDEF, §2, Civil Rights Concerns Within the Department of Homeland Security (Feb. 25, 2003)(see e.g. Lopez v. City of Rogers, Civil Action No. 01-5061 (W.D.Ark. 2002)). See also LCCR, Wrong Then, Wrong Now: Racial Profiling Before & After September 11, 2001 (Feb. 2003)(available at www.civilrights.org).

[13] LCCR, Comments to Interim Rule Titled "Abbreviation or Waiver of Training for State or Local Law Enforcement Officers Authorized To Enforce Immigration Law During a Mass Influx of Aliens" INS No. 2241-02; AG Order No. 2659-2003; RIN 1115-AG84 (February 26, 2003), filed April 28, 2003.

[14] Justice on Trial: Racial Disparities in the American Criminal Justice System (LCCR, 2000) at Ch. I, Race and Police, p. 4.

[15] T. Wenski & S. Schiff, Refugees: Forced Papers May Be the Only Way to Safety, Miami Herald (Op-Ed., Sept. 15, 2003)(asylum seekers are not required to carry legal documentation because they are fleeing persecution; many World War II asylees arrived with false or no documentation); See also Physicians for Human Rights, From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers (June 2003)(abusive detention conditions; detention of asylum seekers violates U.S. and international law)(available at www.prusa.org); Lawyers' Committee for Human Rights ("LCHR"), Is this America? The Denial of Due Process Rights to Asylum Seekers in the United States (Oct. 2000)(available at www.lchr.org).

[16] See Attorney General Ashcroft, News Conference Regarding Human Trafficking (Jan. 24, 2002)(www.usdoj.gov/ag/speeches/2002/012402newsconferenceregardinghumantrafficking.htm) (unveiling the new T-visa program). See also Int'l. Human Rights Institute, De Paul Univ. College of Law, In Modern Bondage: Sex Trafficking in the Americas (2002). Trafficking in persons — also known as "human trafficking" — is a form of modern-day slavery. Traffickers often prey on individuals who are poor, frequently unemployed or underemployed, and who may lack access to social safety nets, predominantly women and children in certain countries. Victims are often lured with false promises of good jobs and better lives, and then forced to work under brutal and inhuman conditions. (www.usdoj.gov/trafficking.htm.)

[17] See, e.g., Testimony of Richard Stana, Director, Justice Issues, General Accounting Office, Before the House Judiciary Committee, Subcommittee on Immigration, Border Security and Claims, Immigration and Naturalization Service: Overview of Recurring Management Challenges (Hearing on INS Performance Issues, Oct. 17, 2002) (www.house.gov/judiciary/75762.pdf.)

without documentation with no remedies yet still deserves the due process protections that the U.S. Constitution ensures for every person under the Bill of Rights.[19] Local police are overwhelmed with public safety and community policing needs, and they are simply not properly trained in immigration laws. Without proper training, federal oversight and accountability,[20] many officers simply choose to demand immigration documents from those who "look foreign," which is a determination based on race, ethnicity and national origin.

Section 109 of the CLEAR Act expressly states that training would not be required before local police are tasked to enforce federal civil immigration laws, breaking the model currently set forth under the Immigration and Nationality Act ("INA"). Section 1357(g) of the INA permits the use of state and local police to enforce federal civil immigration law only under the limited statutory circumstances of a properly signed Memorandum of Understanding ("MOU"), which requires their training in the complexities of federal civil immigration laws.[21]

In contrast, the CLEAR Act would break the MOU rules requiring training under the INA, and it would completely gut civil rights protections in the process. Its sponsors acknowledge that racial profiling is foreseeable under these circumstances. In sum, while the CLEAR Act would not increase public safety or national security, it would provide an excuse to harass Latinos.

Enforcing Civil Immigration Laws Falls Under the Exclusive Jurisdiction of the Federal Government

For the reasons discussed above, MALDEF urges Congress to vote against any policy that would encourage state and local police to become federal civil immigration law enforcers. This would be very dangerous public policy. Congress should instead clarify that immigration enforcement is the job of the federal government, through the newly-created Department of Homeland Security ("DHS"). Federal law enforcement should concentrate on identifying the individuals who are most dangerous. Instead of targeting

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[18] See e.g. Padilla v. Ridge, Complaint No. ___ (S.D. Tex. 2003)(class action of persons with valid immigration rights approved by the judiciary unable to receive documentation from the DHS due to backlogs and other breaches of due process rights under the 4th Amendment of the U.S. Constitution).

[19] LCHR, A Year of Loss: Reexamining Civil Liberties Since September 11 (Sept. 5, 2002), Ch. 3 (available at www.lchr.org).

[20] See Discussion of the Memorandum of Understanding provisions under the Immigration and Nationality Act, infra.

[21] 8 U.S.C.A. §1357(g) and See Testimony of Under Secretary of Border and Security Asa Hutchinson, Before the House Judiciary Committee Subcommittee on Immigration, Claims and Border Security (April 10, 2003)(reported in 80 Interpreter Release 540 (April 14, 2003)); See also 8 U.S.C.A §1357(g)(1)(may carry out functions only to the extent consistent with State and local law); §1357(g)(2)(requiring certification of adequate training regarding enforcement of Federal civil immigration laws); §1357(g)(3)(subject to direction and supervision of Attorney General); and §1357(g)(4)(MOU must set forth duties and limits and agency powers in writing).

or profiling all immigrants, a more effective strategy would be to investigate suspicious behavior in order to find the real terrorists.[22]

The CLEAR Act and similar proposals would not only decrease public safety and increase racial profiling, they would also contradict well-settled Supreme Court doctrine that civil immigration enforcement falls under the exclusive jurisdiction of the federal government. As the Department of Justice and the former INS acknowledged in their own rule-making procedure as recently as January of this year, the federal government and Congress have plenary power over immigration, and the States may not interfere.[23]

In 1996, the Department of Justice ("DOJ") Office of Legal Counsel issued a legal opinion clarifying that state and local police may not enforce federal civil immigration laws, which falls under the exclusive jurisdiction of the federal government.[24] The DOJ clarified that state and local police may assist only in cases of criminal violations of federal immigration laws, under the circumstances of a Terry stop; or in cases of emergency, if a special deputization has been undertaken by Justice and supervised by federal officials; or if an exceptional memorandum of understanding has been agreed to, in accordance with Section 1357(g) of the INA, which was enacted in 1996.[25]

However, during a June 2002 press conference, Attorney General Ashcroft expressed a different sentiment, and stated that he thought that state and local police have "inherent authority" to enforce federal civil immigration laws.[26] Since then, the Department of Justice answered a Freedom of Information Act ("FOIA") request as to the basis of this

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[22] Migration Policy Institute, America's Challenge: Domestic Security, Civil Liberties and National Unity After September 11th (June 2003)(available at www.migrationpolicy.org) (citing national security experts such as Vincent Cannistraro, former head of counter-terrorism for the Central Intelligence Agency).

[23] Immigration and Naturalization Service, Final Rule, Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities, Dept. of Justice, Vol. 68, No. 19 Federal Register 4364 (Jan. 29, 2003), in which the Department of Justice and the Immigration and Naturalization Service ("INS") published the following analysis:

> "Federal control over matters regarding aliens and immigration is plenary and exclusive. 'Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere.' *Nyquist v. Mauclet*, 432 U.S. 1, 10 (1977); *see* also, e.g., *Matthews v. Diaz*, 426 U.S. 67, 81 (1976)('[T]he responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the federal government.')."

[24] DOJ, Memorandum Opinion for the United States Attorney Southern District of California, Assistance by State and Local Police in Apprehending Illegal Aliens (Feb. 5, 1006)[hereinafter "1996 DOJ Memorandum Opinion"]

[25] Id. (note that criminals, including those described by the CLEAR Act sponsors, could be apprehended by state and local police, and their immigration status subsequently checked, under these exceptions).

[26] Federal News Service, Press Conference With U.S. Attorney General John Ashcroft and James Ziglar, Commissioner, Immigration and Naturalization Service Re: Tracking of Foreign Visitors, June 5, 2002.

idea by denying access to the documents underlying this novel interpretation. This FOIA request is now the subject of federal litigation,[27] and a second FOIA request, filed by the ACLU and numerous other groups, is still pending.[28] During House Judiciary hearings last June, Attorney General Ashcroft did not answer Representative Linda Sanchez' question about the basis of his idea that state and local police have "inherent authority" to enforce federal civil immigration laws. Representative Sanchez asked the question because the Attorney General's statement has led to increased racial profiling and harassment of Latino citizens and immigrants alike.[29] But Attorney General Ashcroft avoided answering her question as to the basis of his idea.

Since the Attorney General's interpretation contradicts well-established Supreme Court doctrine about the exclusive federal plenary power to regulate immigration under the U.S. Constitution, it may be that the only legal basis for local law enforcement's expanded involvement in civil immigration matters is that which the Congress would put into place through the CLEAR Act.[30] However, in any case, Congress may not legislate in contravention of the U.S. Constitution.[31]

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[27] Freedom of Information Act ("FOIA") Request to the Department of Justice, requesting records of the basis of Attorney General Ashcroft's statement, as representatives of the news media (American Civil Liberties Union ("ACLU"), with MALDEF and NCLR, et. al, March 5, 2003); FOIA Appeal of refusal to release relevant Office of Legal Counsel ("OLC") documents (ACLU et. al., Oct. 15, 2002); FOIA Request for copy of OLC opinion and clarification of the law (ACLU et. al., August 21, 2002).

[28] Id.

[29] Testimony of Attorney General John Ashcroft, Oversight Hearing on the United States Department of Justice, House Judiciary Committee (June 5, 2003) (www.house.gov/judiciary/fulltrans/050603.htm.)
(questions of Rep. Sanchez and answers of Attorney General Ashcroft at pp. 88-93).

[30] Note that state and local police do have authority to contact federal authorities and ask about immigration status during a criminal arrest, or if special deputization has been undertaken, or under the circumstances of a Memorandum of Understanding. 1996 DOJ Memorandum Opinion, note 24 supra. (*citing* cases). These limited exceptions have clearly been authorized through Congress.

[31] Saenz v. Roe, 526 U.S. 489, 508 (1999)("Article I of the Constitution grants Congress broad power to legislate in certain areas. Those legislative powers are, however, limited not only by the scope of the Framers' affirmative delegation, but also by the principle "that they may not be exercised in a way that violates other specific provisions of the Constitution [*citing* cases]... Although we give deference to congressional decisions and classifications, neither Congress nor a State can validate a law that denies the rights guaranteed by the Fourteenth Amendment. See, *e.g.*, Califano v. Goldfarb, 430 U.S. 199, 210 [97 S.Ct. 1021, 51 L.Ed.2d 270] (1977); Williams v. Rhodes, 393 U.S. 23, 29 [89 S.Ct. 5, 21 L.Ed.2d 24] (1968). Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 732-733 [102 S.Ct. 3331, 73 L.Ed.2d 1090] (1982).")

Conclusions and Recommendations:

Congress must not pass the CLEAR Act. As discussed above, demanding that state and local police enforce federal civil immigration laws would be very bad policy and alienate immigrant and minority communities, who are not the enemy. Latinos, for example, are very concerned about the war against terrorism. However, for all practical purposes, the CLEAR Act would mandate the excuse of racial profiling of Latinos and many other U.S. citizens and immigrants, especially people of color.

For all these reasons, MALDEF urges the Congress and the DHS to clarify that enforcement of federal civil immigration laws falls under the exclusive mandate of the DHS. The 1996 Department of Justice ("DOJ") Memorandum Opinion clarifying this conclusion and detailing the limited exceptions in which state and local police may enforce civil immigration laws should be reaffirmed. The only legal circumstances under which state and local police may get involved in civil immigration enforcement is through an MOU negotiated under Section 1357(g) of the INA, with proper training and federal accountability and oversight, to prevent abuse, including due process and civil rights violations. Furthermore, federal law enforcement should concentrate first on identifying dangerous criminals and terrorists, prioritizing precious national security resources in order to keep American communities safe. First responders such as state and local police should concentrate on protecting against crime and terrorism, while maintaining community policing practices recognizing America as a nation of immigrants.

MALDEF supports the Rule of Law and is not against enforcement of federal immigration laws. However, Congress and the Administration have acknowledged that the system is broken; therefore, it must be acknowledged that many are out of status through no fault of their own. The former INS lost and even shredded documents, and INS information is notoriously inaccurate. Comprehensive immigration reform is needed before any massive enforcement effort would not lead to serious due process violations and permanent damage to American democracy.

Finally, careful review of the facts and the law shows that the crimes mentioned by supporters of the CLEAR Act could have been solved through existing laws. If this was not done in the cases at issue, Congress and the DHS should concentrate on identifying how existing law should be properly implemented to ensure protection against these egregious crimes. At the same, immigrant communities must also have safe access to police protection, including the ability to report crimes. If public safety and national security are truly a priority, the CLEAR Act must not be enacted, community policing practices must be supported and even encouraged, and the U.S. government should clarify that it values the assistance of immigrant communities in fighting the war against terrorism.

# # #

POLICE DEPARTMENT

OFFICE OF THE CHIEF OF POLICE

Ronald Miller
Chief of Police

November 19, 2003

Senator Sam Brownback
303 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Brownback:

This letter is written requesting you to oppose the CLEAR Act and to urge others to also vote against this proposed legislation. The Clear Law Enforcement for Criminal Alien Removal Act of 2003 (CLEAR) would require local law enforcement officers to assume responsibilities presently accomplished by the Immigration and Naturalization Service. The act would mandate that police officers enforce civil immigration laws.

This proposed legislation is of great concern to the Unified Government of Wyandotte County/Kansas City, Kansas and the Kansas City, Kansas Police Department. Our Police Department has taken the lead in establishing a meaningful relationship with our minority communities, especially the Hispanic community. If the CLEAR Act becomes law, it will have a devastating effect on how we provide law enforcement/police service. It will diminish the positive strides we have made to embrace the minority community. We have accomplished much and this proposed legislation would work to reverse our success.

Our city as well as all cities in Kansas are dealing with budget issues. The CLEAR Act would place a substantial and unrealistic strain on finances. If the legislation is passed, we would need additional and specific training, more officers, more equipment, and appropriate housing facilities. All this would require funding that is not available.

This act would certainly place us in a racial profiling environment. This is unacceptable, as it would destroy the credibility we have worked to establish. We also know that members of minority groups, especially Hispanics, because of past experience, have not reported crime or come forward as witnesses, because they were fearful of law enforcement. Through various means, we have helped to turn this attitude around; this, too, could all be destroyed if the CLEAR Act is passed into law. The CLEAR Act would be a detriment to all who live work and visit Kansas City, Kansas. We want all to know that the police are available to protect them no matter whom they are or where they come from.

We ask you to oppose the CLEAR Act and urge your colleagues to vote against this legislation.

Sincerely,

Ronald Miller

Ronald Miller
Chief of Police

701 North 7th Street Kansas City, Kansas 66101-3064 (913) 573-6010 Fax (913) 573-6016

April 22, 2004

The Honorable Edward M. Kennedy
Ranking Member
Subcommittee on Immigration, Border
Security and Citizenship
Judiciary Committee
317 Senate Russell Office Bldg.
U. S. Senate
Washington, DC 20510

Dear Senator Kennedy:

The National Association of Counties (NACo) believes that the Homeland Security Enhancement Act (S. 1906) will place an undue burden on local law enforcement and reduce our ability to protect the public and investigate crimes. For these reasons, NACo opposes the bill. Specifically, NACo is concerned about the following aspects of the bill:

Counties are facing a serious budget crisis. "Counties in Crisis", a report issued by NACo in February 2003 showed that 72 percent of counties are facing budget shortfalls. The report further showed that jails and corrections were among the most affected by state cutbacks. In addition to enforcing civil immigration laws, states and counties would have new and onerous reporting requirements in a field that is neither our responsibility nor our expertise. Additional responsibilities placed on our sheriffs and police departments would only exacerbate the crisis. We have already shouldered substantial costs associated with other aspects of homeland security.

Local law enforcement must have the community's trust. If immigrants are afraid of deportation, they will not come forward to report crimes. NACo believes that the bill will make it more difficult for local law enforcement agencies to perform their duties.

The bill threatens states and counties that do not pass laws to enforce civil immigration laws with the loss of SCAAP funds. However, the SCAAP program is only allowed to reimburse states and counties for correctional expenses. Even if a state or county adheres to the requirements of the bill, it would not be able to use the SCAAP program for other law enforcement activities. Furthermore, the State Criminal Alien Assistance Program (SCAAP) is woefully undefended and reimburses less than 40 percent of all eligible state and local costs.

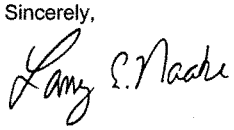
Federal immigration law is extremely complicated. Local law enforcement departments do not have the expertise to enforce civil immigration laws. Even though the bill would require the Attorney General or the Secretary of Homeland Security to develop a

training manual, it does not ensure that the training will be adequate or available.

In 1996 Congress passed an immigration law allowing states and localities to enter into memorandums of understanding (MOUs) with the federal government, to confer civil immigration law enforcement powers on their local officers. These MOUs encourage important safeguards, including the training of local agents in immigration law. An MOU is currently in place in Florida, and others are being negotiated around the country. NACo believes that the MOU process is working well and that the Homeland Security Enhancement Act is unnecessary.

Thank you for the opportunity to comment on S. 1906. NACo respects your leadership in criminal justice reform and looks forward to working with you and your staff on this and other matters.

Sincerely,



Larry E. Naake
Executive Director

NCLR
NATIONAL COUNCIL OF LA RAZA
ISSUE BRIEF
February 2003 No. 9

Immigration Enforcement by Local Police: The Impact on the Civil Rights of Latinos

By Michele Waslin, Ph.D.*

INTRODUCTION

Following the September 11, 2001 terrorist attacks in New York and at the Pentagon, the Department of Justice (DOJ) initiated new policies aimed at preventing future terrorist attacks. One new measure has been to enlist state and local law enforcement officers in antiterrorism activities. While the safety and security of our communities and our country are of the utmost importance, and increased information-sharing between intelligence agencies will aid counterterrorism efforts, new policies that would allow local police departments to enforce federal civil immigration law may, in fact, hinder terrorist

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* This Issue Brief was prepared by Michele Waslin, NCLR Senior Immigration Policy Analyst, based on an earlier analysis prepared by former NCLR Policy Analyst Joel Najar. Ben Johnson, American Immigration Lawyers Association; Katherine Newell, National Asian Pacific American Legal Consortium; and Josh Bernstein, National Immigration Law Center, provided additional information. Cecilia Muñoz, Vice President of NCLR's Office of Research, Advocacy, and Legislation; Charles Kamasaki, Senior Vice President; and Angela M. Arboleda, Civil Rights Policy Analyst, provided substantive oversight in the preparation of this brief. Sonia M. Pérez, Deputy Vice President, and Jennifer Kadis, Editor, provided editorial guidance. The content of this paper is the sole responsibility of NCLR and may not reflect the views of NCLR's funders or any other individual or organization that assisted in its preparation.

and other criminal investigations, and have a serious negative impact on Latino communities.

There has been widespread and vigorous opposition to any delegation of federal immigration law enforcement to state and local police. This opposition includes civil rights, ethnic, religious, and law enforcement leaders and organizations. They argue that this radical policy shift would be in direct conflict with long-standing legal tradition, would inevitably result in higher levels of racial profiling, police misconduct, and other civil rights violations, and would undermine – rather than strengthen – effective enforcement and antiterrorism activities. The DOJ announcement and recent events have also led to decreased willingness within immigrant communities to report crimes and suspicious behavior to the authorities.[1]

This Issue Brief explores the legal status of the DOJ's announcement and discusses the implications for Latino and immigrant communities.

New DOJ Policy Announcements

In June 2002, Attorney General John Ashcroft declared that state and local police have the authority to enforce civil and criminal immigration violations of immigration law. However, Ashcroft did not announce directly that state and local police would enforce immigration law; the change was included in a press conference in which Ashcroft announced a new proposed immigration regulation that would require all persons from certain designated countries arriving in the United States on nonimmigrant visas to register and submit fingerprints at the point of entry. Any individual staying longer than 30 days would be required to appear in person at an Immigration and Naturalization Service (INS) field office and reregister by submitting proof of residency and any other required evidence of legal status. Registered individuals would then be required to reappear at an INS field office and register each year. Finally, those who registered would be required to notify the INS of their departure from the United States. Ashcroft also announced that those who fail to comply with the registration requirements, or those who overstay their visas, will be added to a national criminal database, the National Criminal Information Center (NCIC), be subject to removal, and may possibly be subject to criminal prosecution.

At the same time, the Attorney General announced that state and local police officers, who already have access to NCIC, will have the authority to arrest and detain individuals for failing to comply with the registration requirements. While the new registration requirements are of great concern to immigrant advocates, it was this final part of the announcement that signaled enormous implications for America's Latinos.

In April 2002, several months prior to Ashcroft's announcement, the press reported that the DOJ was poised to issue a new legal opinion. This new, unreleased Office of Legal Counsel (OLC) opinion purportedly declares that state and local police have the "inherent authority" to enforce civil and criminal immigration violations of immigration law. While the legal opinion has never been made public, this announcement indicates that the DOJ has reinterpreted the law and overturned decades of legal precedent, sending an immediate chill through Latino communities.

Ashcroft's June 2002 announcement appears to be based on this unreleased legal opinion.

The issue of state and local law enforcement authority to enforce immigration law has been further muddled because in the weeks and months since April 2002 and the June 2002 press conference, and several different interpretations of the law have been put forward by the Administration resulting in a great deal of confusion.

- **June 24, 2002.** White House Counsel Alberto Gonzales wrote a letter that gives a similar, albeit more limited, interpretation to that of the Attorney General – that "state and local police have inherent authority to arrest and detain persons who are in violation of immigration laws *and whose names have been placed in the National Crime Information Center (NCIC)*" (emphasis in original).
- **July 19, 2002.** The INS distributed a press release announcing a Memorandum of Agreement (MOA) between the State of Florida and the Justice Department in which 35 Florida law enforcement officers will receive training in immigration law and enforcement. The MOA implements a 1996 law that previously had been interpreted to require formal agreements between the federal government and local enforcement agencies wishing to enforce federal immigration law. The formal process of Memorandum of Agreement, as specified in the 1996 law, seems to contradict the "inherent authority" philosophy said to be the current thinking of the DOJ's Office of Legal Counsel.

As a result of these developments, there are now three different interpretations of the law:

1. Local police lack the legal authority to enforce civil immigration law generally, and specific agreements are needed between the INS and state and local law enforcement agencies if they are to enforce immigration law. This interpretation is bolstered by the Florida MOA, noted above. This interpretation is also strengthened by the DOJ's recent issuance of regulations regarding the authorization of certain civil law enforcement powers to state and local officers in a time of a "mass influx" of immigrants.[2]
2. Local police have "inherent authority" to enforce civil immigration law, as the DOJ has reportedly decided in a secret legal opinion.
3. Local police have "inherent authority" to enforce civil immigration law only if violators' names have been placed in the NCIC database, as the Attorney General and White House Counsel have stated.

These contradictory statements have resulted in a great deal of confusion among immigrant communities, immigrant and civil rights advocates, and law enforcement agencies. Yet, regardless of the current status of the OLC opinion, the mere mention that local police may have the authority to enforce immigration law has frightened Latino and immigrant communities, resulting in an increased unwillingness to cooperate with law enforcement, to report crimes, and to come forward as witnesses.

THE LAW

A. OVERVIEW

The Constitution of the United States grants Congress the exclusive power to regulate federal laws concerning the admission of immigrants.[3] The Attorney General has been granted exclusive authority to enforce these laws and, in turn, delegates this power to the INS. Only agents given this power by the Attorney General have the authority and jurisdiction to enforce immigration laws. INS officers must complete immigration law and enforcement training before receiving the authority to arrest individuals for civil or criminal violations of the Immigration and Nationality Act (INA).

An INS agent must have a "reasonable cause" that can be articulated in order to interrogate any person believed to be an undocumented immigrant as to his or her right to be or to remain in the United States. The Supreme Court has ruled that the reasonable cause must not be based solely on racial heritage or ethnic appearance.[4] INS purports to train its agents to be able to detect other characteristics that may identify a person as an undocumented immigrant, such as suspicious behavior.

Until the DOJ announcement, state and local police officers did not have authority to enforce most immigration laws. In certain circumstances, and with specific procedural safeguards in place, Congress had authorized local police to arrest and detain an individual for criminal violations of federal immigration law if such authority exists under state law. For example, the Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996 explicitly authorized state and local police to arrest and detain immigrants who are unlawfully present in the U.S. (a violation of civil immigration law) and have "previously been convicted of a felony in the United States." These immigrants would be deportable based on their criminal behavior, and the law does not authorize state and local law enforcement officers to arrest or detain noncitizens simply because they are unlawfully present. In doing so, this law made an explicit distinction between enforcement of civil immigration law and criminal immigration law.

As early as 1978, the Department of Justice took the position that local police should refrain from detaining "any person not suspected of a crime, solely on the ground that they may be deportable aliens."[5] In 1996, the Department of Justice issued an opinion that again declared, "State police lack recognized legal authority to arrest or detain aliens solely for purposes of civil immigration proceedings, as opposed to criminal prosecution."[6]

Cooperation between the INS and state or local police, at least in theory, had been restricted to incidents in which independent and explainable reasons clearly indicated the need for coordinated action by both the INS and another law enforcement entity.[7] An example of such a situation would be the need for local police traffic control – not including detaining suspected immigrants fleeing the scene – or a situation in which a violation of a local code would be uncovered. When INS and local police collaborated, each was supposed to remain within its legal jurisdiction. Local police could only intervene when a crime was committed or if the nature of the offense was otherwise of local interest or county concern; INS could only enforce immigration laws and certain serious felonies.[8]

B. Immigration Law Enforcement Provisions Under IIRIRA

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) constituted a sweeping reform regarding the way undocumented immigrants found in the United States are treated under the law. Combined with large increases in funding for INS enforcement activities, these provisions have had a major impact on the way INS is enforcing the law. Sections 133 and 642 of IIRIRA, specifically, pertain to communication and cooperation between local police or government officials and the INS.

1. Cooperation Agreements Between Local Police and INS

Section 133 of IIRIRA allows the Attorney General to enter into agreements to delegate immigration powers to local police, but only through negotiated agreements, documented in Memoranda of Understanding (MOUs). These MOUs were to be negotiated between the INS and the local authorities and would include delegation of authority to a limited number of police officers. In authorizing these MOUs, Congress specifically required that any officer or employee of a state performing a function under the agreement should have written certification that s/he has received adequate training regarding the enforcement of relevant federal immigration laws. Furthermore, the statute requires that any and all local law enforcement officials performing these functions shall be subject to the direction and supervision of the Attorney General. The statute clearly does not authorize local law enforcement officials who have no training or experience in immigration laws to enforce those laws during their normal course of business.

MOUs have been attempted several times, and until recently, had never been executed due to opposition by the Latino community and by local officials themselves. For example, a proposal to delegate authority under Section 133 to local police in Salt Lake City, Utah was defeated when the Salt Lake City Council rejected an MOU negotiated between the INS and the police department. A similar proposal was soundly rejected in Marshalltown, Iowa.

As mentioned previously, the State of Florida became the first state to enter into an MOU with the INS. The July 2002 announcement makes clear that, by the terms of the MOU, "[t]he authority to enforce federal immigration laws does not extend to the more conventional enforcement actions that the INS carries out every day in Florida. State law enforcement officers covered by the MOU will not be involved in immigration enforcement activities that do not involve terrorism or domestic security issues."

2. Communication Between Local Government Employees and INS

In addition to Section 133, Section 642 of IIRIRA states that, notwithstanding any other provision of law – including city, county, or state ordinances – a public employee cannot be prohibited by his or her employer from reporting immigration-related information to the INS gathered during the course of his or her job. The section further outlines the obligation of the INS to respond to inquiries made by federal, state, or local government agencies to verify the citizenship or immigration status of an individual.[9]

Additionally, Section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, requires certain federal and state entities to notify the INS of any individual the entity "knows" is not lawfully present in the United States.

Over the past several years, a number of cities have passed ordinances prohibiting certain forms of communication regarding immigration status. It is still unclear how these legislative provisions affect these local ordinances.

- **New York, NY:** After enactment of IIRIRA in 1997, the City of New York filed a lawsuit against the federal government, arguing that Section 642 violated the Tenth Amendment, the guarantee clause, and the principles of federalism. A federal district court judge ruled against the City on all of its motions; New York City appealed the ruling and lost.[10] This decision does not necessarily mean that Section 642 is constitutional, and it does not mean that the law is necessarily going to be enforced. But it is still unclear whether or to what extent the law is enforceable. To date there are no cases on record in which the federal government has attempted to enforce Section 642.

  New York recently changed its charter to state that "the mayor may promulgate rules requiring that information obtained by city employees be kept confidential to the extent necessary to preserve the trust of individuals who have business with city agencies. To the extent set forth in such rules, each agency shall, to the fullest extent permitted by the laws of the United States and the state of New York, maintain the confidentiality of information in its possession relating to the immigration status or other private information that was provided by an individual to a city employee in the course of such employee's duties."[11]

- **Salem, OR:** In December 1997, well after the enactment of IIRIRA, the city of Salem, Oregon implemented an ordinance clarifying its relation to the INS. Among the provisions in the Salem ordinance is a guideline prohibiting city employees and representatives from performing duties dictated by the INS or agents of the INS. Because this ordinance was enacted after the passage of IIRIRA and PRWORA, the extent to which this ordinance can and will be enforced remains unclear.

- **Austin, TX:** In July 1998, the report of a special task force on immigration issues in Austin, Texas made strong recommendations to increase public safety by dispelling fears within the immigrant community that the report of crimes to local law enforcement would result in intervention by the INS. Their recommendation included calls for less cooperation with the INS and special training for local and county officers in all policies and regulations that impact immigrants and immigration laws.

C. Court Decisions Regarding Local Law Enforcement Authority to Enforce Immigration Law

The courts have made it clear that the federal government has the exclusive power to regulate immigration and create immigration law.[12] However, the question of whether local law enforcement has the authority to enforce federal immigration laws has been brought up many times. For example:

The leading case on the issue is *Gonzalez v. The City of Peoria*, a civil rights suit brought by 11 plaintiffs of Mexican descent who challenged the practice of police enforcement of federal immigration law.[13] In *Gonzalez*, the Ninth Circuit Court of Appeals held that local police are precluded from enforcing the *civil* provisions of the Immigration and Nationality Act (INA). The civil provisions constitute "a pervasive regulatory scheme as would be consistent with exclusive federal power of immigration."[14] *Civil* provisions of the INA are the exclusive enforcement domain of the INS and include *unlawful presence* and *unauthorized employment* in the United States. "Expiration of a visitor's visa, change of student status, or acquisition of prohibited employment" are examples of *civil* violations of the INA for which local police cannot make arrests (emphasis added).[15]

In *LULAC v. Wilson*[16] the Ninth Circuit Court struck down those portions of California's Proposition 187 which required state agents to question applicants for state services about their immigration status, to obtain and examine documents relating to their immigration status, to identify "suspected illegal" immigrants and report them to state and federal authorities, and to instruct these individuals either to obtain legal status or leave the country. The court characterized these provisions as a "comprehensive scheme to detect and report the presence and effect the removal of illegal aliens" and found that they were preempted by federal law.[17]

In other cases, such as those outlined below, settlement agreements have been reached which recognize the limitations on local law enforcement officials to enforce federal immigration law.

- **1984.** A joint operation between local police and INS agents targeting 16 Hispanic business establishments occurred in Sanger, California. During the joint operation, customers in each of these businesses were detained and questioned by the INS. The individuals subjected to this treatment filed a suit and later signed a settlement agreement with the defendants. The agreement outlined that INS agents were not to direct, propose, or request that joint operations with state and local law enforcement officers be carried out when INS agents know that these operations will be beneficial only to the INS.[18]
- **1992.** U.S. Border Patrol agents and Farmersville, California police officers searched the private residences of suspected undocumented immigrants during a predawn raid. Fifteen farmworker families filed suit against the United States and the City of Farmersville. The settlement agreement reached in February 1998 outlined specific procedures that the

police of Farmersville are to undertake when cooperating with INS agents.[20]

- **1995.** County and city officers in Oakland, California aided the INS in interrogating, searching, and arresting individuals from 18 families of Mexican descent. The homes of these families were searched without search or arrest warrants. A resulting settlement provided that county sheriff's deputies and local police officers would be barred from conducting raids with the purpose of searching for undocumented immigrants. The agreement also prohibited the city from requesting or disseminating information regarding the immigration status of any individual unless authorized to do so by state or federal statute or court order. The settlement further instructed police officers to become more informed about conduct and procedures when acting jointly with INS officers.[19]

Both the Oakland and Farmersville cases contained an order prohibiting the defendants in each case from requesting or disseminating information about an individual's immigration status. However, neither agreement in Oakland or Farmersville is self-enforcing. In light of Section 642, it is unclear whether and how these court-ordered agreements would be enforced.

D. Dubious Legal Justification for the New DOJ Legal Opinion

DOJ has dramatically shifted its legal position despite the fact that no new law has been passed since IIRIRA. The new legal opinion apparently simply overturns existing DOJ legal opinions, as well as decades of legal tradition. The new opinion reportedly is based on Tenth Circuit Court cases that deal with criminal immigration law enforcement, not civil law. Given the current state of law and other court decisions issued over the past decade, the legal justification for the new DOJ legal opinion is dubious, at best.

The Department of Justice reportedly cites as justification for its legal opinion the 1984 decision in *United States v. Salinas-Calderon*,[21] as well as other Tenth Circuit Court cases. In the *Salinas-Calderon* case, the court found that a local law enforcement officer has general investigatory powers to inquire into "immigration violations." However, the court did not define what it meant by an immigration violation and did not discuss – or even appear to recognize – the difference between civil and criminal immigration offenses.

In *U.S. v. Vasquez-Alvarez*,[22] the Tenth Circuit Court used the general reference to an "immigration violation" found in *Salinas-Calderon* to uphold a police officer's arrest of an individual for the *civil* immigration violation of unlawful presence in the country. However, the court relies only on cases that authorize police enforcement of federal *criminal* offenses, and thus there is no support for an expanded interpretation covering civil offenses. In the final Tenth Circuit case, *United States v. Santana-Garcia*,[23] the defendants faced both drug possession charges and a criminal immigration offense. On appeal, the court upheld the legality of a pre-arrest detention of the defendants by a state trooper finding, among other things, that the trooper had probable cause to arrest for an unspecified

immigration "violation." Furthermore, in reaching its conclusion, the court in *Vasquez-Alvarez* erroneously determined that state law authority for an arrest for a federal offense is unnecessary, so long as state law does not prohibit it. It is well settled, however, that the legality of an arrest by a state or local officer for a federal offense is to be determined by state law.[24] It is not sufficient that state law not prohibit the arrest; instead, state law must specifically provide the officer the "power" to make the arrest.[25]

INS-Local Law Enforcement Collaboration

A. Overview

Immigration law is extremely complex and subject to frequent changes, and enforcement requires a great deal of training and experience. All INS officers must attend a 17-week Immigration Agent Basic Training, and agents in the field complete additional on-the-job training. Even so, this training does not guarantee that well-trained INS agents will not make mistakes. A worksite raid in Miami in 1997, in which several Nicaraguans (potential beneficiaries of the Nicaraguan Adjustment and Central American Relief Act of 1997) were unnecessarily detained and removed from their place of work, serves as an example of how even trained INS agents sometimes detain the wrong people.[26] Deputizing untrained, inexperienced local law enforcement personnel to enforce immigration law is likely to lead to increased racial profiling, civil rights violations, and mistakes.

B. INS Misconduct

INS agents have been allowed immense discretion in their use of appearance in formulating their reasons to stop and question a suspected undocumented immigrant. For example, among the criteria which INS has used (and which some courts have approved) as reasonable cause for stopping a vehicle is that a particular route has had previous experience with "alien traffic." Other factors have included manner of dress, hygiene, and hairstyle.[27] Used in conjunction with the ethnic appearance of an individual, these factors have been justified in some courts as reasonable cause for a stop. This discretion has traditionally been used in border regions; interior enforcement has not until recently been an issue for the INS. In the last few years, concurrent with the massive increase in resources available to the INS for interior enforcement, complaints of ethnically selective enforcement and INS agents' targeting of individuals based solely on their ethnicity have also risen in the interior of the United States. The most blatantly discriminatory incidents, some of which are described below, have involved local police officers.

Contrary to the relatively free reign that the INS previously enjoyed at the border, the courts have repeatedly circumscribed their independence where ethnicity has clearly been a factor in the execution of their functions. Using information gathered from the "I-44" forms that border patrol agents are advised to fill out at traffic stops, the Ninth Circuit Court of Appeals in the class action *Durgin v. De La Vina* found in 1998 that the plaintiffs could in fact show a pattern and practice of Border Patrol stops made without reasonable suspicion. In a 1984 decision, a federal district court order in Michigan prohibited the Border Patrol

from such stops as a violation of a person's civil rights (*Ramirez v. Webb*).

The pattern and practice of INS "racial profiling" continues. In Ohio in 1997, a federal district court temporarily ordered the Ohio State Highway Patrol to stop confiscating green cards from motorists being pulled over for routine traffic stops after the Ohio State Highway Patrol had stopped, searched, and detained two Hispanic migrant workers. Allegedly, the Ohio police had been asked to inquire about immigration status by the Border Patrol.[28]

The following are other examples of recent INS misconduct:

- **April 1998, Fresno, California.** The INS had to bring a Fresno minor back from Mexico into his mother's custody after the Border Patrol arrested him, advised him to sign a voluntary departure statement, and deported him. Although INS has a policy to stay off of school grounds, Border Patrol agents came onto school grounds at the request of local police to arrest suspected gang members. Local police had already been harassing children at the school, quizzing them about their immigration status. The minor who was returned said, "the cops just think that all the Mexican kids who hang out together at school are in a gang. And that's not true."[29]
- **January 1998, Bethesda, Maryland.** Waitress Allegra Foley was preparing tables for lunch at the Thymes Square Café when plainclothes INS officers entered the restaurant. They headed directly to the kitchen, where they questioned a number of Latino employees; six were arrested.[30] Foley was particularly upset that employees at the Café were clearly targeted for questioning based on their perceived racial appearance. In a notarized affidavit, Foley testified that "at no time did they ever question a White, Black, or Asian employee on duty at the restaurant... with sole exception of the manager... who... voluntarily provided his green card."[31]
- **July 1997, Portland, Oregon.** INS agents in unmarked vehicles began arresting almost 50 Latino day laborers who were waiting for work on street corners along East Burnside Street. The agents did not identify themselves and arrested the majority of the people without asking questions. Most of the agents were dressed in plainclothes, although some of them later donned Border Patrol jackets when their colleagues arrived in bulletproof vests and uniforms. "I only saw one man questioned. It happened right in front of me. The INS agent came right up close to his face, leaned over him, and asked him where he was from and to show his papers. The worker didn't answer but started to fumble in his wallet in an effort to extract a document and was arrested before he could get it out. The entire interchange took less than a minute. Only Latino men were arrested. Other people on the scene, including a light-skinned Mexican, were not even questioned," recalled Lucy Bernard, a witness from the Workers' Organization Committee in Portland.[32]

- **August 1996, Jackson Hole, Wyoming.** INS agents conducted a raid in which 153 suspected illegal immigrants were rounded up and detained. According to press reports, some of the suspects were picked up off the street merely because their skin was brown. It was reported that agents picked one man off his bicycle as he rode down the street; "They failed to ask him to stop, they simply ran him down, took him off his bike, put him in handcuffs, and stuffed him in the police car," stated an eyewitness.[33] Some of those picked up had large numbers written on their arms with black felt pen, as though they were cattle. Further press reports stated that 18 of those picked up were "hauled away in a dirty horse trailer lined with fresh manure." In the end, 40 of the "suspects" were released after proving they were citizens or documented workers.[34]

As a result of these instances and many others, the INS is constantly in a position to explain "bad judgment calls" by its own agents. INS headquarters has had to reiterate INS policies on nondiscrimination and probable cause to its own agents twice in the last three years, and in 1998 insisted on an immediate "refresher training" of its agents.[35]

A May 1, 2001 *New York Times* article provides further evidence that INS engages in racial profiling. In this article, a review of 37 INS worksite raids in the district of New York City showed that agents frequently cited skin color, use of Spanish, foreign accents, and clothing "not typical of North America" as primary evidence that workers were likely to be undocumented. For example, one INS agent conducting a surveillance of a delicatessen between 34th and 35th Streets in New York City reported that some workers appeared to be of South or Central American descent. Some spoke Spanish, the agent noted, and others spoke English "with a foreign accent." The Times investigation confirmed that the INS explicitly uses ethnicity to guide its enforcement efforts, a tactic the agency previously has denied using.

Given that the INS must take greater steps to ensure that its own trained agents are following INS policies, delegating immigration law enforcement to untrained or less-trained local police will inevitably result in increased civil rights violations.

C. INS-Local Collaboration Impact

The relationship between the Immigration and Naturalization Service (INS) and Latinos in the United States has long been one characterized by tension and fear. Latinos face the reality of being stopped by immigration enforcement agents because of their ethnicity, language, or appearance. Many encounters with immigration agents have been without probable cause, and in some instances have involved unnecessary use of force. Latinos also experience similar encounters with police officers assuming the role of – or working jointly with – INS agents. As a result, many immigrants and U.S.-born Latinos have little trust in the INS or in the police to ensure public safety in their neighborhoods.

Furthermore, the relationship between police and the communities they patrol is extremely fragile. In some areas, criminals have exploited the fear that immigrant communities have of all

law enforcement officials. In Durham, North Carolina, thieves told their victims – in a community of migrant workers and new immigrants – that if they called the police they would be deported. Local police officers have found that people are being robbed multiple times and are not reporting the crimes because of such fear instilled by robbers.[36] These immigrants are left vulnerable to experience crimes of all sorts, not just robbery. In 1998, Elena Gonzalez, an immigrant in New Jersey, was found murdered in the basement of her apartment. Friends of the woman say that the suspected murderer, her former boyfriend, threatened to report her to the INS if she did not do what she was told.[37]

The following are incidents in which police have cooperated with INS, violated the civil rights of people lawfully in the U.S., and have damaged their ties to Latino communities severely:

- **Roswell, Georgia – April 1999**
  Signs posted in Spanish read, "It is illegal to pick up or hire workers on private property without the property owner's permission. Violators will be arrested and reported to the Immigration and Naturalization Service and the IRS for possible federal prosecution."[38] Leaders of local community organizations and even the Mexican government have come forward to denounce the Roswell law as discriminatory against Hispanics. The controversy was sparked when an overzealous police lieutenant issued an order to arrest and issue citations in the center of Roswell's growing Hispanic community. Acting on the apparently mistaken belief that his chief wanted a crackdown on loitering in the area, the lieutenant intentionally targeted Latinos as the focus of his broad sweep. Although the lieutenant was disciplined and the issue dismissed as an isolated incident, the Hispanic community remains distrustful of the law and the police officers who enforce it.

- **Passaic, New Jersey – April 1998**
  Federal immigration agents, state police, and Passaic County Sheriff's officers conducted a nighttime raid at a recreational park in the city of Passaic, New Jersey. The raid was conducted purportedly to round up gang members wanted on arrest warrants, but police accosted other innocent individuals. Children were commanded to put their hands behind their heads during questioning by police officers. Police officers acted out of their jurisdiction and threatened to hurt a 14-year-old boy if he didn't give the officer his Social Security Number. When the boy's father arrived and began to complain about the treatment of his son, another police officer demanded that the father show him his "green card" and driver's license. The city's Mexican American community continues to be fearful and angry about the conduct of the police officers.[39]

- **Chandler, Arizona – July 1997**
  The most noted incident occurred in Chandler, Arizona where local police and INS agents worked very closely in planning a community-wide roundup of suspected undocumented immigrants. Certain areas received multiple searches in the operation,

and a number of individuals were stopped in their cars and on the street several times by police and INS. Chandler police acted outside of their jurisdiction and attempted to enforce immigration law. The Arizona Attorney General later found that residents were stopped repeatedly "for no other apparent reason than their skin color or Mexican appearance or use of the Spanish language."[40] Despite purported INS policies to stay off of school campuses and outside of business establishments, individuals were stopped or questioned just outside of businesses and schools. Police patrolling on bicycles harassed and detained Hispanic-appearing individuals in their cars, walking on the street, and sitting in their homes. The Attorney General's report further stated that these numerous stops "violated the Constitutional rights of American citizens and legal residents to equal protection and to be free from unlawful searches and seizures."[41]

- **Crescent City, Florida – January 1997**
  Putnam County Sheriff's officers, Crescent City Police, and INS agents conducted a nighttime joint operation purportedly in search of illegal drug activity. Officers set up a highway checkpoint in addition to invading homes, without warrants and without probable cause, in a predominantly Latino neighborhood. Despite the pretextual reasoning that there was suspected illegal drug activity, the police and INS made no drug-related arrests, but managed to frighten an entire neighborhood with dogs and bright lights.[42]

- **Katy, Texas – May 1994**
  The Police Department and the INS in Katy, Texas conducted a joint operation during which egregious violations of constitutional rights occurred. Vehicles driven by individuals of "Hispanic appearance" were stopped and detained by Katy Police Department officers and INS agents. The joint operation included searches in homes, trailers, and apartment complexes that were predominantly Latino. "Street sweeps" in which Latinos were the only individuals stopped and questioned regarding their immigration status also were conducted. Katy City Police officers acted outside of their jurisdiction and wrongfully questioned, detained, and arrested individuals based on their immigration status.[43]

Based on these and numerous other incidents, it is clear that increasing state and local police enforcement of immigration laws will inevitably result in widespread civil rights violations of U.S. citizens and lawful residents.

D. Regaining Community Trust

It is ironic that this possible DOJ announcement comes at the same time as the U.S. is becoming much safer for Latinos. According to the DOJ, violent crime against Latinos dropped by 56% during the 1990s.[44] Law enforcement officials attribute this drop in crime in part to increased trust and growing relationships between local police officers and Latino communities.[45] It would be extremely unfortunate if the decision to allow local police to enforce immigration law were to undermine

this positive and important trend by destroying a trust that has taken so long to build.

Perhaps the most alarming example of the need for police departments to reach out to the communities they protect is the case of the 58 deaf and mute Mexican workers who were found living in virtual slavery in New York in July 1997. Most of these immigrants were tricked into coming to the United States and were subsequently exploited by their smugglers. Forced to live in crowded apartments, the individuals were beaten, raped, traded, and shocked into submission with stun guns. The immigrants feared going to the police because they were undocumented and their smugglers threatened to report them to the INS.[46] The workers were found only after two of them managed to give a written statement about their working and living conditions to the police.[47] Although neighbors of the deaf Mexicans witnessed some of the abuse that occurred in the building, they also feared calling the police.[48] The neighbors of the workers seemed unaware that New York City has an ordinance prohibiting police from providing information to the INS about an immigrant who is the victim of a crime. One of these neighbors who did not feel that the police would respond to calls said, "We speak with an accent, we can hardly make ourselves understood. They are not going to come here just because we call and complain about something that is happening to one of us."[49]

Earning the trust of communities is essential in creating effective policing efforts. Community-based policing programs that actually reach out to immigrants fare better than those that do not. In fact, it may not be enough for a local police officer merely to abide by an ordinance against cooperation with the INS. The most successful efforts actually involve explicit indication to the community that the police will not report immigrants to the INS. Evidence of this can be seen in the following programs:

- **Los Angeles, California.** An historically crime-ridden neighborhood of Los Angeles has a program called *Los Amigos* which has decreased the crime rate by 30% from 1996 to 1997.[50] *Los Amigos* has been effective in the immigrant community because it has provided Spanish-speaking dispatchers to answer calls providing tips or complaints to the police, and the patrolling officers have assured residents that they are not *la migra* (the INS).
- **Durham, North Carolina.** In another exemplary effort, immigrants in Durham have been successfully urged to join neighborhood watch groups to patrol their own neighborhoods. Bilingual meetings between police officers and community members, along with the police department publicly emphasizing that the department does not have time to patrol for illegal immigrants, have created positive relationships between community members and police.
- **Fort Worth, Texas.** A similar effort by a community-watch group, *Vecinos Unidos*, is also reducing crime rates. The group was created to act as a bilingual neighborhood patrol. Attempts to create such a group in the past had failed because of minority sentiments toward police officers.[51] The successful creation of this group seems to be a sign of the Latino community's greater esteem for the police. Police officers in the

area recognize the need for such a program and have welcomed the group.

A scarcity of Spanish-speaking officers in those states where the Latino population has only recently experienced rapid growth, however, is often the greatest obstacle to strong community-based policing. Many county police forces consider themselves lucky to have any Spanish-speaking officer in their ranks at all. As Sheriff John Baker of Wake County, North Carolina describes, "All law enforcement agencies are faced with this. We have 19 positions open and would love to hire an Hispanic or a Spanish-speaking officer . . . but the bottom line is, we just can't find any."[52] Fortunately, the need has been recognized, and some basic language training has been funded so that the local police can better protect and serve the Latino community. Without some kind of dialogue, though, even the first step in trust-building is impossible.

The most important component of outreach to the Latino community is an assurance that the police will not harass individuals about their immigration status. Even U.S. citizens and lawfully-present immigrants will cease to cooperate with police if they sense that the police are viewing them with suspicion because of their ethnicity or the language they speak. It is not necessary for a city to have an official ordinance mandating noncooperation for community-based policing to be successful. What is essential is for residents of a neighborhood to hear explicitly from police officers and other officials that they are not the INS, and that they have no intentions of reporting them, their family members, or their neighbors to the INS.

If such a policy is not in place, the undocumented, as well as legal immigrants and U.S. citizens, will be reluctant to talk to the police and to report crimes and suspicious activity. Because immigration law is complicated and subject to frequent changes, many legal immigrants still worry that they could be deported for reasons they may not have known about. Furthermore, many immigrants live in "mixed-status" families, meaning that U.S. citizens, legal immigrants, and undocumented immigrants live within the same household. It is understandable that, int hese households, even citizen and lawful residents are afraid that extra scrutiny may have unforeseen consequences for their close family members. In other words, the effects of local law enforcement of immigration law go far beyond the undocumented immigrant community and pose serious threats to all Latino immigrants, U.S. citizens, and indeed, the entire community that must suffer the consequences of unsolved and undeterred crimes.

E. Other Law Enforcement Concerns

In addition to the issues outlined above, granting local law enforcement agencies authority over immigration law raises other concerns:

Empowering local law enforcement to enforce immigration law is not an effective means to prevent future terrorism and may well undercut the fight against terrorism. Furthermore, law enforcement agencies will need to rely on information from people in the community in order to prevent future terrorist acts. This information is likely to be obtained from local police officers with strong relationships with the community. Terrorists and other criminals

could take advantage of the threat of INS/local law enforcement collaboration to further their activities since communities divided by fear and distrust are not likely to work together and report suspicious activity. It would be truly ironic if, at some point in the future, the U.S. experiences a terrorist act partially because community members were deterred by racial profiling tactics from reporting suspicious or criminal behavior.

In addition to undermining community trust, the imposition of the additional burden of immigration law enforcement threatens effective anti-terrorism efforts. Some have likened the process of tracking down suspected terrorists to finding the proverbial "needle in the haystack." Even DOJ's supporters acknowledge that upwards of 99.99% of undocumented immigrants pose absolutely no terrorist threat. However, delegating immigration law enforcement to already over-burdened police departments adds millions of undocumented immigrants to the pool of potential suspects – in effect, it adds more hay to the haystack. This makes it more difficult, not easier, to find real terrorists.

Deputizing local police to enforce federal immigration law diverts limited resources that are better spent elsewhere. Local police departments need to spend their limited resources on solving crimes and preventing terrorism, and the INS needs to focus its efforts to enforce immigration law and create smart enforcement policies that are effective. Local police will be distracted from their primary mission when they are asked to perform new duties for which they have no training, compromising public safety and undermining effective immigration enforcement. Additional mandates are confusing and conflicting and restrict local police forces' ability to serve and protect their communities.

Without specific training, or with only cursory courses, local police officers have no hope of aiding effective immigration enforcement and will undermine any efforts that do exist. If extensive training is provided, requiring that local police attend training will drain time and resources that could be better spent on solving crimes and preventing terrorism. Most local communities cannot spare the time or the money to send their local police officers to a 17-week Immigration Agent Basic Training course.

Involving local police in immigration law enforcement activities is likely to lead to racial profiling, discrimination, and costly litigation. When local law enforcement gets involved in immigration enforcement, particularly without proper training and enforcement, people are often targeted for immigration enforcement on the basis of their accent or appearance. This can lead to serious violations of the civil rights of legal permanent residents and even U.S. citizens. Puerto Ricans, naturalized citizens, and others have frequently been the victims of such abuses. These civil rights violations, in turn, may result in costly litigation. The Chandler, AZ case described previously illustrates that INS-local law enforcement collaboration can be expensive. The joint INS-local police sweep cost the city $400,000 in the settlement of one of two lawsuits brought by victims of the operation, while another is pending. Law enforcement agencies, many of whom face potentially serious budget constraints, can ill-afford the costs of such litigation.

CONCLUSIONS

History has shown that collaboration between the INS and local law enforcement contravenes decades of established legal tradition, and has resulted in an erosion of community trust, civil rights violations, and litigation. In particular:

- **Delegation of authority contradicts decades of federal case law and policy, and is of dubious constitutionality.**
- **INS/local law enforcement collaboration will inevitably result in more cases of racial profiling, police misconduct, and violations of civil rights.**
- **INS/local law enforcement collaboration will undermine trust and community policing efforts.**
- **INS/local law enforcement collaboration will further undercut effective law enforcement and anti-terrorism efforts by diverting resources and leading to additional litigation.**

NCLR and other civil rights advocates are not alone in its opposition to increased INS collaboration with local law enforcement. Many local leaders, among them prominent mayors such as former Mayor Rudy Giuliani and current Mayor Michael Bloomberg of New York, former Mayor Richard Riordan of Los Angeles, and Mayor Richard Daley of Chicago, have expressly condemned turning local police officers into INS agents. Additionally, local police departments and police associations have voiced their opposition to local law enforcement of immigration laws.[liii] These individuals clearly understand the special dynamics between the people in their communities and the police. By moving forward with this plan, DOJ will undermine the relationships that these leaders have worked hard to create, and will likely alienate the communities for whose trust these local and national figures have so long worked.

The DOJ should immediately rescind its dubious new legal interpretation and renounce any plans to expand delegation of immigration law enforcement to state and local police. Absent such a policy shift, Congress should act to prevent or, at a minimum, circumscribe and carefully monitor its implementation.

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ENDNOTES

1. The events surrounding the October 2002 sniper attacks in Maryland and Virginia demonstrate how fear in immigrant communities can hamper criminal investigations. During the investigation, a Mexican national and a Guatemalan national were detained in connection with the sniper attacks. After determining that they were not involved with the attacks, the two undocumented workers were turned over to the INS for immigration violations. Press statements declared that the two were simply "in the wrong place at the wrong time," but immigrant communities were given the message that reporting information could place them or their family members in jeopardy. Chief Charles A. Moose of the Montgomery County Police Department and INS Commissioner James Ziglar later made statements urging immigrants to report any information they had regarding the sniper attacks without fear of deportation or other penalties. The fact that these special requests for information were publicized is evidence that law enforcement officials need and depend upon information from immigrant communities for their investigations, and that law enforcement is best served when everyone in a community feels safe to report crime and suspicious behavior.
2. *Federal Register*, Vol. 67, No. 142, July 24, 2002, p. 48,354.
3. U.S. Constitution art. I, § 9, cl. 1
4. *Brignoni-Ponce*, 422 U.S. at 884(1975), *Gonzales v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983), *Illinois Migrant Council v. Pilliod*, 540 F.2d 1062 (7th Cir. 1976), *Murillo v. Musegades*, 809 F. Supp. 1278 (W.D. Tex. 1992), *Ramirez v. Webb*, 599 F. Supp. 1278 (W. D. Mich. 1984), *Nicacio v. United States INS*, 595 F. Supp. 19 (E.D. Wash. 1984).
5. *Local Police Involvement in the Enforcement of Immigration Law*, 1 Tex. Hisp. J.L. 9 (1994) quoting Attorney General Bell, Dept. of Justice Press Release, June 23, 1978.
6. "Assistance by State and Local Police in Apprehending Illegal Aliens," Memorandum Opinion of the Department of Justice, February 5, 1996.
7. *Florida Avocado Growers v. Paul*, 373 U.S. 132, 142.
8. McDonald, William, "Crime and Illegal Immigration: Emerging Local, State, and Federal Partnerships," *National Institute of Justice Journal*, June 1997.
9. The legislative history shows that the aim of this provision is to undercut city ordinances that prohibit local law enforcement officers and city employees from cooperating with the INS. The underlying reason for the emergence of such ordinances, however, was concern for public health and safety. If local government agencies are seen as a threat to a person's ability to keep his or her family intact, or to keep his or her job, then an immigrant would likely not seek needed medical care, or call the police. This is a particularly important issue for cities with large, mixed-immigrant-status communities – both legal and undocumented immigrants would have reasons to fear government employees. Police officials in such areas are concerned that immigrants and their neighbors will not report crimes to local officers performing or assisting in the duties of INS agents.
10. *City of New York v. United States*, 1795 3rd F.3d 29 (2nd Cir. 1999).
11. *Making Our City's Progress Permanent*. Report of the New York City Charter Revision Commission, September 5, 2001.
12. *De Canas v. Bica*, 424 U.S. 351, 354-55 (1976).
13. 722 F. 2d 468 (9th Cir. 1983).
14. *Gonzales v. City of Peoria*, 722 F. Supp. at 475.
15. *Id.* at 476.
16. 908 F.Supp. 755 (C.D. Ca. 1995).
17. Id. at 769.
18. *Velasquez v. Ackerman*, No. C-84-20723-JW (D. Cal. 1992).
19. *De Haro v. City of St. Helena*, No. C-93-3487 (D. Cal. 1995).
20. *Mendoza v. City of Farmersville*, No. CV-F-93-5789 (D. Cal. 1998).
21. 728 F.2d 1298 (10th Cir. 1984).
22. 176 F.3d 1294 (10th Cir. 1999).

23. 264 F.3d 1188 (10th Cir. 2001).

24. *Miller v. U.S.*, 357 U.S. 301, 305 (1958); *U.S. v. Lipinski*, 460 F.2d 234, 237 (10th Cir. 1972).

25. *Miller, supra.*

26. "Enforcement, Not Terror," *Miami Herald editorial*, April 25, 1998. For more examples see Joge, Carmen T., *The Mainstreaming of Hate: A Report on Latinos and Harassment, Hate Violence, and Law Enforcement Abuse in the '90s*, Washington, DC: National Council of La Raza, November 1999.

27. *Brignoni-Ponce*, 422 U.S. at 884 (1975).

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32. "Workers' Organizing Committee Witnesses INS Raid," Press Release, Workers' Organizing Committee, Portland, OR, July 12, 1997.

33. "Probe Sought into INS Raid," *Jackson Hole News*, August 28, 1996.

34. "FBI Probes Possible Civil Rights Violations," *The Press Enterprise*, February 25, 1998.

35. "Immediate Action Directive for Worksite Enforcement Operations," Memorandum for Regional Directors, Michael A. Pearson, Executive Associate Commissioner for Field Operations, Immigration and Naturalization Service, U.S. Department of Justice, May 22, 1998.

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41. *Ibid.*

42. Eyewitness accounts and Palatka Daily News, January 29, 1997. See *The Mainstreaming of Hate: A Report on Latinos and Harassment, Hate Violence, and Law Enforcement Abuse in the '90s*, op.cit.

43. *Cedillo-Perez v. Adams*, No. 94-2461 (S.D. Tex. 1994).

44. "Crimes Against Latinos Decrease," *Los Angeles Times*, April 8, 2002.

45. *Ibid.*

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Reviews the most recent data on homeownership and analyzes the factors associated with the low homeownership rate of Latinos. The brief also proposes specific recommendations and lays out a strategy for the private sector, community-based programs, and public policy to increase the number of Hispanic homeowners by two million over the next two decades. Issue Brief No. 7

The No Child Left Behind Act: Implications for Local Educators and Advocates for Latino Students, Families, and Communities

This issue brief examines how the No Child Left Behind Act may impact Latino students, families, and communities. It paints a broad picture of what state and local educators must consider as they attempt to implement this legislation. Specifically, this paper provides a short, recent history of the standards movement in Congress, discusses challenges in implementing these reforms as they relate to Hispanic students, and provides recommendations for state and local policymakers.
Issue Brief No. 8

September 2003 CLEAR Act Letter to Congress

September 16, 2003

Dear Member of Congress:

We, the undersigned, urge you to oppose the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, H.R. 2671, introduced by Representative Charles Norwood (R-9th/GA). Despite its title and the rhetoric surrounding it, this bill would have dangerous consequences for public safety.

We agree that our criminal laws need to be enforced in order to make our streets and communities safe. State and local police are currently authorized to enforce criminal laws, regardless of the immigration status of the perpetrator of the crime. They are also authorized to notify federal immigration agents about foreign nationals who have committed crimes. This authority is fully consistent with the public safety role of police. However, the CLEAR Act would force police to investigate and enforce federal *civil* immigration laws—for example, staying past the expiration date of a temporary visa is a civil immigration law violation. Asking local police to enforce civil laws would actually have a detrimental effect on crime solving and prevention. Newcomers and native-born residents alike, who are victims or witnesses of crime, would be less likely to approach local law enforcement for fear of exposing themselves or their immigrant family members to deportation.

We have grave concerns about several provisions of this bill, and ask you to consider the following:

State and local police are not equipped to enforce federal civil immigration laws. Federal immigration agents undergo an intensive 17-week training course in immigration law before they begin duty. The immigration code is among the most complex bodies of law, even in comparison to the tax code. It is infeasible to adequately train 600,000 state and local police officers in immigration law enforcement. And at a time of severe budget crises, when local police departments are simultaneously laying off staff and responding to new homeland security mandates, tacking on such a wide body of federal laws to enforce would simply overwhelm these agencies.

If newcomers and their families view local police as immigration agents, they will be discouraged from reporting crimes or serving as witnesses. It was no surprise that the Department of Justice's similar effort last year (to give local police the authority to enforce civil immigration laws) was denounced by scores of local police departments. Police attribute plummeting crime rates over the last decade or so to the "community policing" philosophy, where local police work to gain the trust and confidence of the residents they are charged with protecting. Enactment of the CLEAR Act would undermine the efforts—and successes—of local police, as word that they are now immigration agents will spread like wildfire in newcomer communities. Immediately, more immigrants and U.S. citizens with immigrant family members would decline to come forward to report crimes, fires, and other hazards, simply because they know that their immigration status or that of their family members would come under new scrutiny. When immigrants and their family members are scared to report crimes and suspicious activity, crimes go unsolved and the safety of the entire community is compromised.

As organizations that work with immigrants on a regular basis, we can point to countless examples of the chilling effect this bill would have on crime reporting. For example, immigrant victims of domestic violence are often told by their batterers that if they report the abuse to authorities, they will be deported. This forces victims to decide between two nightmares: remaining with their abuser, or potentially facing separation from their children and leaving them at the mercy of the batterer. The decision to report abuse is already difficult enough. Fear of immigration consequences on the part of the victim should never be a factor. Sadly, though, this is often the case. In fact, we know of situations in which the victim's immigration status has indeed come under scrutiny, either by the local police investigating the situation or the judge adjudicating a protective order. When other domestic abuse victims see their friends and

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relatives in deportation proceedings because they sought help from authorities, the message is clear: do not report the crime or you will face even harsher consequences.

This problem is not limited to domestic violence cases. Other examples show how criminals are not apprehended when immigrants begin to fear contact with local police, and stop reporting crimes or information. A Pakistani immigrant from Brooklyn, NY was stabbed in the foyer of his building in January 2003.[i] To avoid having to make a police report (because he was undocumented and feared the consequences), he told paramedics that he had stabbed himself. In Manhattan, a Mexican teenager was raped, but was afraid to report it to police because of her own undocumented status.[ii] And in Clearwater, FL, the murder of an immigrant mother and her child may go unsolved because residents with clues or information of interest to local police are afraid to come forward.[iii] These are isolated examples of what would quickly become an epidemic, should the CLEAR Act pass.

In addition to the public safety concerns posed by this bill, it practically ensures the likelihood of civil rights abuses and wrongful arrests. There are nearly eleven million naturalized U.S. citizens, and more than twenty-five million native-born Americans of Latin American and Asian descent. Citizens are not required to carry proof of citizenship with them. Yet some police officers, vested with the authority proposed in the CLEAR Act, would inevitably stop and question people of certain ethnic backgrounds, who speak foreign languages, or who have accents—leading to violations of the rights of U.S. citizens and legal residents whose only offense is "appearing foreign." Anticipating this, the bill purports to grant immunity from civil lawsuits for officers who enforce immigration laws. Such immunity is contrary to efforts to eradicate racial profiling from U.S. law enforcement, and it will not stop inevitable costly and lengthy litigation. Finally, wrongful arrests are likely as the bill requires that the notoriously bad data maintained by the federal immigration service be dumped into the National Crime Information Center database. This presents an administrative nightmare for state and local police, and again wastes precious resources at a time they can ill afford it.

If passed, the CLEAR Act would make state and local law enforcement officers' jobs nearly impossible, and would bring us further from, not closer to, the goal we all share of making our communities safer. We urge you to oppose it.

Sincerely,

National Organizations

ACORN
American-Arab Anti-Discrimination Committee (ADC)
American Civil Liberties Union
American Immigration Lawyers Association
Amnesty International USA
Anti-Defamation League
Arab American Institute
Asian American Legal Defense and Education Fund
Catholic Legal Immigration Network, Inc. (CLINIC)
The Committee for Inter-American Human Rights
Episcopal Migration Ministries (EMM)
Family Violence Prevention Fund
Hebrew Immigrant Aid Society (HIAS)
Immigrant Legal Resource Center
Immigrant Women Program of NOW Legal Defense and Education Fund
Immigration and Refugee Services of America
Labor Council for Latin American Advancement (LCLAA)

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Lawyers Committee for Human Rights
Leadership Conference on Civil Rights (LCCR)
Love Sees No Borders
Lutheran Immigration and Refugee Service
Mexican American Legal Defense and Educational Fund (MALDEF)
Muslim Public Affairs Council (MPAC)
National Asian Pacific American Legal Consortium
National Catholic Association of Diocesan Directors for Hispanic Ministry (NCADDHM)
National Coalition Against Domestic Violence
National Coalition for Asian Pacific American Community Development
National Coalition for Haitian Rights
National Council of La Raza
National Employment Law Project
National Immigration Forum
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Korean American Service and Education Consortium
Network in Solidarity with the People of Guatemala (NISGUA)
People For the American Way
The Puerto Rican Legal Defense and Education Fund
Service Employees International Union (SEIU), AFL-CIO, CLC
SHARE Foundation
Sikh Mediawatch and Resource Task Force (SMART)
Southeast Asia Resource Action Center (SEARAC)
Tahirih Justice Center
UNITE!
United Food and Commercial Workers International Union (UFCW)
United States Conference of Catholic Bishops

Regional, State, and Local Organizations

Alabama
Hispanic Interest Coalition of Alabama

Arizona
Addiction Services, P.C.
Border Action Network
Border Watch
Florence Immigrant and Refugee Rights Project
Tempe Hispanic Forum

California
ACLU of Southern California
American Arab Anti-Discrimination Committee, Los Angeles and Orange County Chapter
Asian Law Alliance
Asian Pacific American Legal Center of Southern California
Asian Pacific Policy and Planning Council
Catholic Charities of the Diocese of Santa Rosa
Catholic Charities Refugee and Immigrant Services—San Diego
Catholic Charities of San Jose
Central American Resource Center (CARECEN)—Los Angeles
Coalition for Humane Immigrant Rights of Los Angeles

Darin M. Camarena Health Centers, Inc.
East Bay Asian Local Development Corporation
East San Jose Community Law Center
International Institute of the East Bay
Korean Resource Center of Los Angeles (KRC)
Lawyers' Committee for Civil Rights—San Francisco Bay Area
Migration Policy and Resource Center/Occidental College, Los Angeles
Newark Police Department
Sexual Assault Crisis Agency (SACA)
South Asian Network

Colorado
9to5 Colorado
Boulder County Safehouse
Colorado Coalition Against Domestic Violence
Fuerza Latina
Los Compañeros (San Juan Citizens Alliance)
Rights for All People/Derechos Para Todos

Connecticut
Catholic Charities Migration and Refugee Services—Hartford

District of Columbia
CARECEN-DC (Central American Resource Center)
Washington Lawyers' Committee for Civil Rights and Urban Affairs

Florida
Catholic Charities of Orlando, Inc.
Diocese of Orlando, Respect Life Office
The Farmworker Association of Florida, Inc.
Florida Immigrant Advocacy Center (FIAC)
Latino Leadership, Inc.
The Law Firm of M. Thomas Lobasz, P.A.
Office for Farmworker Ministry

Georgia
Immigration Services of Catholic Social Services—Atlanta

Hawaii
Catholic Charities Community and Immigrant Services
Na Loio - Immigrant Rights and Public Interest Legal Center

Illinois
Alivio Medical Center
Dominican Literacy Center
Heartland Alliance for Human Needs and Human Rights
Illinois Coalition for Immigrant and Refugee Rights (ICIRR)
The Immigration Project
Korean American Resource & Cultural Center (KRCC)
Latino Youth, Inc.
Peregrinos por la Dignidad

Iowa
Immigrant Rights Network of Iowa and Nebraska

Kansas
El Centro, Inc.

Louisiana
Catholic Charities Archdiocese of New Orleans
Migration and Refugee Services/Catholic Diocese of Lafayette
Office of Justice and Peace/Catholic Diocese of Lafayette

Maine
Immigrant Legal Advocacy Project

Maryland
Immigration Outreach Service Center (IOSC)
Migrant and Refugee Cultural Support, Inc. (MIRECS)

Massachusetts
Brazilian Immigrant Center
Brazilian Resources and Services Network
Brazilian Workers Center
Irish Immigration Center
Massachusetts Immigrant and Refugee Advocacy (MIRA) Coalition
Massachusetts Law Reform Institute
UFCW Local 1445

Michigan
ACCESS (The Arab Community Center for Economic and Social Services)
Hispanic American Council
Michigan Organizing Project (MOP)

Minnesota
Archdiocese of St. Paul & Minneapolis Hispanic Ministry Leadership Team
C.N. Realty
Jewish Community Action
Minnesota Literacy Council
Waseca Area Neighborhood Service Centre

Mississippi
Catholic Charities of the Diocese of Jackson
Catholic Diocese of Jackson
Daughters of Charity
Dominican Sisters
Saint Anne Catholic Church

Nebraska
NE Mexican American Commission
Nebraska Appleseed Center for Law in the Public Interest

New Jersey
Catholic Community Services, Refugee Resettlement and Immigration Assistance Programs—Newark

Migration and Refugee Services/Diocese of Trenton
New Jersey Coalition for Battered Women
New Jersey Immigration Policy Network, Inc.
Wind of the Spirit, Immigrant Resource Center

New Mexico
MANA de Albuquerque (Mexican American National Association of Women)

New York
Alianza Dominicana, Inc.
Asian Americans For Equality, Inc.
CUNY School of Law, Immigrant Initiatives
Cabrini Immigrant Services
Catholic Charities of Rockville Centre
Central American Legal Assistance
Central American Refugee Center
Centro Salvadoreño
Community Board 2 Manhattan
Face to Face
The Forest Hills Community House
Goddard Riverside Community Center
Hotel Employees & Restaurant Employees Union, Local 100
Latin American Integration Center
Marymount Manhattan College Institute for Immigrant Concerns
New Immigrant Community Empowerment (NICE) – Jackson Heights
New York Immigration Coalition
New York State Defenders Association
Rockland Immigration Coalition
Safe Horizon
Young Korean American Service & Education Center (YKASEC)

North Carolina
Center for New North Carolinians
Episcopal Farmworker Ministry
FaithAction
Latino Community Credit Union
Latino Community Development Center
North Carolina Justice and Community Development Center

Ohio
Community Refugee & Immigration Services
En Camino, Migrant and Immigrant Outreach/Diocese of Toledo

Oklahoma
Asian American Community Service Association, Inc.
Leblang, Sobel & Ashbaugh, P.L.L.P.

Rhode Island
International Institute of Rhode Island, Inc.

Tennessee
Garcia Labor Company, Inc.

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Highlander Research and Education Center
Iraqi House
Tennessee Immigrant and Refugee Rights Coalition (TIRRC)

Texas
ARCA (Association for Residency and Citizenship of America)
Association for Immigrants' Equality and Freedom
BARCA, Inc.
Catholic Charities of Dallas, Immigration Counseling Services
Catholic Family Service, Inc.
Concilio de Inmigración
Equal Justice Center
Hines & Leigh, P.C.
School for All
Texas Civil Rights Project
Texas Council on Family Violence

Virginia
The Hispanic Committee of Virginia
Office of Justice and Peace, Catholic Diocese of Richmond
Refugee and Immigration Services, Catholic Diocese of Richmond
Refugee & Immigration Services - Roanoke Office
Tenants' & Workers' Support Committee
Virginia Hispanic Chamber of Commerce
Virginia Justice Center for Farm and Immigrant Workers

Washington
Chinese Cultural Association
El Centro de la Raza
Northwest Immigrant Rights Project
Washington Defender Association's Immigration Project

Wisconsin
La Causa, Inc.
Voces de la Frontera

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[i] Margie McHugh, Executive Director of the New York Immigration Coalition, testimony before the Governmental Operations Committee and the Subcommittee on Immigration, New York City Council, May 5, 2003.
[ii] Ibid.
[iii] Tampa Tribune, "Police Appeal For Clues In Slaying Of Mom, Son," Natashia Gregoire, July 22, 2003.

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Letter from the Boston Police Department in Opposition to the CLEAR Act

September 30, 2003

Senator Edward M. Kennedy
2400 JFK Federal Building
Boston, MA 02203

Dear Senator Kennedy:

I am concerned about a movement underway in the House of Representatives that would have state and local police enforce civil immigration laws.

I continue to take seriously the threat of terrorism in our post 9/11 world, and support efforts that will mitigate that threat. In fact, the Boston Police Department is working hard to ensure we are as prepared as possible to prevent and respond to a terrorist incident. Many of our efforts are being made in partnership with our community, including law enforcement and other government agencies, private and non-profit organizations, and the people of Boston.

In recent years, we have made great progress at the Boston Police Department in our efforts to prevent crime and reduce fear. Our success is due in large part to our ability to partner with the communities we serve. Now, it is my fear that the CLEAR Act will impair those partnerships.

The Boston Police Department, as well as state and local police departments across the nation have worked diligently to gain the trust of immigrant residents and convince them that it is safe to contact and work with police. By turning all police officers into immigration agents, the CLEAR Act will discourage immigrants from coming forward to report crimes and suspicious activity, making our streets less safe as a result.

I ask that you continue your efforts to do all that is possible to protect us from the threat of terrorism, but also make sure that police departments can continue to maintain strong relationships with the diverse communities they serve. Thank you for your attention to this important matter.

Sincerely,

Paul F. Evans
Police Commissioner

National Immigration Forum 50 F Street NW, Suite 300 Washington, DC 20001
(202) 347-0040 fax (202)347-0058 www.immigrationforum.org

Letter from Lenexa, Kansas, Police Department in Opposition to CLEAR Act

August 26, 2003

Congressman Dennis Moore
431 Cannon House Office Building
Washington, DC 20515

Dear Congressman Moore,

The City of Lenexa and the Lenexa Police Department have made a commitment in recent years to build a good working relationship between police employees and members of the minority community. As the minority population has grown in Lenexa we have worked at learning and understanding cultural differences to better service their needs. Progress has been made and we continue to direct resources to this important issue.

With that in mind, recent legislation, the Clear Law Enforcement for Criminal Alien Removal Act of 2003 (CLEAR) causes us considerable concern. This Act would require local law enforcement officers to assume responsibilities presently handled by INS and would add the enforcement of civil immigration laws to long list of current responsibilities. This Act poses several areas of concern and could negatively impact Lenexa in the following ways.

- We are, like many jurisdictions across the country, short on resources and manpower and struggling to meet our citizen's service demands. This mandate will magnify that problem and force us to make cuts in other areas to comply with the CLEAR Act.
- We are not trained in immigration law and to reach a satisfactory level of proficiency would require both time and money, both of which are at a premium.
- It would appear on the surface that this act could be construed to contain components of racial profiling. This agency and law enforcement in general have worked diligently over the last few years to assure citizens that racial profiling is not tolerated in professional law enforcement agencies. This piece of legislation could damage the credibility we have worked so hard to establish.
- The most troubling aspect of this act is that it could cause members of certain groups to not report crimes or come forward with information about crimes for fear of being deported. The level of public safety we should deliver to these groups as well as the trust we are attempting to establish in our community could be severely damaged by the CLEAR Act.

We would ask you to oppose the CLEAR Act and ask you to urge others to vote in a similar manner. Thank you for your attention to this matter.

Sincerely,

Ellen T. Hanson
Chief of Police

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(202) 347-0040 fax (202)347-0058 www.immigrationforum.org

Letter from the National Association of Counties in Opposition to the CLEAR Act

September 30, 2003

The Honorable Jim Sensenbrenner
Chairman
Committee on the Judiciary
2138 Rayburn House Office Bldg.
U. S. House of Representatives
Washington, DC 20525-6216

Dear Chairman Sensenbrenner:

The National Association of Counties (NACo) believes that the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671) will place an undue burden on local law enforcement and reduce our ability to protect the public and investigate crimes. For these reasons, NACo strongly opposes the CLEAR Act. Specifically, NACo is concerned about the following aspects of the bill:

Counties are facing a serious budget crisis. "Counties in Crisis", a report issued by NACo in February showed that 72 percent of counties are facing budget shortfalls. The report further showed that jails and corrections were among the most affected by state cutbacks. In addition to enforcing civil immigration laws, states and counties would have new and onerous reporting requirements in a field that is neither our responsibility nor our expertise. Additional responsibilities placed on our sheriffs and police departments would only exacerbate the crisis. We have already shouldered substantial costs associated with other aspects of homeland security.

While the bill would authorize funding to reimburse state and local governments for equipment and other expenses, there is no guarantee that counties will actually receive these funds given the current federal deficit. In fact, programs that have been established to reimburse state and local governments for immigration related expenses have been woefully underfunded. For example, the State Criminal Alien Assistance Program (SCAAP) has only reimbursed less than 40 percent of all eligible state and local costs.

The CLEAR Act threatens states and counties that do not pass laws to enforce civil immigration laws with the loss of SCAAP funds. However, the SCAAP program is only allowed to reimburse states and counties for correctional expenses. Even if a state or county adheres to the requirements of the CLEAR Act, it would not be able to use the SCAAP program for other law enforcement activities.

Federal immigration law is extremely complicated. Local law enforcement departments do not have the expertise to enforce civil immigration laws. Even though the CLEAR Act would require the Attorney General or the Secretary of Homeland Security to develop a

training manual, it does not ensure that the training will be adequate or available, because it also states that training would not be deemed a prerequisite for enforcing federal immigration laws.

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Local law enforcement must have the community's trust. If immigrants are afraid of deportation, they will not come forward to report crimes. NACo believes that the CLEAR Act will make it more difficult for local law enforcement agencies to perform their duties.

In 1996 Congress passed an immigration law allowing states and localities to enter into memorandums of understanding (MOUs) with the federal government, to confer civil immigration law enforcement powers on their local officers. These MOUs encourage important safeguards, including the training of local agents in immigration law. An MOU is currently in place in Florida, and others are being negotiated around the country. NACo believes that the MOU process is working well and that the CLEAR Act is unnecessary.

Thank you for the opportunity to comment on H.R. 2671. NACo respects your leadership in criminal justice reform and looks forward to working with you and your staff on this and other matters.

Sincerely,

Larry E. Naake
Executive Director

National Immigration Forum 50 F Street NW, Suite 300 Washington, DC 20001
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THE FAX ON IMMIGRATION

A nation of immigrants....a nation of prosperity

November 12, 2003

Contact Douglas Rivlin 202.383.5989 (press)
Lynn Tramonte 202.383.5993 (policy)

Vol. 4, No. 9

Border Officials Say "No, Thanks" to Proposal for Federal Immigration Enforcement by Local Police

The United States/Mexico Border Counties Coalition, a nonpartisan body comprised of government officials from the 24 U.S. counties on the southwest border, recently sent letters to Congress outlining their opposition to proposals like the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, H.R. 2671. This bill would essentially force local police into enforcing federal immigration laws, by threatening them with further loss of critical federal reimbursements under the State Criminal Alien Assistance Program if they refuse to take on additional, civil immigration enforcement duties.

Writes the US/Mexico Border Counties Coalition: "We believe the solution to apprehending undocumented immigrants is for Congress to enforce federal immigration law" (letter to Congress, 11/6/2003). The coalition notes that the CLEAR Act would essentially be "imposing [a federal] burden on financially strapped local governments that lack the expertise to enforce these laws."

On Thursday, November 13, the Senate Immigration Subcommittee will hold a hearing examining the role of state and local police in enforcing federal immigration laws. Members of the subcommittee should note the perspective of border county police and sheriffs' departments below, whose concerns echo those raised by the county supervisors, judges, and other officials that make up the border counties coalition.

Arizona

Pima County, Sheriff Clarence Dupnik
"As a general rule, I wouldn't want our people certified as having the authority of a Border Patrol officer."
("Officials wary of border policing," *Arizona Daily Star*, 8/1/02)

Santa Cruz County, Sheriff Tony Estrada
"We will assist all law-enforcement agencies if someone has been identified as being wanted, but we won't go out and look for these people who are here illegally."
("Immigration proposal has many fearing racial profiling," *El Paso Times*, 10/9/03)

South Tucson Police Department, Chief Sixto Molina
"We don't have the time and the personnel to be immigration agents. Murderers, rapists, robbers, thieves and drug dealers present a much bigger threat than any illegal immigrant."
(Tucson Citizen editorial, "Immigration role not for local police," 10/15/03)

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Tucson Police Department, Chief Richard Miranda
"I do not believe it is appropriate to allocate the limited resources of the Tucson Police Department to the issue of immigration control. We have worked hard to build bridges and establish partnerships with the diverse population of our city. I believe that taking on the additional role of enforcing immigration laws would jeopardize those relationships and create unneeded tension in our community."
("Expansion of foreigner arrest plan is feared," *Arizona Daily Star,* 7/12/02)

Yuma County, Sheriff Ralph Ogden
"[The CLEAR Act is] counterproductive. We each [federal and local law enforcement agencies] have our own jobs to do."
("Bill would morph local police into INS agents," National Association of Counties membership newsletter, 10/03)

California

California Police Chiefs' Association, President Rick TerBorch
"It is the strong opinion of the California Police Chiefs' Association that in order for local and state law enforcement organizations to be effective partners with their communities, it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status."
(letter to Senator Feinstein, 9/19/03)

Anaheim Police Department, Spokesperson Mike Hildalgo
"We have enough problems just doing our routine calls and investigating the everyday things. This would put additional burden on us that we probably wouldn't be able to handle."
("Immigrants Worried, Coe Pleased," *Orange County Register,* 4/4/02)

Los Angeles Police Department, Public Information Officer Grace Brady
"People without legal rights would not be willing to speak up or would be frightened of police if we did [begin enforcing civil immigration laws]."
("Value, Legality Debated as Local Police Become Immigration Cops," *Hispanic Link Weekly Report,* 6/9/03)

Newark Police Department, Chief Ray Samuels
"Police agencies in California have worked very hard over the years to gain the confidence of their diverse population. We deal with immigrants from all over the world, many who are steeped in beliefs and practices that alienate them from law enforcement. . . . By turning police into immigration agents, all of our agency's efforts to gain the trust of immigrants—both legal and illegal—would be undermined as immigrants would be discouraged from coming forward to report crimes and suspicious activity."
(letter to Representative Stark, 9/17/03)

Sacramento Police Department, Chief Arturo Venegas, Jr
"I don't think it's a good idea. We've made tremendous inroads into a lot of our immigrant communities. To get into the enforcement of immigration laws would build wedges and walls that have taken a long time to break down."
("Administration Split on Local Role in Terror Fight," *The New York Times,* 4/29/02)

San Diego Police Department, Spokesperson David Cohen
"Our policy has been and continues to be that we are not federal immigration officers, and our department guidelines for dealing with undocumented persons are very strict and are unlikely to change."
("Police May Gain Power to Enforce Immigration," *San Diego Union-Tribune*, 4/3/02)

San Joaquin County Sheriff's Office, Lt. Armando Mayoya
"If police officers start reporting to the INS, more undocumented workers could wind up as victims. Criminals soon would realize that undocumented workers would be unlikely to call police for fear of being deported and target them for attacks. Racial profiling also could intensify if police are tasked with upholding immigration laws, and it wouldn't just be Latinos targeted by police."
("U.S. May Let State, Local Authorities Enforce Federal Immigration Laws," *Dallas Morning News*, 4/3/02)

Stockton Police Department, Chief Edward Chavez
"To be quite honest, if people are law-abiding and are here to earn a productive life and be a contributing member of society…they should be allowed to live their lives."
("S.J. Officials Blast INS Role for Police," *Stockton Record*, 4/4/02)

Ventura County Sheriff's Department, Spokesperson Eric Nishimoto
"We're not in favor of having our department being responsible for that function. The number one risk is the potential for civil rights violations. Right now we're involved in preventing any kind of racial profiling and this type of function could open us to that kind of risk . . . . We feel our officers are not equipped to make that kind of determination of who is legal. In the 70's, one of our tasks was to round up illegals and it was very difficult to make that kind of determination. From a practical standpoint, we're not staffed to do that, especially in this time of budget reductions."
("Proposal for Police to Act as INS Agents Denounced," *Ventura County Star*, 4/6/02)

Texas

Arlington Police Department, Chief Theron Bowman
"We can't and won't throw our scarce resources at quasi-political, vaguely criminal, constitutionally questionable, not any other evolving issues or unfunded mandates that aren't high priorities with our citizenry."
("2 Chiefs Oppose Immigration Role," *Dallas Morning News*, 4/5/02)

Austin Police Department, Assistant Chief Rudy Landeros
"Our officers will not, and let me stress this because it is very important, our officers will not stop, detain, or arrest anybody solely based on their immigration status. Period."
("Austin Police Won't Arrest People Only for Immigration Status," KEYE CBS, Austin, 4/5/02)

El Paso Municipal Police Officers' Association, President Chris McGill
"From a law-enforcement point of view, I don't know how productive it would be to have police officers ask for green cards. It's more important that people feel confident calling the police."
("Immigration proposal puts burden on police," *El Paso Times*, 10/9/03)

Dallas Police Association, Senior Cpl. Glenn White, President
"The strain on local police already is enormous, and to ask us to arrest and detain immigrants is something the federal government needs to address by funding the INS some more and hiring additional personnel."
("U.S. May Let State, Local Authorities Enforce Federal Immigration Laws," *Dallas Morning News*, 4/3/02)

Garland Police Department, Officer Steve Dye
"Even if they're here illegally, they still have rights. They should call the police and report [crimes]. They are residents. We serve them like any other residents."
("Non-English speakers may face questionable business dealings," *Dallas Morning News*, 8/27/03)

Houston Police Department, Spokesperson Silvia Trevino
"The INS handles immigration. We handle crime."
("Local police may get role in immigrant law," *Baltimore Sun*, 7/9/2003)

Houston Police Officers Union, Hans Marticiuc, President
"It's very difficult in the immigration communities to get information from folks, and if there's a fear of being reported to the INS because of illegal status, then it just makes our job that much more difficult and it makes the city have that much more criminal activity."
("Houston police stick to hands-off immigrant policy," *Houston Chronicle*, 3/3/2003)

San Antonio Police Department, Chief Albert Ortiz
"Any time we get mandates and more work without a commensurate amount of resources, something has to suffer. One of the beauties of living in San Antonio is we have a lot of diversity and we seem to pull together. If that [mandate] happens, we'd really have to think very hard about where it would be on our priority list, and if it would even be a priority...We've tried so very hard for years to build bridges to all segments of our community. This would be a setback in that regard."
("Sheriff, Top Cop Blast INS Proposal," *San Antonio Express News*, 4/5/02)

Waco Police Department, Chief Alberto Melis
"I worry that there are people who don't ask for help because they have fear of the police."
("Waco Police Chief Asks Immigrants Not to be Afraid to Report Crimes," *Waco Tribune-Herald*, 4/15/02)

These are just a sampling of the departments that oppose initiatives like the CLEAR Act. For more quotes or complete statements, please contact the National Immigration Forum at 202.383.5989 (press) or 202.383.5993 (policy), or visit our web site at http://www.immigrationforum.org/currentissues/clear.htm.

To strengthen
And promote cities as centers of opportunity, leadership, and governance.

National League of Cities

1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004-1763
202-626-3000
Fax: 202-626-3043
Internet: www.nlc.org

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Mayor,
New Haven, Connecticut

Executive Director
Donald J. Borut

April 22, 2004

The Honorable Edward M. Kennedy
Ranking Member
Senate Subcommittee on Immigration,
Border Security, and Citizenship
Washington, DC 20510

Dear Senator Kennedy:

The National League of Cities (NLC), an organization representing over 18,000 cities, strongly opposes the Homeland Security Enhancement Act (S. 1906) because it preempts local laws, imposes unfunded mandates, undermines community policing and increases racial profiling. NLC testified in opposition to the companion House bill, H.R. 2671, the "Clear Law Enforcement for Criminal Alien Removal Act of 2003" for the same reasons.

NLC policy states: "Local police have a responsibility to cooperate with the federal government to apprehend specific persons identified as having committed a crime and violated US immigration laws and who have been located by the federal government. Local personnel, however, cannot be conscripted into federal service because the federal government has decided not to fund and staff its immigration enforcement agencies to meet demand. This type of action can divert local personnel from their primary duties and constitute a cost shift onto local governments." *National Municipal Policy § 6.06(A)*

Preemption

H.R. 1906 preempts local laws that bar their law enforcement officers from assuming the federal responsibility of enforcing civil immigration laws. Section 102 requires state and local governments to repeal any policies that limit police enforcement of immigration laws if they want to continue to receive reimbursement from the State Criminal Alien Assistant Program (SCAAP). NLC opposes the federal preemption of local laws, especially when Section 102's subtle threat to withhold SCAAP reimbursement would force local governments to assume federal responsibilities or risk reimbursement for the services rendered.

Unfunded Mandates

S. 1906 would impose unfunded mandates on local governments by failing to authorize funding for SCAAP, costs associated with asset forfeiture, visa processing fees, administrative judgments, or grants to state and local police agencies for equipment and technology used to process individuals for federal immigration law enforcement. Section

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The Honorable Edward M. Kennedy
Page Two
April 22, 2004

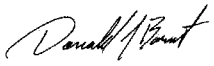
108 (a)(4) would provide federal funding for training manuals for local law enforcement officials but not for actual training of the officers.

NLC opposes the shifting of costs and responsibilities of immigration law enforcement to local governments. Local law enforcement routinely assists the federal government by apprehending and housing and feeding non-documented criminal suspects in city jails until federal agents are dispatched to retrieve the individuals. Since September 11, 2001, local governments have assumed huge financial responsibilities to help secure the homeland. Yet, local and state governments received no more than 35% of the costs related to the detainment of non-documented persons in fiscal year 2003 according to the Bureau of Justice Assistance. Even if local governments were to comply with S. 1906, they would not be fully compensated because SCAAP reimbursements are limited to correctional expenses.

Community Policing and Racial Profiling
Police departments from cities of all sizes have raised concerns that efforts to force local officers to enforce federal civil immigration laws would damage successful community policing initiatives and inadvertently encourage racial profiling. Local law enforcement departments do not have the expertise to enforce civil immigration laws. Training manuals are inadequate tools to prepare police officers regarding the complexities of immigration law. Communication, visibility, and trust are the foundation of an effective community policing program. Section 109's attempt to provide some immunity for officers accused of civil rights violations does not pacify concerns about the increased use of racial profiling as an enforcement tool by inadequately trained officers.

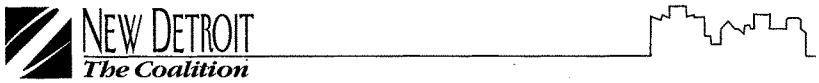
For the previously stated reasons, NLC respectfully asks that this subcommittee reconsider the unmanageable burden S. 1906 would place on local law enforcement. NLC believes that the most effective tools to secure the homeland are improved coordination, planning, technology, training and funding – not preemption, unfunded mandates, deteriorated community policing, and racial profiling.

Sincerely,



Donald J. Borut
Executive Director

cc.: Senator Saxby Chambliss, Chairman
Members of Senate Subcommittee on Immigration, Border Security, and Citizenship



November 11, 2003

The Honorable Edward Kennedy
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Kennedy:

We are writing in opposition to the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671). The CLEAR Act places state and local law enforcement agencies in a significantly different position. The CLEAR Act forces police to investigate and enforce civil immigration laws, such as, staying past the expiration date of a temporary visa.

While we agree that our criminal laws need to be enforced, state and local police are currently authorized to enforce these laws regardless of the immigration status of the perpetrator of the crime. These law enforcement agencies are also authorized to notify federal immigration agents regarding foreign nationals who have committed crimes. This authority is fully consistent with the public safety role of the police.

It is our contention that utilizing state and local police to enforce civil immigration laws will have a detrimental affect on crime solving and prevention. For example, newcomers and native-born residents alike, who are victims or witnesses of crime, will be less likely to approach local law enforcement for fear of exposing themselves or their immigrant family members to deportation.

In addition, we are concerned for the victims of crime. Victims of domestic violence, street robbery and assault, who may not have legal papers or who are in the process of legalizing their residency would be reluctant to contact a legal department that is also capable of arranging their deportation.

Inquiries into the immigration status of victims and witnesses significantly erode immigrant community cooperation with the police and confidence in the judiciary, and can only result in less safe communities for us all. These victims, and any other people who fear deportation, will be reluctant to contact law enforcement for protection.

We conclude that aggressive mandates requiring state and local police to become immigration law enforcers will undermine the justice system's ability to prosecute crimes against immigrants. We further conclude that this legislation overloads the limited resources and staff power of our law enforcement agencies.

3011 W. Grand Boulevard, Suite 1200, Detroit, Michigan 48202 • *www.newdetroit.org* • Phone 313.664.2000 • Fax 313.664.2071

Our constituencies are further concerned with the possibility of civil rights abuses and wrongful arrests. The CLEAR Act will enhance and legalize the profiling of people based on their appearance, speech, race, ethnicity or culture. Citizens, both naturalized and native-born, are not required to carry proof of citizenship. Yet, under the rubric of the CLEAR Act, police officers, vested with the authority proposed by this act, will be given license to stop and question people of certain ethnic backgrounds, who speak foreign languages, or who have accents.

The latitude of this proposed act opens the door for the wholesale violation of the civil rights of U.S. citizens and legal residents whose only offense is "appearing foreign." Perhaps in anticipation of violating civil rights, the proposed bill would grant immunity from civil lawsuits for officers who enforce immigration laws. Such immunity is contrary to efforts to eradicate racial profiling.

As a coalition of leaders representing the diverse racial, ethnic and cultural communities of the Detroit metropolitan area, we urge you to oppose this legislation.

Sincerely,

(see attached signature page)

Shirley R. Stancato
New Detroit

Ismael Ahmed
Arab Community Center (ACCESS)

Eva Garza Dewaelsche
SER Metro Detroit

Ying Gee, Ed.D.
Association of Chinese Americans

Rev. Dan Krichbaum, Ph.D.
National Council for Community & Justice

Richard Thibodeau
International Institute of Metropolitan Detroit

David Gad-Harf
Jewish Community Council

Jane C. Garcia
Latin Americans for Social & Economic Development (LASED)

Imad Hamad
American Arab Anti-Discrimination Committee

Gloria Rivera
Freedom House

Peter Wong
Asian Pacific American Chamber Commerce

AMERICANS FOR TAX REFORM

Grover G. Norquist President

Grover Norquist, President of American For Tax Reform.
Written Testimony before the Senate Judiciary Subcommittee on Immigration, Border Security, and Citizenship.

Chairman Chambliss and other members of this committee, thank you for the opportunity to address you regarding federal immigration laws and their relationship with local law enforcement.

My name is Grover Norquist and I am president Americans For Tax Reform (ATR), a non-partisan, not-for-profit non-partisan coalition of taxpayers and taxpayer groups who oppose all federal and state tax increases. I submit my comments to you today in strong opposition to forcing state and local law enforcement to enforce federal immigration laws.

In April 2002, the Justice Department attempted to force state and local police into enforcing civil immigration laws. This proposal was met by a firestorm of opposition from state and local law enforcement, elected officials, and other organizations over fears that if the policy became law, **it will set a dangerous precedent with regard to the authority of state and local law enforcement agencies to enforce civil violations of many federal laws.** Fortunately, the Department of Justice listened to the expressed concerns and backed off of their original proposal.

Despite the Justice Department's decision not to implement this policy, Congress is debating whether or not to introduce legislation that forces state and local law enforcement personnel to enforce federal immigration laws. Introduction of this type of legislation will start the United States on a path towards establishing a National Police Force.

I will outline the taxpayer's concerns with this proposal, and explain our opposition to the expansion of federal law enforcement duties to state and local police forces.

Congress should not legislate the legal authority of police to enforce federal civil immigration laws (currently state and local police may only enforce criminal immigration laws, except in very specific circumstances), and require them to either do so or lose certain federal funds. Some proposals in Congress seek to encourage police participation by awarding them assets seized from undocumented immigrants, permitting them to seek funds from the federal government for failure to pick up undocumented immigrants, and granting them limited immunity from lawsuits.

In addition, mandating the entry of civil immigration information into the National Crime Information Center (NCIC) database (a database of wanted persons maintained by the FBI for local law enforcement use) raises several concerns. By inputting potentially millions of names of people with civil immigration law violations in the NCIC, this bill proposes a sweeping expansion of the scope of NCIC, and severely undermines its manageability.

I will now explain several of the concerns that myself and members of the Center-Right Coalition have with the implications enactment of these types of laws will have on local law enforcement. In addition, I

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would like to submit a letter signed by myself, Former Member of Congress Bob Barr, and David Keene, President of the American Conservative Union.

Expansion of Federal Immigration Responsibilities Harms Local Law Enforcement's Efforts to Enhance National Security

National security experts and state and local law enforcement agree that good intelligence and strong relationships are the keys to keeping our nation and streets safe. Mechanisms already exist in current law to foster cooperation between local law enforcement and federal agents when these types of partner ships are required partnerships are required.

For example, in 1996, Congress amended the Immigration and Nationality Act to provide an appropriate forum for state and federal cooperation in the enforcement of federal immigration laws. Congress authorized the Attorney General to enter into a written agreement with a state or local, government under which local law enforcement officers could perform the functions of an immigration officer. These agreements would require that the local police officers receive appropriate training in federal immigration law, and that they perform these functions under the supervision of the Attorney General. Operating under this statute, the Attorney General can work with local authorities under conditions that ensure proper training and that preserve the exclusive authority of the federal government over immigration matters.

New Job Duties Increase the Burden on State and Local Law Enforcement

The number one priority of local police is ensuring public safety. Crime solving and prevention should not take a back seat to immigration law enforcement or any other federal mandate. Adding immigration law enforcement to the job duties of local law enforcement diverts much-needed resources, and is at cross-purposes with their main goal: ensuring the safety and security of the communities they have pledged to serve.

Because of the complexity and nuances involved, immigration law enforcement is an expensive proposition. It requires extensive training of agents unfamiliar with federal immigration law.

The responsibilities of state and local police have increased immensely after the September 11th terrorist attacks, and they simply do not have extra time on their hands to take on what is rightly a federal duty. Federal immigration law is even more complex that the U.S. tax code, and enforcement of such should remain with the federal agents trained in these matters. Forcing state and local law enforcement agencies to enforce federal immigration laws will make police's primary job—investigating, solving, and preventing real crimes—even harder.

Undermines State and Local Governments

Expanding the responsibilities of federal immigration officers onto state and local police forces runs roughshod over state and local governments. The federal government uses threats of decreased or eliminated federal funding in order to force local governments into participating in this program. Many state and local government bodies have passed laws and city council ordinances, preventing the deputization of local police as immigration agents.

Since September 11th, resolutions and laws prohibiting civil immigration law enforcement by state and local police have passed in over twenty localities. These local governments understand that, even with the challenges of waging an international war on terrorism, turning police into immigration agents is not the solution to fixing our current immigration problem.

Forcing Immigration Law Enforcement Duties onto State and Local Police Is Unneeded and Unnecessary Law-Making

As I mentioned earlier, mechanisms already exist within current law to foster cooperation between local law enforcement and federal immigration agents. Several states and localities have entered into memorandums of understanding (MOUs) with the federal government, to confer civil immigration law enforcement powers on their local officers. These MOUs encourage important safeguards, including the training of local agents in immigration law. An MOU is currently in place in Florida, and others are being negotiated around the country. Congress should not override these safeguards by allowing any local police officer in the nation to enforce civil immigration laws, with no training or safeguards in place.

It is important to note that local police already have the right and duty to enforce criminal law—this includes criminal immigration law violations and other crimes committed by foreign nationals. Legislation is simply not needed in order to confer these powers upon state and local law enforcement. State and local police are also currently authorized to notify federal immigration agents about arrests of foreign nationals for crimes they have (or are suspected of having) committed. This ability is fully consistent with the public safety role of police.

Conclusion

It is unrealistic to ask local police to take on the variety of specialized law enforcement functions currently the responsibility of the federal government. The legislation that has been introduced places an unmanageable burden on local law enforcement by forcing state and local governments to pay their police forces to do the jobs of federal law enforcement agencies, raising questions, by the way, of the federal Anti-Deficiency Act.

In order to ensure that state and local law enforcement agencies comply the federal government uses financial incentives and penalties to force them to take on the responsibilities of federal immigration personnel. In fact, legislation that has already been introduced in the House of Representatives will discontinue federal funding to states and localities if they do not implement statutes explicitly authorizing their law enforcement to enforce immigration laws within two years after the bill's enactment.

Passage of this legislation will represent a dramatic shift that is likely to damage local law enforcement, while raising troubling new questions about the intersection of local law enforcement and federal law.

I along with members of the Center-Right Coalition support the efforts of Congress and this Administration to fight terrorism at home and abroad. However, Congress should not implement sweeping and unnecessary policy changes that place us on the path towards creating a Federal Police Force, and which clearly violate principles of federalism on which our Republic was founded and would cost taxpayers large sums of money to implement or will the program will become an unfunded mandate.

Thank you for the opportunity to submit my testimony.

1920 L Street NW • Suite 200 • Washington DC 20036
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April 21, 2004

Senator Jeff Sessions
U.S. Senate
Washington, D.C. 20510

Dear Senator Sessions:

As officers of law enforcement, we wish to thank you for introducing S. 1906, the Homeland Security Enhancement Act. We fully support this legislation and urge the Senate to pass it right away.

The Homeland Security Enhancement Act could not come at a more momentous time. Its remedy is badly overdue because of the severe crisis illegal and criminal aliens are causing. The United States is being overrun by 8-10 million illegal aliens. More than 400,000 illegal aliens are under final orders of removal, but they have fled justice. Some 80,000 of these are known to be criminal aliens, with 15,000 of them "of national security interest."

The federal government has only 2,000 immigration officers in the interior of the country. Even with the combined Customs and former INS, only 5,500 agents are available for both immigration and customs enforcement in the interior. Yet, state and local law enforcement could be a tremendous force multiplier, because more than 600,000 state and local officers police American streets every day.

Besides the problem of federal enforcement agents being vastly outmanned, state and local police departments face a wholly uncooperative spirit from federal authorities. When state or local police call the federal immigration agency about an apprehended illegal alien, the usual response is to tell us to "just let them go." That is, federal law enforcers knowingly and willfully force us to release back onto our streets suspected or known illegal or criminal aliens. Further, many state and local law enforcement personnel are unclear about the legal authority they have to enforce immigration laws.

S. 1906 is vital if we ever hope to secure our homeland. For all the rhetoric about "securing the borders," controlling illegal immigration in the country's interior is just as critical for homeland security. And there is no earthly way the federal government can succeed at this task on its own. As law enforcement officers, we firmly believe that it is irresponsible not to give the very people who are charged with protecting our communities the authority they need in cases when illegal and criminal aliens are involved. Your legislation would empower state and local law enforcement officials to help win the war on terrorism in this important facet, and it is past time to do so.

We do not believe there could be any plainer need than to enhance homeland security as S. 1906 would do.

Yours and Senator Miller's S. 1906 would address the most pressing problems that keep officers like us on the sidelines in this challenge. It would clarify authority, improve information-sharing, and provide additional resources. Further, it would curb the ability of illegal aliens and terrorists to perpetrate frauds in key pressure points that help them further their criminality.

First, the HSEA would clarify the legal authority that law officers have to enforce immigration violations during the normal course of carrying out regular duties. Second, S. 1906 would increase the amount of immigration information entered into the NCIC database. This would make the information more readily accessible to state and local officers because this is the database we most frequently consult during our routines.

Third, S. 1906 would add critically needed federal detention facilities and bed space. That means criminal aliens, once apprehended, do not have to be released due to lack of detention space. Fourth, the legislation would direct the federal government to take custody of illegal aliens caught by state or local officers or else pay the locality to detain the aliens. Currently, state and local officers face being told to let the illegal aliens go free because no one is available to take custody.

Fifth, S. 1906 would speed the deportation of criminal aliens. It would mandate extension of the Institutional Removal Program so that criminal aliens are detained after their sentences until removal. This change would prevent these removable criminals from being released into the American community and disappearing.

Sixth, HSEA would squarely address the problem of some states issuing driver's licenses to illegal aliens and thereby putting in the wallets of lawbreakers a valid ID that eases their ability to break more of our laws. States could issue driver's licenses only to legal aliens and would have to make the license expire on the same day the alien's permission to be in the country expires. The bill also combats public benefit fraud. Only ID documents issued by a federal or state authority could be recognized for the receipt of a federal or public benefit.

Finally, HSEA would be a deterrent to cities and police departments that have enacted "sanctuary" policies, in violation of federal law. It is vital that state and local law enforcement officers be permitted to communicate with federal immigration authorities if we are to do our jobs effectively. We take pride in our role as protectors of public safety but we cannot adequately protect the public if our access to important information about the suspects we detain is obstructed.

We strongly support S. 1906 for the reasons we have stated. We strongly urge all Senators to cosponsor your bill, and we strongly urge Congress to pass this common-sense, reasonable, well crafted legislation this year. Failure to enact S. 1906 into law only helps lawbreakers, forces both federal and all state and local law enforcement officers to fight with one arm tied behind our backs, and leaves a gaping hole in the defense of this nation and the

enforcement of our laws. S. 1906 is badly needed in order to restore the rule of law to a key component that directly affects (and currently threatens) our homeland security.

Respectfully,

Dave Aydelotte
Trooper, Oregon State Police
Baker City, OR

Kris Brisson
Deportation Officer, Bureau of Immigration and Customs Enforcement, DHS
Phoenix, AZ

Anthony E. Bulver
Officer (Ret.), Tucson (AZ) Police Department;
Ava, MO

Christian Chojnowski
Officer (Ret.), North Miami Beach Police Department
Richland, MI

Thomas V. Connor
Correction Officer, New York State Department of Correctional Services
Wallkill, NY

Bob and Bonnie Eggle
Parents of U.S. Park Ranger Kristopher W. Eggle, slain in the line of duty on August 9, 2002
Cadillac, MI

John H. Frecker
U.S. Border Patrol (Ret.); Vice President, National Border Patrol Council
Baileyville, ME

Dudley C. Gibson
Major (Ret.), Phoenix Police Department
Sun City West, AZ

Thomas B.Gray
U.S. Border Patrol Agent (Ret.)
Lynden, WA

Robert Hample
Probation Officer
Ventura, CA

Gene Hollerud
Police Officer and Special Reaction Team (SRT) Member, Department of Defense, Rock Island Arsenal Police Department
Rock Island, IL

Paul Hopper
Security Guard, Genesee Management/Wilmorite Security and Northeastern Security Services
Webster, NY

Tim Jones
Special Agent (Ret.), Georgia Bureau of Investigation
Lithonia, GA

Andrew A. Konkoly
Captain (Ret.), Fire Department
Lyndhurst, OH

James Larmore
Officer (Ret.), Federalsburg Police Department, Federalsburg, MD
Mardela Springs, MD

Lorrie McComb
Los Angeles Fire Department widow (Ret.)
Etna, WY

Loren Montgomery
Immigration Examiner (Ret.), Immigration and Naturalization Service
Woodland, CA

Phyllis Nemeth
California Youth Authority
Arcadia, CA

Gregary Orr
U.S. Border Patrol Agent
Whitefish, MT

Thomas Porter
U.S. Coast Guard (Ret.)
Hampton, NH

Rosanna Pulido
Northfield (IL) Police Department
Chicago, IL

Warner Reeser
Officer (Ret.), Denver Police Department
Estes Park, CO

Larry Rengstorf
SMSgt (Ret.), U.S. Air Force
Windsor, CA

James Scarborough
U.S. Army Security Agency (Ret.); Lockheed-Martin
Fairfax, VA

G. M. Tippit
Officer (Ret.), Dallas Police Department
Dallas, TX

Ernest G. Wade
Immigration Inspector (Ret.), Immigration and Naturalization Service
Snellville, GA

William A. Weatherford
Trooper (Ret.), New Mexico State Police
Littleton, CO

Michael H. Weekley
Corporal, Calvert County Detention Center
Upper Marlboro, MD

Thomas Zamrok
Officer (Ret.), Buffalo Police Department
Alden, NY

STATEMENT ON BEHALF OF THE IMMIGRANT WOMEN PROGRAM OF LEGAL MOMENTUM: ADVANCING WOMEN'S RIGHTS

AND

THE NATIONAL NETWORK TO END VIOLENCE AGAINST IMMIGRANT WOMEN WITH THE NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD AND FAMILY VIOLENCE PREVENTION FUND

By: Leslye E. Orloff, Director of the Immigrant Women Program, Legal Momentum and Co-chair of the National Network to End Violence Against Immigrant Women

BEFORE THE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CITIZENSHIP OF THE SENATE COMMITTEE ON THE JUDICIARY

DANGERS THAT LOCAL POLICE REPORTING CAN CAUSE FOR IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE

April 22, 2004

Leslye E. Orloff, Immigrant Women Program
NOW Legal Defense and Education Fund
202-326-0040

Statement:

My name is Leslye Orloff. I am the Director of the Immigrant Women Program at Legal Momentum (the new name of the NOW Legal Defense and Education Fund). I am also co-chair of the National Network to End Violence Against Immigrant Women (National Network) along with the National Immigration Project of the National Lawyers Guild and the Family Violence Prevention Fund. The National Network is a 500- to 700-member strong organization made up of advocates, attorneys, shelter workers, social workers, health care providers, police, prosecutors, researchers, and others who provide assistance to and advocate for improved legal protections for immigrant victims of domestic violence, sexual assault, and trafficking.

To provide you with an example of how deputizing local law enforcement endangers immigrant victims, I want to share with you a story about a woman named Lucia. This story illustrates the problems that occur for immigrant victims when law enforcement takes on the role of the Bureau of Immigration and Customs Enforcement (ICE); when there are Memorandums of Understanding like the MOU in south Florida in which police are enforcing federal immigration laws; and what happens in immigrant communities when this occurs.

Lucia lives in south Florida. She is 35 years old and has been married for quite some time to a U.S. citizen who has abused her for years and who has never filed immigration papers for her. They have two U.S. citizen children and continue to be married and to live together.

Lucia had suffered numerous beatings perpetrated by her husband. These beatings were so severe that the neighbors heard the abusive incidents, saw bruises a number of times, and heard Lucia's screams of pain. Her husband never filed immigration papers for her, although he clearly could as a U.S. citizen. Lucia's husband repeatedly told her, "If you call for help, the police will turn you in to ICE and deport you and you will never see your children again." We hear these threats in cases of immigrant victims' domestic violence all over the country. In fact, research has found that such forms of immigration-related abuse almost always co-exist with physical and sexual abuse in a relationship.[1]

Lucia's husband's threats to have her deported and ensure that she will not see her children kept Lucia from calling the police or seeking any form of help. She did not go to the hospital, no matter how bad her injuries were. Ultimately, her neighbor, who was also an immigrant, took her to a local agency that worked with immigrant victims of domestic violence. Both the neighbor and Lucia told the advocates at the agency that the reason Lucia never called the police was because of the advertising on television and radio about the fact that if you call the police, they turn you over to ICE. Her fear of being turned over to ICE was so great that she put up with the beatings because she believed she was trapped and that she had no other options.

What happened in Lucia's case is an example of immigrant victims being cut off from law enforcement help and protection because of policies in which police choose to enforce immigration laws. These policies send a clear message to non-citizen crime victims – if you call

[1] Giselle Aguilar Hass et al., *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications, in* DOMESTIC VIOLENCE: GLOBAL PERSPECTIVES 103, 106-109 (2000).

the police for help to stop abuse or to report a crime, you will be deported. We see this happening all over the country, in cities, small towns, and rural communities. Police reporting to ICE really does pose harm for immigrant victims of domestic violence, rape, sexual assault, and trafficking, particularly when it happens routinely.

Exposure to domestic violence is not higher in any particular race, class, or ethnic group in the U.S., but immigrant victims are at greater risk of longer exposure to abuse due to systemic barriers that they must overcome when seeking help. Barriers include, but are not limited to, concerns that if immigrant victims call the police for help they will be turned in to ICE, coupled with the fact that there are very few culturally competent services in this country to help immigrant victims of domestic violence.

There have been a few cases in which judges in protection order cases ask victims about their immigration status and call ICE. Instead of holding the abuser accountable for his violence and giving the immigrant victim a protection order, these judges have ICE pick up the immigrant victim. When police, judges, and immigration officials report immigrant victims to ICE and when victims are picked up, many are deported despite the fact that they legally qualify for Violence Against Women Act immigration relief and despite the fact that ICE has internal policies that are supposed to prevent immigrant victims who qualify for VAWA, T visa, or U visa immigration relief that would prevent them from being deported.[2] Currently, these policies are not working effectively.

Members of this committee need to understand that sweeping deputizing of local police, sheriffs, and state troopers to enforce immigration laws will allow perpetrators of crimes against immigrant victims to go free. These perpetrators of domestic violence, rape, sexual assault, and trafficking will continue to live in our communities and will continue to perpetrate crimes against others.

There is a history of insufficient police training, both with regard to working with immigrant communities through community policing, and also with regard to domestic violence. Researchers have found that only one in four immigrant victims of domestic violence, is willing to call the police for help, no matter how bad the violence, no matter how long it has gone on, and no matter how severe. The reporting rate for U.S. women, generally, is one in two, but for undocumented immigrant populations, the reporting rate drops to one in seven. These reporting rates are reflected in cases of serious domestic violence, with numerous incidents of abuse.

Because abusers use immigration status and threats to turn victims over to ICE as a tool to control their victims,[3] when immigrant victims hear on the radio and television that police are

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[2] Michael D. Cronin, Office of Programs, Immigration and Naturalization Service, Victims and Trafficking and Violence Prevention Act of 2000 (VTVTA) Policy Memorandum Number 2- "T" and "U" Non-Immigrant Visas, Memorandum to Michael Pearson, Office of Field Operations, INS Memo HQINV 50\1 (Aug. 30. 2001).

[3] Congress in 1994 and again in 2000 in the Violence Against Women Act expressed is interest in ending the control over immigration status as a tool used against immigrant victims. The Violence Against Women Act of 2000 Section by Section Summary, 146 Cong. Rec., S10,195 (2000) states as follows: "[T]he Battered Immigrant Women Protection Act of 2000. . .Title V continues the work of the Violence Against Women Act of 1994 ("VAWA") in removing obstacles inadvertently interposed by our immigration laws that may hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or

in fact reporting to ICE, or when a victim hears from a friend in the community who is her support system that her friend's sister was turned over to ICE when she called the police to help her on a domestic violence case, the fear of deportation becomes the ultimate barrier. Women will not call for help. Women will not cooperate in getting abusers prosecuted.

We should be fostering trust through community policing in immigrant communities and have better law enforcement overall, which will enable us – as the Violence Against Women Acts of 1994 and 2000 intended us to do – to prosecute perpetrators of domestic violence, perpetrators of rape and sexual assault, and traffickers in women and children.

If we cannot bring these prosecutions, our communities will suffer. It's not just the individual victims who can't get protections and are harmed, their children grow up learning that violence is an appropriate response to problems in intimate relationships. Many of the young boys in these families will grow up to continue the cycle of violence in their own relationships and in our communities. We know that if domestic violence and sexual assault perpetrators can abuse one person and that person is deported, they will continue to abuse others, and will put other people at risk in our communities.

We want to encourage the kind of cooperation with police that ensures that victims are not jeopardized and are not asked about immigration status, so that they feel free to call the police and so that the prosecutions happen. We seek your support for bipartisan efforts to form a consensus that criminal justice system officials should not be inquiring into the immigration status of victims who call the police for help. On behalf of the immigrant victims that Legal Momentum and the National Network to End Violence Against Immigrant Women work to help, we seek your understanding that if immigration status questions are asked, innumerable immigrant victims and their children will be needlessly endangered.

Included with this statement is an excerpt from research on immigrant victims' interactions with police in domestic violence cases, to amplify the record on this important issue.

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lawful permanent resident spouse to blackmail the abused spouse through threats related to the abused spouse's immigration status. . . .VAWA 2000 addresses the residual immigration law obstacles standing in the path of battered immigrant spouses and children seeking to free themselves from abusive relationships that either had not come to the attention of the drafters of VAWA 1994 or have arisen since as a result of 1996 changes to immigration law."

Safety Implications of Police Response to Calls for Help From Battered Immigrants[4]

I. Introduction

Domestic violence does not occur at a higher frequency within one socio-economic class, racial group, or geographic area.[5] However, some victims of domestic violence are at a greater risk of longer exposure to and greater impact from domestic violence because of their lack of access to culturally responsive services from the community in which they live.[6] Immigrant women[7] who encounter language barriers, cultural differences, and stereotyping by mainstream society are often invisible to the anti-domestic violence movement.[8] The pervasive lack of understanding of the life experiences of battered immigrant women by the systems designed to protect battered women and immigrant victims greatly reduces the likelihood that immigrant victims will be able to escape the violence in their lives.[9] While there have been some attempts to remove the barriers that battered immigrant women face, these attempts have not been completely successful. This is partially attributed to the lack of responsiveness and culturally appropriate treatment battered immigrant women experience when interacting with the police.

There are many strategies battered women use to escape, avoid and stop intimate

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[4] This portion of this testimony is adapted from the following article pending publication with the U.C.L.A. Journal of Women and the Law: Leslye E. Orloff, Mary Ann Dutton, Giselle Aguilar Hass, Nawal Ammar, Battered Immigrant Willingness to Call the Police for Help and Police Response (forthcoming 2003).

[5] Lisa E. Martin, *Providing Equal Justice for the Domestic Violence Victim: Due Process and the Victim's Right to Counsel*, 34 GONZ. L. REV. 329, 331 (1998/1999). *See generally*, Honorable Karen Burstein, *Symposium on Reconceptualizing Violence Against Women By the Intimate Partners Critical Issues: Naming the Violence: Destroying the Myth*, 58 ALB. L. REV. 961 (SPRING, 1995); Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Stereotypes in Gender Violence*, 8 COLUMN. J. GENDER & L. 1 (1998); Mary Ann Dutton, Leslye Orloff, & Giselle Aguilar Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO J. POVERTY L. & POL'Y 245 (SUMMER 2000).

[6] *See* Dutton, *supra* note 1; Leslye Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next Steps* WM. & MARY L. REV (2001), Cecelia Espenoza, *No Relief for the Weary: VAWA Relief Denied for Battered Immigrants Lost in the Intersections*, 83 MARQUETTE L. REV. 163 (1999); Lee J. Teran, *Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act*, 17 B.U. INT'L L.J. 1 (1999); see also Virginia P. Coto, *LUCHA, The Struggle for Life: Legal Services for Battered Immigrant Women* 53 U. MIAMI L. REV. 749 (1999) (summarizing difficulties facing organizations providing legal services to poor, battered immigrant women); Karen Wang, *Battered Asian American Women: Community Responses From the Battered Women's Movement and the Asian American Community*, 3 ASIAN L.J. 151 (1996); *Supplement Respecting Diversity: Responding to Underserved Victims of Crime*, NVAA (2000) at http://www.ojp.usdoj/ovc/assist/nvaa2000/academy/H-8-DIVR.htm. *See also Barriers*, FAMILY VIOLENCE PREVENTION FUND at http://www.fvpf.org/immigration/barriers.html.

[7] The term "immigrant women" is used in this article generally to refer to immigrant women who were born in countries outside of the United States and includes immigrants, refugees, documented and undocumented immigrants and persons who may currently be naturalized citizens.

[8] Tien Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration Law on Battered Immigrant Women*, 6 B.U. PUB. INT. L.J. 589, 592 (WINTER 1997). *See generally* Sandra D. Pressman, *The Legal Issues Confronting Conditional Resident Aliens Who are Victims of Domestic Violence: Past, Present, and Future Perspectives*, 6 MD. J. CONTEMP. L. ISSUES 129 (1995).

[9] Leslye E. Orloff, Societal Issues and Family Violence, *in* THE NATIONAL CONFERENCE ON FAMILY VIOLENCE: HEALTH AND JUSTICE CONFERENCE PROCEEDINGS, 1994, at 67, 70 (AMA).

violence. Some strategies are informal, (e.g. speaking with friends), while others are formal, (e.g. seeking help from government or social services agencies). However, when a woman realizes that her partner's abuse will not stop without outside intervention and she needs to take decisive actions, calling the police can be one of her first formal responses.[10] Indeed, appropriate police intervention has been found to have a significant impact in lowering the rate of subsequent domestic violence.[11] However, scholars have found that police have not always fulfilled their protective role due to prejudice, call screening, gender bias, language barriers, and lack of culturally competent training and understanding about the life experiences of immigrant communities and domestic violence victims.[12]

At the same time, many immigrants have a strong distrust of the police due to negative perceptions or experiences with police in their countries of origin[13] and experiences of racism and prejudice with the police in the United States.[8] When this lack of trust is combined with fears including arrest, deportation[9] and retribution from their abusers,[10] it becomes clear why many battered immigrant women hesitate to contact the police to report abuse. These life experiences of battered immigrants require that police officers be more aware of the intersection of culture, law, gender, language barriers and victimization in handling domestic violence in immigrant families.

The call for change in police relationships with immigrants who experience domestic violence is particularly important in light of the changing immigrant demographics in the U.S. The rate of immigrants entering the United States has tripled over the past generation, and the 1990s witnessed the largest influx of immigrants to date.[11] The immigrant population now extends beyond people who are foreign born to include the children of these families. In the year

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[10] Giselle Aguilar Hass, Mary Ann Dutton and Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and y Implications,* DOMESTIC VIOLENCE: GLOBAL RESPONSES, 90-113 (AB Academic Publishers, Great Britain, 2000). CALL NURA TO GET ORIGINAL CITE FROM LIFE TIME ARTICLE

[11] See Raymond Paternoster, Ronet Bachman, and Robert Brame & Lawrence Sherman, *Do fair* procedures *matter? The effect of procedural justice on spouse assault.* LAW AND SOCIETY REVIEW 31,1 (1997); E. S. Buzawa and C.G. Buzawa, D *Domestic Violence: The Criminal Justice Response. Newbury Park, California, 1990.*

[12] Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials,* 14 B.C. THIRD WORLD L.J. 231 (1994); Daniel E. Georges-Abeyie, *Symposium: Law Enforcement and Racial and Ethnic Bias,* 19 FLA. ST. U.L. REV 717, 720 (1992).

[13] UNITED STATES COMMISSION ON CIVIL RIGHTS, RACIAL AND ETHNIC TENSIONS IN AMERICAN COMMUNITIES: POVERTY, INEQUALITY AND DISCRIMINATION, VOLUME 1: THE MOUNT PLEASANT REPORT 75 (1993); Orloff, *supra* note 2, at 70.

[8] *See* Kevin Pimentel & Ronnie Rhoe, *Asian American: Greatest Hits A Review of Angelo Ancheta's Race, Rights, and the Asian American experience,* 4 MICH. J. RACE & L.169 (FALL 1998); Flo Messier, *Alien Defendants In Criminal Proceedings: Justice Shrugs,* 36 AM. CRIME. L. REV 1395, (FALL, 1999); *see generally Supplement Respecting Diversity: Responding to Underserved Victims of Crime,* NVAA (2000) at http://www.ojp.usdoj/ovc/assist/nvaa2000/academy/H-8-DIVR.htm

[9] Dutton, *supra* note 2.

[10] Richard A. Berk, Sarah Fenstermaker, Phyllis J. Newton, & Donileen R. Loseke, *Cops on Call: Summoning the Police to the Scene of Spousal Violence,* 18 LAW & SOCIETY REV. 479 (1984); JULIE E. SAMUELS & STEPHEN B. THACKER, NATIONAL INST FOR JUSTICE & CDC, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE 50 (2000); CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE 7 (2000).

[11] MICHAEL FIX & WENDY ZIMMERMAN, THE URBAN INSTITUTE, THE INTEGRATION OF IMMIGRANT FAMILIES iii (2000).

2000, 20% of school-aged children had immigrant parents,[12] and it is estimated that by the year 2040, 27% of the U.S. population will be immigrants or the children of immigrants.[13]

It is critical to realize that the sheer increase in the number of persons immigrating to the United States means that geographic areas of the U.S. which typically have not had significant immigrant populations are now being called upon to respond to the needs of diverse populations of immigrants and refugees who are new arrivals in the United States. While the majority of immigrants live[14] in the West[14] and the South[15], immigrants now have an increasingly significant presence in the Northeast[16] and Midwest[17]. This influx of immigrants is also affecting rural areas in which greater numbers of immigrant families are settling in communities that have not historically been home to immigrant populations. As the immigrant population becomes an increasingly dominant portion of American society, it is critical that police officers learn to work with all types of battered immigrant and refugee populations in order to effectively help them counter, reduce and hopefully bring an end to the domestic violence they experience.

II. Overview of Police Interactions With Minority Communities

The historic record of policing in minority communities in the U.S. leaves a lot to be desired..[18] As the U.S. population becomes increasingly diverse,[18] the need for adequate police training in effectively addressing issues that affect minority populations becomes more important. Due to issues such as lack of language capacity, training, budgetary support, understanding, and cultural competency reports of police violence and discrimination against and indifference towards the safety of minorities have increased.

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[12] *Id.* at iv.

[13] Michael Fix and Jeffrey Passel. IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT. 40 (The Urban Institute 1994).

[14] LISA LOLLOCK, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, THE FOREIGN-BORN POPULATION IN THE UNITED STATES, 2 (2001).

[14] Id. Lisa Lollock, 39.9% of the population in the Western United States are immigrants.

[15] Id. 26.8% of the total population living in southern states are immigrants.

[16] Id. Now constituting 22.6% of the total population in the Northeast.

[17] Id. The proportion of the population in the Midwest who are immigrants has risen to 10.7%.

[18] Armando, Morales. Ando Sangrando (I am Bleeding): A Study of Mexican American Police Conflict. La Puente: Perspective Publication. Kukendall, Jack L. 1970 "Police and Minority Groups: Towards A Theory of Negative Contact." Police 15 (Sept.Oct.):47-56

[18] *Overview of Race and Hispanic Origin*, Census 2000 at http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf (reporting that 75% of all those who responded recorded their race as white alone, 13% reported as Hispanic alone, 12 % reported as Africa-American or Black alone, 4% responded Asian alone, just under 1% responded as only American Indian or Alaskan Native, 0.1% indicated Native Hawaiian or other Pacific Islander alone, 5.5% of respondents indicated some other race alone, and 2.4% of respondents reported two or more races.); *see also*, Michael Fix & Jeffrey S. Passel, THE URBAN INST., IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT 39-40 (1994), at http://www.urban.org/pubs/immig/immig.pdf. (stating that it is expected that 27% of Americans will either be foreign-born immigrants or first generation Americans by 2040).

A. Police Interactions With Immigrant Populations

Issues of race, class, and ethnicity have always been at the forefront of discussions about the criminal justice system.[19] All branches of the United States government—judicial, legislative, and executive—have a history of racism.[20] This history of racial prejudice within the executive branch is often exemplified through the actions of police officers. The history of racism against African-Americans is clear from Jim Crow laws, segregation, and racial profiling.[21] Discriminatory practices by police officers have also extended to various immigrant populations who are too often viewed by police as persons not legally residing in the United States and suffering from a cultural lag. These assumptions, combined with the fact that newer immigrants are often living in poverty,[19] have fostered the image that immigrants pose a problem and a danger to U.S. societal fabric.[22]

The relationship between police officers and immigrant populations is one that has been strained for a variety of reasons. Unguided and untrained police action against immigrant populations has often resulted in the violation of the rights of citizens, lawful residents, and other noncitizens.[23] Some of the most brutal acts of violence and police brutality have occurred against

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[19] *See generally* David Cole, NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM, New York, NY: The New Press (1999); Carolyn Wolpert, *Considering Race and Crime: Distilling Nonpartisan Policy From Opposing Theories*, 36 AM. CRIME. L. REV 365 (SPRING 1999); Andrew Leipold, *Symposium on Race and Criminal Law: Objective and Subjective Bias Some Problems of Discriminatory Intent in Criminal Law*, 73 CHI.-KENT L. REV. 559 (1998); Malia Brink, *Symposium: Race Crime & the Constitution: Forward*, 3 U. PA. J. CONST. L. 1 (FEB. 2001).

[20] *See generally* Loving v. Virginia, 388 U.S. 1(1967); Plessy v. Ferguson 163 U.S. 537, 559(1896) (Harlan J. dissenting); Chinese Exclusion Act, Act of May 6, 1882, ch. 126, 22 Stat. 58, *repealed by* Chinese Exclusion Repeal Act of 1943, ch. 344, 57 Stat. 600; Earl M. Maltz, *Citizenship and Constitution: A History of the Supreme Court's Alienage Jurisprudence*, 28 ARIZ. ST. L.J. 1135 (WINTER 1995).

[21] *See* Plessy, *supra* note 8; Dred Scott v. Sanford, 60 U.S. 393 (1856); Korematsu v. Untied States, 323 U.S. 214 (1944); Joseph Gordon Hylton, *Evolving Voices in Land Use Law:* A FESTSCHRIFT IN HONOR OF DANIEL R. MANDELKER: Part I: Historical Background: Chapter 1: The Supreme Court: relude to Euclid: The United States Supreme Court and the Constitutionality of Land Use Regulation, 1900-1920, 3 WASH. U.J.L. & POL'Y 1 (2000); United States v. Adkins, 2001 U.S. App. LEXIS 199.

[19] Although newly immigrated families have higher poverty rates than the general U.S. population, immigrant earnings over time grow rate, which surpasses the growth rate for native-born families. Harriet Orcutt Duleep, Immigrant Earnings Growth 1960-1990: Initial Insights From Longitudinal Data on Individuals. http://gsbwww.uchicago.edu/research/workshops/wae/Duleep.pdf. Visited February 11, 2002; Incomes of households headed by naturalized citizens who have lived in the U.S. for 10 years or more slightly exceeds that of native U.S. citizens. Michael Fix, Wendy Zimmerman and Jeffery S. Passel, Integration of Immigrant Families in the United States p. 21 (The Urban Institute, Washington, D.C., July 2001).

[22] *See* Mark D. Rosenbaum & Daniel P. Tokaji, *Healing the Blind Goddess: Race and Criminal Justice*, 98 MICH. L. REV. 1941 (MAY 2000); *see also* David Cole, RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM, New York: The New Press (1999). Immigrants who enter the United States without permission from the Immigration and Naturalization Service and those who overstay their immigration visas have not violated U.S. criminal laws. The proper terminology to refer to this portion of the non-citizen population in the U.S. is "undocumented." They are persons who currently do not have documentation from the Immigration and Naturalization Service giving them legal permission to live and work in the United States.

[23] Linda Reyana Yanes & Alfonso Soto, *Local Police Involvement in the Enforcement of Immigration Law*. 1 TEX. HISPANIC J. LAW & POL'Y 9 (1994), United States Commission on Civil Rights, *Supra* note 7 at 143-145.

immigrants.[24] However, overt physical violence has not been the only negative response by police in their interactions with immigrant populations. There have been a number of cases where police officers, because of their own prejudices or simple lack of knowledge, have arrested, harassed and accused immigrants of various crimes and threatened them with deportation.[25]

Police officers use discretion in deciding to arrest. This discretion often turns into selective law enforcement, and encompasses the use of coercive force and/or verbal threats when they come into contact with immigrants.[26] An officer's perception of a person's race, ethnicity, and social class can (and often does) determine what legal enforcement measures will be used in any given instance.[27] These perceptions may be based on personal experience and/or stereotypes that an individual police officer has with regard to a particular ethnic group.[28]

These same problems of perception and stereotyping that affect and strain the relationship between immigrants and police officers also affect and strain the relationship between police officers and immigrant victims of domestic violence. Researchers have found that the patriarchal occupational subculture of police officers or departments often leads to individual attitudes which tend to blame the victim, project blame on other institutions, and foster negative images of women as manipulative individuals.[29] This does not mean, however, that these perceptions cannot be changed through adequate training and education, access to interpreters who are trained in domestic violence, and the development and implementation of appropriate policies.

The dire need for culturally appropriate law enforcement training has become more evident in the aftermath of the September 11th 2001 tragedy. The sudden thrust of law enforcement into the day to day realities of diverse cultural groups living in the U.S. has more than revealed how antiquated police training and police department polices for intervening in domestic violence cases of immigrant victims are. When stereotyping, culturally insensitive, xenophobic and gender biased attitudes persist among police officers and are unmitigated by appropriate training and continuing education, the daily ordeals battered immigrant women endure when contacting law enforcement for service are exacerbated.

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[24] *See, e.g.* Michael Cooper, Officers *in Bronx Fire 41 Shots, and an Unarmed Man is Killed*, NY TIMES, FEB 5, 1999, at B5; Scott Glover & Matt Lait, *Police in Secret Group Broke Law Routinely Transcripts Say*, LA TIMES, FEB 10, 2000, at A1; Mixed *Verdict in Louima Torture Case*, STAR TRIB. (Minneapolis-St. Paul) June 9, 1999, available in WL 4559149.

[25] *See* e.g. Gonzales v. City of Peoria, 537 F. SUPP. 793 (D. Ariz., 1982) (One citizen and four lawful resident plaintiffs who challenged police arrests made under the Immigration and Nationality Act in violation of their civil rights); *see also* Valasquez v. Senko, 643 F. SUPP. 1172 (N.D. Cal. 1986) (Raid on Latino business which lead to violations of civil rights and the arrest of US citizens and lawful permanent residents). *See also*, Leslye Orloff, Jennifer Lewkowski and Rachel Little, *Ensuring the Battered Immigrants Who Seek Help from the Justice System Are Not Reported to the INS*, in Leslye E. Orloff and Rachel Little, SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED IMMIGRANT WOMEN, A "HOW TO" MANUAL FOR BATTERED WOMEN'S ADVOCATES AND SERVICE PROVIDERS, 278-288 (May 1999).

[26] *See generally* Freeman v. City of Santa Ana, 68 F.3d 1180 (C.D. Cal. 1995).

[27] Daniel E. Georges-Abeyie, *Symposium: Law Enforcement and Racial and Ethnic Bias*, 19 FLA. ST. U.L. REV 717, 720 (1992); United States Commission on Civil Rights, *supra* note 7, at 20.

[28] *See* Trish Oberweis & Michael Mucheno, *Policing Identities: Cop Decision Making and the Constitution of Citizens*, 24 LAW & SOC. INQUIRY 897 (FALL 1999).

[29] *See* George Rigakos, *Constructing the symbolic complainant: Police subculture and the nonenforcement of protection orders for battered women.* VIOLENCE AND VICTIMS, 10,3 (1995).

B. Police Interactions With Victims of Domestic Violence

Historically domestic violence has been viewed as a private problem.[30] This view has gradually begun to change with activism and some legislation, but the change in perspective has been slow in coming. Police intervention in domestic violence cases has historically been minimal in some instances because of this perception.[31] The tools used by law enforcement to protect victims were not often used effectively due to the police outlook on domestic violence as a private matter.[20] Protection orders have not always been treated seriously and a tendency to arrest victims has been related to police finding violent acts by the perpetrators justifiable.[32] The response to this lack of attention eventually led to the development of mandatory and pro-arrest policies that take away the discretion and power from police officers in deciding whether or not to arrest the batterer.[33] Much emphasis has been placed on mandatory arrest as a primary form of police intervention in domestic violence cases, but this singular focus can prove to be detrimental to battered women whose life experiences are determined by issues of race, class, ethnicity, and immigration status.[34]

Violence Against Women Act (VAWA) passed by Congress in 1994 and improved in 2000,[21] sought among many goals to reform the manner in which law enforcement officers intervened in domestic violence cases. VAWA provided funding, technical assistance, development of model training programs and support for police department units that specialized in appropriate response to domestic violence calls for help.[22] Overall, although there has been significant improvement in police response to domestic violence in some communities following the passage of VAWA, police response to domestic violence in many communities continues to be lacking. The personal attitudes of some police officers about what domestic violence is (a private problem) and how it should be handled (through mediation rather than arrest or formal charges) has the effect of marginalizing victims of domestic violence and even disregarding their

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[30] *See Symposium on Reconceptualizing Violence Against Women By Intimate Partners: Critical Issues: Domestic Violence as a Human Rights Issue*, 15 HUM. RTS. Q. 36 (1993).

[31] *See* Barbara J. Hart, *Arrest: What's the Big Deal*, 3 WM. & MARY J. WOMEN & L. 207 (1997).

[20] E. Pleck Domestic Tyranny: The Making of American Social Policy Against Family Violence From Colonial times to the Present. New York: Oxford University Press., 1987.

[32] *See* Daniel Sanders, *The tendency to arrest victims of domestic violence: A preliminary analysis of officer characteristics*, JOURNAL OF INTERPERSONAL VIOLENCE, 10,2 (1995).

[33] *See generally* Joan McCord, *Deterrence of Domestic Violence: A Critical View of Research*, 29 J. OF RESEARCH IN CRIME & DELINQUENCY 229 (1992); Lawrence W. Sherman, *The Influence of Criminology on Criminal Law: Evaluating Arrests for Misdemeanor Domestic Violence*, 83 J. CRIME. L. & CRIMINOLOGY 1 (1992); Jane Sadusky, Violence Against Women Online Resources, *Working Effectively with the Police: A Guide for Battered Women's Advocates*, at http://www.vaw.umn.edu/BWJP/policeV.htm.

[34] *See generally* Miriam M. Ruttenberg, *A feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy*, AM. UNIV. J. OF GENDER & L. 2 (1994); Gena Durham *The Domestic Violence Dilemma: How Our Ineffective and Varied Responses Reflect Our Conflicted Views of the Problem*, 71 SO. CAL. L. REV. 641 (1998).

[21] The Violence Against Women Act of 1994 (VAWA 1994) in the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994) and the Violence Against Women Act of 2000 in the Victim's of Trafficking and Violene Protection Act of 2000 Pub. L. No. 106-386, 114 Stat. 1464 (2000).

[22] VAWA 2000 section 1104; Section 40231 of The Violence Against Women Act of 1994 (VAWA 1994) in the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994) Part U Section 2101(b)(3).

requests for help.[35] These problems of lack of appropriate response from the police and police department policies to domestic violence are further compounded when the battered woman is an immigrant. This can occur because the police do not have the capacity to communicate effectively with the immigrant victim in her own language, the police may use her abuser or her children to translate for her, and/or police may credit the statements of her citizen spouse or boyfriend over her statements to the police due to gender, race or cultural bias.

C. Police Interaction With Battered Immigrant Women

Battered immigrant women, especially those of color, face multiple barriers when trying to access services to aid their escape from violent relationships or try to stop the abuse.[36] The treatment of immigrants by police in general influences whether battered immigrant women will trust the police and call for help.[37] The interaction between police officers and immigrants has been a tenuous one in which immigrants have been arrested and threatened with deportation for minor criminal violations based largely upon the fact that they are immigrants. Domestic violence, especially when perpetrated upon a person of the same race or ethnicity as the batterer, is not perceived as unusual within the immigrant communities by law enforcement officials.[38] Violence is often viewed by officers as being a part of the immigrant culture and the lives of immigrant women, leading some police officers to conclude that domestic violence is not a crime when the victim is an immigrant.[39] Other times, they may misperceive the victim's hesitancy to get involved with the legal system as a sign that she may not follow through on the prosecution of the criminal case.[23] In light of these problems and practices, it is not surprising that anecdotal

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[35] *See* Joanne Belknap, *Law Enforcement Officers' Attitudes About the Appropriate Responses to Women Battering,* 4 INT'L REV. OF VICTIMOLOGY 47 (1995); *see also* Randall Armentrout, *Car 54 Where Are You? Police Response to Domestic Violence Calls*, 40 DRAKE L. REV. 361 (1991).

[36] *See generally* Sandra D. Pressman, *The Legal Issues Confronting Conditional Resident Aliens Who are Victims of Domestic Violence: Past, Present, and Future Perspectives*, 6 MD. J. CONTEMP. L. ISSUES 129 (1995); Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 No. 2 GEORGETOWN JOURNAL ON POVERTY LAW & POLICY 245, 249-253 (2000), Leslye E. Orloff and Dave Nomi, *Identifying Barriers: Survey of Immigrant Women and Domestic Violence in the DC Metropolitan Area,* POVERTY AND RACE 9-10 (Jul/Aug 1997); Mary Ann Dutton and Giselle Aguilar Hass, *Use of Expert Testimony Concerning Battering and Its Effects on Immigrant Women,* in Mary Ann Dutton, el al., DOMESTIC VIOLENCE AND IMMIGRATION: APPLYING THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT: A TRAINING MANUAL FOR ATTORNEYS AND ADVOCATES, Appendix C, (2000); Leslye E. Orloff and Rachel Little, SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED IMMIGRANT WOMEN, A "HOW TO" MANUAL FOR BATTERED WOMEN'S ADVOCATES AND SERVICE PROVIDERS, 279 (May 1999); Leti Volp, WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE 16-20 ((1995); Catherine Klein and Leslye Orloff, *Providing Legal Protection for Battered Women: An Analysis of Statutes and Case Law*, 21 No. 4 HOFSTRA L. REV. 801, 1019 (Summer 1993)(Hereinafter Hofstra).

[37] Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231 (1994).

[38] *Id.*

[39] *See generally* Linda Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1017 (1995); Rivera, *supra* note 37.

[23] The battered immigrant woman's hesitancy may be due to the law enforcement officer's inability to communicate with her using an impartial interpreter. She may believe her abuser's threats that if she cooperates with law enforcement against him, he will have her deported or will retaliate against her in other ways.

evidence from advocates working with immigrant victims of domestic violence reports that the number of arrests for domestic violence within immigrant communities is relatively low.[24]

Battered immigrant women's lack of trust in the system and its officers intersects with many other fears: fear of deportation,[40] fear of retribution by their abusers, fear of being the one arrested and separated from her children, and fear of future economic, social and/or employability repercussions. These issues preclude many battered immigrant women from requesting the help they need to counter the domestic violence they are experiencing in their lives.[41] These barriers become even more pronounced when the batterer is a U.S. citizen and the victim is a non-citizen.[43] Police officers are more likely to believe the citizen batterer when he contradicts the battered immigrant woman's accusations of violence.[25] In many instances, the fact that battered immigrant women have no legal immigration status or documentation in the U.S. is a result of the batterer's use of her immigration status as a weapon of abuse.[44]

In certain instances, the police in effect act as the gatekeepers to the judicial system. Their discretion is the determining factor in deciding whether immigrant women victim's will gain access to the system and be able to find protection from the violence perpetrated against them in their homes. In many cases, unfortunately, the most difficult hurdle for battered immigrant women is that of police indifference and inaction.[45] This inaction can act as an almost impassible barrier for many battered immigrant women to overcome, leaving them trapped and without any legal remedies.

Research Findings on Immigrant Victims of Domestic Violence and Police

To better understand the barriers immigrant women face that prevent them from calling the police for help and how immigrant victims are treated by police when they call, data

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[24] These anecdotal experiences are confirmed by the research findings reported in this article.

[40] Leslye Orloff, Jessica Cundari and Erika Esterbrook, NEW DANGERS FOR BATTERED IMMIGRANTS: THE UNTOLD EFFECTS OF THE DEMISE OF 245(i) (January, 1999) (Collection of stories of battered immigrant victims experiences of domestic violence perpetrated against them by their U.S. citizen or lawful permanent resident spouses illustrate how fears of deportation prevented many from calling the police for help).

[41] Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 No. 2 GEORGETOWN JOURNAL ON POVERTY LAW & POLICY 245, 251, 256 (2000).

[43] Hofstra at 1022-1026.

[25] See generally, Leslye Orloff, Jessica Cundari, Erica Esterbrook, New Dangers for Battered Immigrants: The Untold Effects of the Demise of 245(i) (Ayuda, Washington, D.C. 1999); Robin L. Camp, Deeana Jang, Debbie Lee, Bill Tamayo, Leni Marin and Leslye Orloff, Untold Stories: Cases Documenting Abuse by U.S. Citizens and Lawful Residents on Immigrant Spouses. (Family Violence Prevention Fund, San Francisco, November 1993).

[44] Tien-Li Loke, *Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women*, 6 B.U. PUB. INTL. L.J. 589, 591 (WINTER 1997); *See also* Ryan Lilienthal, *Old Hurdles Hamper New Options for Battered Immigrant Women*, 1592 BROOKLYN L. REV. 1595 (WINTER 1996); Dutton, Mary Ann, Leslye E. Orloff, and Giselle Aguilar Hass. *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*. 7 GEORGETOWN JOURNAL ON POVERTY LAW & POLICY 245 at 293 (Summer 2000) (stating that "threats of deportation are very powerful tools used by abusers of immigrant women to keep them in abusive relationships and prevent them from seeking help.)

[45] Donna Coker, *Piercing Webs of Power, Identity, Resistance, and Hope in Latcrit Theory and Praxis; Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009 (Summer 2000).

collected in a survey conducted among Latina immigrant women in the Washington D.C. metropolitan area was analyzed.

Domestic Violence Definition Used in the Research

Three separate abuse measures were used in the study - physical, sexual, and psychological. In addition, the researchers constructed a violence measure ("domestic violence offense") to examine those forms of abuse that as a matter of law constitutes domestic violence under the criminal and protection order laws of all states.[26] In addition, we constructed a similar category to identify those acts of violence that constitute a "child abuse offense." The types of acts that were included in the categories of "domestic violence offense" against an adult victim or a "child abuse offense" against a child victim included: assaults (hit, pushed, scratched, pulled hair, with fist, kicked, choked, bit, burned); weapons (attacked, hit, threatened or shot with a gun, knife, machete or other weapon); kidnapping (locked victim or her children in the house or a room); sexual assault (rape, sexual assault, assault during pregnancy, incest, forced sexual relations, child sexual assault), criminal threats (threats to kill, bodily harm, harm victim, her children or her family members); and attempted assaults (drove a car at the victim or her children, tried to run over the victim or her children, drove in a manner that endangered her or her children, threw objects at her or her children).

Visible physical injury. A visible physical injury scale included cuts, visible bruises, and other wounds and injuries that made it visibly difficult for the victim to move. If such injuries are present, an arrest should occur as a matter of law because such injuries provide evidence of a domestic violence offense.

Other evidence. An "other evidence" measure was constructed which included torn clothing, property in disarray, police witnessing victim abuse and police hearing threats. An "other evidence" score refers to the number of other types of evidence present that the victims reported to be at the scene when the police arrived.

Crime scene evidence. A crime scene evidence variable was constructed as a total score representing visible physical injury and other evidence since both types constitute viable evidence in a crime scene investigation.

Immigration status. Immigration status was divided into three categories: stable, temporary and undocumented. The "stable" immigration status category contained citizens, naturalized citizens and lawful permanent residents. The "undocumented" category consisted of persons without legal permission to be in the United States either because they had entered without inspection or because they had entered lawfully and had overstayed or violated the terms of their visa. The "temporary" immigration status category included cases where the

[26] It is important to note that for the purposes of this part of the research analyzing when battered immigrants called the police and police response to calls from battered immigrants, researchers included in the definition of domestic violence offense only those offenses that under state criminal and protection order laws would be considered domestic violence. Some forms of domestic violence that are sufficient to grant immigrant victims protection under immigration laws most notably extreme cruelty, were note included in this domestic violence offense definitions because under many state law extreme cruelty would not be covered under state criminal domestic violence laws. See, Hofstra pp. 848-866.

Immigration and Naturalization Service (INS) was aware of the presence of the immigrant and the immigrant had legal permission from the INS to live and, in most cases, work in the United States. However, persons in this immigration category had forms of immigration status that were not permanent. The status was limited as to length of time, was dependant upon a specific familial or employment relationship or was designed to offer temporary relief to persons due to conditions in their home country.

Survey Results[27]

Demographics

The sample consisted of 230 immigrant women who had experienced violence or abuse from a past or current intimate partner. Half of respondents were between the ages of 30 and 41 years (50.9%, n = 86), with 40.8% (n = 89) under 30 years and only 9.2% (n = 20) 42 years or older.[47] Half of the women reported not being involved in a current intimate relationship at the time of the survey (50.0%, n = 109). Most of the participants were employed (64.2%, n = 138) either full or part-time, the majority of whom (60.7%, n = 68) reported an average annual income below $9,000. In addition, more than three-quarters of the women had very little or no English speaking skills (75.6%, n = 169) and 20% (n = 45) reported very little or no Spanish reading literacy.

The immigration status of the respondents in the sample was primarily undocumented (44.4%, n = 95) but also included temporary (28.5%, n = 61) and stable (27.1%, n = 58) status categories. The immigration status of respondents' spouses included a greater proportion of stable (40.7%, n = 59) compared to respondents and somewhat fewer undocumented (39.3%, n = 47) and temporary (20%, n = 29).

Calls to Police

Of the sample, 27.0% (n = 53) indicated that at some point while in the United States they had called police for assistance due to violence or abuse from an intimate partner. Among these callers, the number of calls made ranged from 1 to 10. Of those who called, nearly an equal number of respondents reported they had called the police once (27.3%, n = 12), twice (22.7%, n = 10), three times (22.7%, n = 10), and more than three times (27.2%, n = 12).

Factors Related to Battered Women's Calls to Police

Demographics

Overall, 65.1% (n = 125) of the respondents reported living in the United States for three

27 The authors of this article are continuing to analyze the wealth of data collected in this survey. In a future article the authors plan to include information from a multivariate statistical analysis of some of the data discussed in this paper along with reporting on other survey findings.

47 Not all immigrant women survey participants answered all questions asked by interviewers. When these respondents did not answer any particular questions the results are missing data. This missing data explains why figures do not add up to n = 230 in these and other survey data analyses.

or more years. These women were more likely to call the police than women who had been in the U.S for less time (32.8% vs. 16.4%, $\chi 2 = 5.93$, $df = 1, 192$, $p \leq .01$). Overall, 47.2% (n = 91) of the women reported current involvement in an intimate relationship. These women were less likely to call police than women who were currently not in an intimate relationship (20.9% vs. 33.3%, $\chi 2 = 3.74$, $df = 1, 193$, $p \leq .05$).

Battered women who had a stable immigration status were more likely to call police (43.1%) than those with either a temporary status (20.8%) or who were undocumented (18.8%) ($\chi 2 = 10.7$, $df = 2, 184$, $p \leq .01$). There was no significant effect on women's calls to police depending on the immigration status of their spouse, their intimate partner or the father of respondents' children on women's calls to police. Variables found not to be related to immigrant women respondents' calling the police included respondents' education, income, English language ability, Spanish language ability, current employment, and whether the spouse had presented immigration papers for the respondent.

Violence-Related Variables

Overall, 84.1% (n = 190) of the immigrant women respondents reported abuse that involved physical and/or sexual violence. The remaining 15.9% (n = 36) of women reporting abuse reported experiencing events that constitute psychological abuse only. As expected, the *type of violence* that women experienced was related to whether or not they called police. Women who were physically and/or sexually abused were more likely to call police than women who reported psychological abuse only (31.5% vs. 5.9%, $\chi 2 = 9.34$, $df = 1, 196$, $p \leq .01$). Overall, 12% (n = 22) of the sample had been abused by more than one intimate partner, however there was no difference in the proportion of multiply abused women who called police compared to women who had been abused by one partner only.

Violent acts were coded based on whether or not they involved *severe physical* abuse,[48] defined as being hit, punched, kicked, attacked with a knife, choked, bitten, or hit with an object. In this study, 66.9% (n = 71) overall reported experiencing severe violence. Those who experienced severe physical abuse also reported calling police more often than those who did not (29.7% vs. 4.0%, $\chi 2 = 13.23$, $df = 1, 151$, $p \leq .001$). Interestingly, 93.8% of those who called police had been severely abused even though severely abused women account for only 66.9% of the immigrant women respondents in the survey.. Violent acts were also coded according to whether or not they would constitute a domestic violence offense in most jurisdictions. Overall, the 81.1% (159) of women who reported experiencing domestic violence that would constitute a domestic violence offense were more likely to call police than those who did not (32.7% vs. 2.7%, $\chi 2 = 13.69$, $df = 1, 196$, $p \leq .001$). Again, 98.1% (n = 52) of all women who called the police had experienced a domestic violence offense, even though this sample included only 81.1% (n = 159) of women with domestic violence offenses overall.

[48] Giselle Aguilar Hass, Mary Ann Dutton and Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications*, DOMESTIC VIOLENCE: GLOBAL RESPONSES, 90-113 (AB Academic Publishers, Great Britain, 2000).

Two additional variables were examined only among those women who called the police. Overall, 59.6% (n = 21) reported some form of visible *physical injury* at the time they called police. Specifically, 51.9% (n = 21) reported having bruises, 13.7% (n = 7) having cuts, 11.5% (n = 6) having wounds, and 7.7% (n = 4) having wounds that made it difficult to move. Those who reported some form of physical injury also reported calling police more often than those women who reported no physical injury (68.9% vs. 0%, $\chi 2 = 11.94$, $df = 1, 52$, $p \leq .001$). Thus, 100% of calls to police were from women who were injured, even though injured women comprised only 81.5% of the overall sample. Further, women who reported being injured by domestic violence sometime in the past (overall, 79.9%, n = 147) were more likely to call police than women who reported never having been injured in the past (32.7% vs. 13.5%, $\chi 2 = 5.28$, df = 1, 184, $p \leq .05$).

The extent to which *other types of evidence* were present was also studied only among women who called the police. In 51.1% (n = 23) of the cases in which women called police, evidence other than physical injury was present at the scene when the police arrived such as torn clothing, property in disarray, or police witnessed violence or threats. For all cases reported to police was present at the crime scene some other type of evidence, 34.8% (n = 8) reported more than one other type. Combining both injury and other types of evidence described above, 68.9% (n = 31) of the respondents reported at least one of these types of *crime scene evidence*. Of those reporting some type of crime scene evidence, 19.3% (n = 6) reported more than one type.

Respondents were asked about the amount of time that generally passed between abusive incidents. Overall, more than a third of the respondents 35.4%, (n = 70) reported abuse experiences every one to two days, 27.3% (n = 54) every 3 days to one week, 20.7% (n = 41) weekly to monthly, and 16.7% (n = 33) less often than once a month.

Those in the sample who reported experiencing abusive incidents every one to two days called police more often (33.3%, n = 20) than those who experienced violence between three days and one week (10.9%, n = 5), but not significantly more often than those who experienced violence every one week and one month (31.4%, n = 11) or more often than one month (37.9%, n = 11; $\chi 2 = 9.23$, $df = 3, 170$, $p \leq .05$).

Overall, 29.1% (n = 52) reported that their *children had witnessed the domestic violence*. Mothers whose children had witnessed violence reported calling the police more often than mothers whose children had not witnessed the violence (63.5% vs. 37.8%, $\chi 2 = 9.81$, $df = 1, 179$, $p \leq .001$). Overall, 22.8% (n = 22) reported that a *child had never experienced abuse* sufficient to constitute a criminal offense. However, respondents called the police due to intimate partner violence at similar rates whether or not child abuse was also present.

Social Support

Overall, 90.7% (n = 135) of respondents had talked to more than one person about their experience with domestic violence. Talking with more than one person was associated with a greater likelihood of calling police (31.9% vs. 0%, $\chi 2 = 5.40$, $df = 1, 147$, $p \leq .01$). All (100%) of the women who called the police for help had spoken to someone else about the abuse prior to making any call to the police. Interestingly, however, while most women reported a

"supportive" (87.1%, n= 115) vs. a "negative" (12.9%, n = 17) response from those with whom they talked, the type of response was not associated with the calling of police (33.3% and 33.6% for negative and supportive response, respectively).

Police Response

Among women who called police, 54.4% (n = 25) reported that police responded within fifteen minutes. Other response times were between 16-30 minutes (26.1%, n = 12), 31-60 minutes (6.5%, n = 3), and an hour or more (14%, n = 6). Upon arrival, in nearly one-third of all cases (31.1%, n=14) police never spoke to the woman, speaking instead to the abusive partner (11%, n = 5) or to others (20%, n = 9). About a third (34%, n = 16) of the women reported that Spanish was spoken when police arrived. Finally, a little over a quarter (28.6%, n = 16) of police calls resulted in the arrest of the abusive partner.

Factors Related to Arrest

The only variable related to whether police made an arrest was whether the battered woman had a protection order at the time of the call. Nearly one-third of respondents in the study, 32.7% (n = 17), reported having a protection order in effect when they called police. Police were more likely to make an arrest when the victims reported having a protection order (50% vs. 20.7%, $\chi 2 = 4.13$, df = 1, 45, $p \leq .05$).

The crime scene evidence score (0 – 4), calculated as a sum of items in the crime scene evidence variable, showed no difference in cases in which arrest was vs. was not made. Nearly everyone who called police had experienced at least one form of violence that would constitute a criminal offense. Among those who experienced a form of violence that would legally constitute a criminal offence, police made an arrest only 29.6% (n = 16) of the time. Additionally, neither the respondents' nor the perpetrators' immigration status nor the respondent's English language ability were related to whether or not police made an arrest.

Discussion

A. Factors That Influence Battered Immigrant Women's Contact With the Police

Of all the battered immigrants surveyed, only 27% were willing to call the police for help in a domestic violence incident. Among those women that were physically and/or sexually abused as opposed to emotionally abused, 31.5% reported calling the police for help. Both of these reporting rates are much lower than reporting rates found by several national studies for domestic violence victims. A 1998 Department of Justice study reported that 53% of domestic violence victims report the abuse to the police[54] and a survey of shelter residents found that 58% of the victims reported the violence.[55] The results of this study provide insight into what might be some of the reasons for this discrepancy in reporting rates. The difference most likely results

[54] RENNISON *supra* note 10, at 7.
[55] Martha L. Coulter & Kathryn Kuehnle, *Police-Reporting Behavior and Victim-Police Interactions as Reported by Women in a Domestic Violence Shelter* 14 No. 12, JOURNAL OF INTERPERSONAL VIOLENCE, 1290, 1290 (1999).

from the roles that acculturation, having children who witnessed abuse and fear of deportation play for battered immigrants.

1. Acculturation

Acculturation is a process in which new immigrants begin to adapt to their new country.[56] The longer immigrants reside in the United States following immigration, the more accustomed to and knowledgeable about U.S. customs, laws and systems they become. This survey found in fact that the longer battered immigrants lived in the United States the more likely they were to try to access U.S. based systems of protection. Battered Latina immigrants surveyed who had been residing in the United States for more than three years were twice as likely to call the police for help during a domestic violence incident as were those who had been living in the U.S. for less than three years (32.8% vs. 16.4%). This significant gap in reporting suggests that acculturation may play an important role [56].

Many immigrant women immigrate to the United States from countries in which the courts and police took made no efforts to offer protection to domestic violence victims.[28] Despite this fact and despite the fact that many experience isolation power and control tactics,[29] the longer immigrant women reside in the United States following immigration, they become more accustomed to and knowledgeable about U.S. customs, laws and justice and social services systems. It seems that, with time, immigrant battered women are able to develop more trust in the new system and a better understanding of their rights.

An important clue as to how some of this important acquiring of information and acculturation takes place appears to be from immigrant women talking to and sharing information with each other. Battered immigrant women in the current study who had talked with more than one person about the violence were significantly more likely to call the police during a domestic violence incident (31.9% vs. 0.0%). Battered immigrants who had spoken to no one about the abuse or who had only spoken to one person did not call the police for help even though they had suffered injuries in a domestic violence incident. This finding suggests that battered women tend to rely first on informal help-seeking strategies before moving to formal strategies such calling the police.

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[56] Acculturation is the process of becoming adapted to a new or different culture including its patterns and customs. *See*, Webster's New World Dictionary (1980).

[56] Acculturation is the process of becoming adapted to a new or different culture including its patterns and customs. *See*, Webster's New World Dictionary (1980).

[28] Leslye E. Orloff, Societal Issues and Family Violence, *in* THE NATIONAL CONFERENCE ON FAMILY VIOLENCE: HEALTH AND JUSTICE CONFERENCE PROCEEDINGS, 1994, at 67, 70 (AMA). ; Brief of *Amici Curiae* in Support of Respondent's Appeal from the Decision of the Immigration Judge at 7, INS vs. Vallabhaneni, (A76 724 694).

[29] Out of the battered immigrants in the general population sample, 29% reported that their abusers were using isolation tactics as part of the psychological abuse they were experiencing. Giselle Aguilar Hass, Mary Ann Dutton and Leslye Orloff, *Lifetime Prevalence of Violence Against Latina Immigrants: Legal and Policy Implications,* DOMESTIC VIOLENCE: GLOBAL RESPONSES, 90, 104 (AB Academic Publishers, Great Britain, 2000).

2. The Victim's Fear that She Will Be Deported

Most importantly, the results of this survey suggest that a battered immigrant victim's immigration status made a significant difference in whether or not an immigrant domestic violence victim would call the police for help. In this study, battered immigrants with stable permanent immigration status were significantly more likely to call the police for help in a domestic violence case than other battered immigrant women (43.1 %) This reporting rate dropped to 20.8% for battered immigrants who were in the United States legally but on temporary non-immigrant visas, and further dropped to 18.8% if the battered immigrant was undocumented. These reporting rates are significantly lower than reporting rates of battered women generally in the United States, which range between 53%[63] and 58%[64].

Fear of being reported to the INS and of subsequent deportation is one of the most significant factors preventing immigrant victims of domestic violence from seeking help from legal and social service systems.[50] In many instances, U.S. immigration law formally ties the legal immigration status of an immigrant wife to the citizenship status of legal immigration status of her spouse.[30] Abusers of immigrant domestic violence victims actively use their power to control their wife's and children's immigration status together with fears about and threats of deportation as tools to keep their abused spouses and children from seeking help or from calling police to report the abuse.[51]

It is important to keep in mind that many battered immigrant women come from countries in which the police, the courts and the justice system can not be relied upon to protect battered women.[31] In some instances, the country has no laws that make domestic violence a crime or

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[63] Martha L. Coulter & Kathryn Kuehnle, *Police-Reporting Behavior and Victim-Police Interactions as Reported by Women in a Domestic Violence Shelter* 14 No. 12, JOURNAL OF INTERPERSONAL VIOLENCE, 1290 (1999). Reporting rates for the general population of battered women in the United States are 53%.

[64] CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE 7 (2000). (Reporting a 58% reporting rate for battered women in the United States

[50] Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 No. 2 GEORGETOWN JOURNAL ON POVERTY LAW & POLICY 245, 292-293 (2000).

[30] See e.g. INA section 204(a)(1) and 204(a)(2)(allowing citizens and lawful permanent residents to file with INS to confer legal permanent residency on their spouse and children; 8 C.F.R. 214.2(f)(3)(spouses and children may follow student visa holders on F visas); INA Section 101(a)(13)(H)(spouses and children of temporary skilled workers on work visas H 1-B, H-2-A, H-2-B, H-3 can receive H-4 visas); 8 U.S.C. 1101 (a)(13)(G) and (N)(spouses and children of diplomats. In each of the above listed cases the spouse or parent with the visa or other legal status has to choose to file for legal immigration status for their spouse or children.

[51] The legislative history of the Violence Against Women Act of 1994 found that "[m]any immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave." COMMITTEE ON THE JUDICIARY, REPORT ON THE VIOLENCE AGAINST WOMEN ACT TO ACCOMPANY H.R. 1133, H.R. Rep. No. 395, 103d Cong., 1st Sess. 26-7 (1993). The legislative history of the Violence Against Women Act of 2000 also underscores Congress's ongoing recognition of how immigration laws "may hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or lawful permanent resident to blackmail the abused spouse through threats related to the abuse d spouse's immigration status ... if the abused spouse sought to leave the abuser or report the abuse. MANAGER'S STATEMENT AND SECTION-BY-SECTION SUMMARY OF THE VIOLENCE AGAINST WOMEN ACT OF 2000 Congressional Record — Senate October 11, 2000 at p. 10192 and 10195.

[31] UNITED STATES COMMISSION ON CIVIL RIGHTS, RACIAL AND ETHNIC TENSIONS IN AMERICAN COMMUNITIES: POVERTY, INEQUALITY AND DISCRIMINATION, VOLUME 1: THE MOUNT PLEASANT REPORT 75 (1993).

that offer protection to domestic violence victims. In other instances, a law exists, but it is not enforced particularly against abusers who are politically connected, have served in the military or the police force or who have sufficient economic means to avoid being held accountable.[32] Additionally, much of the information an immigrant woman has about the U.S. legal system may come from her abuser. Without access to information about U.S. justice and social service system interventions that can offer her protection and can hold her abuser accountable for his crimes, the abuser's immigration related abuse can be very effective in keeping immigrant victims from seeking help, including calling the police.[33]

3. Effect of Protection Orders

Of the battered immigrants in the survey who called the police for help, 37% had already obtained a protection order. This is encouraging as it may show that once battered immigrants have begun to take steps to protect themselves they are willing to take additional steps to help ensure protection for themselves and their children. This finding provides another reason why battered immigrants should be encouraged by advocates, attorneys and justice system personnel to obtain protection orders in domestic violence cases. It also underscores how important it is that protection orders and family courts are open to all persons who are victims of domestic violence crimes committed in a state and/or who reside in a state without regard to the protection order applicant's immigration status.[34]

B. Police Response to Calls from Immigrant Victims

Police Did Not Treat Calls For Help From Battered Immigrants Seriously or Appropriately

Latina victims of domestic violence reported that police responding to calls for help generally did not intervene effectively and did not follow either pro-arrest or mandatory arrest procedures that were in place at the time that the survey was conducted. Although the police responded within fifteen minutes to over half (54.4%) of the calls, the response time was in excess of an hour in 14% of the cases.[117] Survey participants were asked questions about incidences in which they had placed calls to the police for help during a domestic violence

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[32] Id.

[33] For numerous case history examples of how abusers use threats of deportation to silence victims that were submitted to Congress in conjunction with the Violence Against Women Act's of 1994 and 2000, see generally, Leslye Orloff, Jessica Cundari, Erica Esterbrook, New Dangers for Battered Immigrants: The Untold Effects of the Demise of 245(i) (Ayuda, Washington, D.C. 1999); Robin L. Camp, Deeana Jang, Debbie Lee, Bill Tamayo, Leni Marin and Leslye Orloff, Untold Stories: Cases Documenting Abuse by U.S. Citizens and Lawful Residents on Immigrant Spouses. (Family Violence Prevention Fund, San Francisco, November 1993).

[34] Hanano v. Alassar, 2001 Va. Cir. LEXIS 169, at * 10 (Va. Cir. Ct. 2001).(The immigration status of a legal or undocumented immigrant does not preclude them from formulating the necessary intent to establish domicile or residency for purposes of divorce actions); See generally, Howard A. Davidson. PART VII SPECIAL GROUPS: IMMIGRANT WOMEN AND CHILDREN, The Impact of Domestic Violence on children: A Report to the President of the American Bar Association. American Bar Association Center on Children and the Law, October 1994, at 19.

[117] In the narrative response to the question about whether the battered immigrant felt that the police had responded appropriately to her call for help one battered immigrant reported that she had "called the police at 1:30 a.m. and they did not arriver until 7 a.m."

incident. Almost half (49.9%) of the battered immigrants who reported that they had called the police for help had called for help on more than one occasion. In response to the question about whom the police spoke to when they arrived on the scene, 31% of the immigrant victims who called for help reported that when the police arrived they spoke to others on the scene instead of the victim herself, and in 11% of the cases police spoke only to the abuser. This may be due in part to the fact that only 34% of officers communicated with the victims in Spanish.

These communication problems are even more troubling in light of the fact that the vast majority of battered immigrants who called the police (72.7%) reported making multiple calls for problems related to domestic violence. Of the battered immigrant women who called the police, 93.8% were experiencing severe physical abuse and were more likely to have experienced previous injuries. Immigrant women survey respondents also reported that they were experiencing abusive incidents at frequent intervals. Over half were abused at least once a week. In addition, among the battered immigrants who called the police, 98.1% experienced a history of criminal domestic violence offences.

This research also found that in addition to having a history of severe and frequent physical abuse (which often constituted criminal acts), 100% of the battered immigrant women who called the police were injured at the time of the call. A large proportion (59.6%) of the battered immigrants who called the police during a domestic violence incident reported that they had visible injuries when police arrived. Of the women who called, 51.1% reported that other evidence of domestic violence was present on the crime scene including torn clothing, property in disarray or the police officer witnessed violence or threats. Disturbingly, 34.8% of these women reported that two or more additional types of evidence were present. When the police arrived at the scene of the domestic violence incidents reported by the women in this survey, 68.9% of the time at least one injury or other form of crime scene evidence was present.

Despite the prevalence of physical evidence, crime scene evidence and the history of the abuse (that with proper interviewing the police could have discovered), the arrest rate for abusers when police responded to calls from the battered immigrants in the survey was only 28.6%. Further, this arrest rate is even more troubling in light of the fact that 32.7% of the battered immigrants who reported domestic violence to the police already had protection orders in place.

Police interventions need to be improved so that all battered women and battered immigrant women get the response they need when calling the police for help during a domestic violence incident. When the police arrive as they did in the cases reported by women in the survey, see evidence of domestic violence including visible injuries and fail to make an arrest or fail to get a warrant for his arrest, their lack of action to punish the abuse sends a clear message to all involved. The abuser of the battered immigrant learns that he can continue to abuse and the police will not stop him and the victims learn that what the abuser has been telling her all along – that the police will not help her – is the truth, and they will be less likely to contact the police again.[132] On the other hand, when police see evidence of abuse and make arrest, victims feel "good because ...people have helped" them.

[132] Orloff, *Supra* note at 36.

III. Policy Implications, Service Provisions and Training Needs

Contrary to misperceptions, battered immigrant women are often willing to call the police for help to stop incidences of domestic violence perpetrated against them. Willingness to call the police is affected by immigration status, how long a battered immigrant has lived in the United States, the number of support persons she has been talking to, whether or not the violence is beginning to affect her children, and whether she has obtained a protection order. There are many steps that can be taken by police departments to counteract the obstacles that immigrant battered women face in their ability to effectively use reporting to the police to curb, stop and/or try to escape the intimate violence in their lives. Advocates and attorneys working with battered immigrant women can play an important role supporting battered immigrant women's efforts to involve police in her case. They can also advocate for needed reforms in police practices, ideally as part of a coordinated community response to domestic violence that reflects the needs battered immigrant women.

A. Utilizing legal resources that protect immigrant battered women Violence Against Women Act (VAWA) Protections

Until October of 2000, many battered immigrants who were in the United States on temporary visas had no real immigration protection from their abuser's power, control, abuse and retaliation. The Violence Against Women Act of 1994 (VAWA 94)[66] offered access to legal immigration status for battered immigrants abused by their U.S. citizen or lawful permanent resident spouse or parent without the abuser's knowledge or control. The Violence Against Women Act of 2000 (VAWA 2000)[67] recognized that despite VAWA's 1994 protections, there were still many battered immigrants who were effectively cut off from many resources within the justice and social services systems that they and their children needed to be able to escape ongoing domestic violence.[35] As a remedy for the plight of battered immigrants not provided protection by VAWA 1994, Congress expanded VAWA protection to offer, for the first time, legal immigration options for battered immigrants without regard to the immigration status of their abusers and without regard to whether the abuser is a husband or parent.[68] VAWA 2000 created a non-immigrant crime victim visa ("U visa") for immigrant crime victims who can

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[66] Subtitle G, Protections for Battered Immigrant Women and Children, Violence Against Women Act in the Violence Crime Control and Law Enforcement act of 1994, Pub. Law 103-322, 106 STAT 1953-1955 (September 13, 1994).

[67] The Violence Against Women Act of 2000, Pub. Law 106-386 (October 28, 2000).

[35] Leslye E. Orloff and Janice Kaguyutan, Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses, Volume 10, Number 1, April 2002. *American University Journal of Gender, Social Policy and the Law.* While VAWA 1994 helped battered immigrants whose abusers were U.S. citizen or lawful permanent resident spouses or parents, battered immigrants who were not married to their abusers, whose abusers were undocumented or whose abusers had legal permission to live in the United States but who were not lawful permanent residents could not prior to VAWA 2000 access domestic violence related immigration relief. This last category included spouses and children of non-immigrant visa holders (e.g. students, diplomats, work visa recipients) who prior to VAWA 2000 retained the full legal right to control the immigration status of their spouses and children. These spouses and children could often only attain legal immigration status as a derivative of their sponsor spouse or parents immigration visa.

[68] Violence Against Women Act of 2000, Joint Managers Statement, Vol 146, No. 126 Congressional Record, 106th Congress Second Session, Wednesday October 11, 2000, S10192.

successfully demonstrate substantial physical or mental injury stemming from criminal activity.[69] The U visa is offered so long as the victim is, is likely to be or has been willing to be help in a criminal investigation or prosecution.[70] The victim must also obtain certification from a police officer, prosecutor, judge or other federal, state or local authority investigating or prosecuting the criminal activity[71] to be filed along with the victim's self-petition. After three years, a crime victim awarded a U visa can apply for lawful permanent residency if she can demonstrate that she needs to remain in the United States for humanitarian reasons, for family unity or because her presence is in the public interest.[72] With this new U-visa option, many more battered immigrants can receive protection and safely access police protection without suffering immigration consequences or risking deportation.

This research among battered immigrant women demonstrated that more than one fourth of women surveyed contacted the police for help with domestic violence at least once. This contact indicates that not only that battered women's advocates, legal services and pro bono attorneys and immigration rights groups, but also police and other justice system personnel who do in fact interact with battered immigrants need to learn about U visa protections. Each must play an active role in identifying those immigrants who qualify for U visa and VAWA protection and providing immigrant crime victims with information about options through which they can attain legal immigration status. The police and those they work with, including prosecutors, court house staff and judges, must be encouraged not only to identify victims who may qualify for VAWA or the U visa, but further provide U visa applicants with the certification they need from a government official so that immigrant crime victims can file for the U visa protections Congress created for them. Such actions benefit both victims and society. They simultaneously enhance protection for the victim and her children and at the same time strengthen the ability of police, prosecutors, courts and the state to hold abuser of immigrant victims accountable for their criminal actions.

B. Developing Policies and Outreach Strategies That Build Upon Factors That Encourage Battered Immigrant Women to Call the Police For Help

a. Breaking the silence

Isolation is a major control tactic used by abusive partners with their victims. It includes such acts as prohibiting contact with family and friends, forbidding the abused woman to work or attend school, and isolating her from her friends and family members and may include using threatening or offensive behavior toward them. Through isolation, an abused woman is cut off

[69] "[T]he criminal activity referred to . . . is that involving one or more of the following or any similar activity in violation of Federal, State or local law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes" INA Section 101(a)(15)(U)(iii); 8 U.S.C. 1101 (a)(15)(U)(iii).
[70] H.R. 3244, 106th Cong. § 1513 (2000) (enacted) INA 101 (a)(15)(U) 8 U.S.C. 1101 (a)(15)(U).
[71] INA Section 101(a)(15)(U)(i)(III); 8 U.S.C. 1101 (a)(15)(U)(i)(III).
[72] H.R. 3244 106th Cong. § 1513 (f) (2000) (enacted) INA § 245 (l) 8 U.S.C. 1255 (l).

from important sources of social and tangible support that are essential to her efforts to escape, avoid, or remain safe from abuse. Social support has been shown to be extremely important in battered women's efforts to gain assistance.

The battered immigrant women in this survey who reported calling the police for help in a domestic violence incident were all persons who had spoken to two or more people about the domestic violence prior to calling the police. Of all the women who had spoken to more than one person about the abuse, 31.9% called the police for help. None of the women who reported never having spoken to anyone about the abuse called the police regarding domestic violence. Importantly, it appears that the act of talking to others about the abuse was vital. The type of response they received from the individuals with whom they spoke about the abuse, whether it was supportive or non-supportive, did not influence whether women who spoke to one or more persons about the abuse were willing to call the police for help.

A common stereotype exists that abused women who do not leave the relationship are not trying to extricate themselves from the violence in their lives. This misconception is particularly troubling since immigrant women in particular need to be able to access justice and social service system assistance in order to counter violence without regard to whether or not they wish to separate from their abusers. The culturally based barriers to leaving an abusive relationship reported by other reseachers[97] were found to be extremely high for the battered immigrant Latinas in this survey population.

Comparing battered immigrants, who at the time of the survey were still living with their abusers with those who were not, it was found that cultural norms and concerns about the role of the woman as wife and mother in Latino families, a woman's cultural and religious obligation to keep the family together, and concerns about not having value in the community as a single woman/mother were pervasive factors that kept battered immigrants from leaving their abusers. In a previous analysis of data of this research study, we found that Latinas still residing with their abusers reported higher rates of the following barriers: fear of losing children (48.2%), a need to keep the family together(41.2%), not wanting to separate children from their father (41.2%), the perception that a good wife/mother does not leave (18.8%), and religion (18.8%).[98] Concerns about how a single woman would be treated by the community were also ranked higher for battered women still with their abusers, including the fear of being alone, "no one would want me" and gossip. The other culturally related barrier that was higher among those still with their abusers was the inability to speak English (25.9%).[99]

Despite these strong cultural disincentives to seeking help, the data showed that the vast majority of the battered immigrants surveyed reported talking to one or more persons about the abuse.[100] For many battered women the first step in the help-seeking process is talking to people about the abuse. Other methods by which women try to escape or avoid the abuse include calling the police, obtaining a protection order, going to shelters, speaking with clergy, obtaining

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[97] Rachel Rodriguez, *The Power of the Collective: Battered Immigrant Farmworker Women Creating Safe Spaces,* HEALTH CARE FOR WOMEN INTERNATIONAL 20, 417, 426 (1999).
[98] Dutton, *Supra* note 2, 276-279.
[99] *Id.*
[100] *Id.* at 266.

a separation or divorce from the abuser, using children for protection, and complying with the batterers urges.[101]

Studies have suggested that the most common way for a woman to receive help is through a progression of these methods. Most women go from personal methods (talking with the abuser), to informal (talking with a friend), to formal strategies (going to a shelter, clergy or social services agency), to legal strategies.[102] If they meet success at each of these steps, they will be more confident about their chances and continue to take steps to end the violence. At the same time, unsuccessful attempts such as calling the police for help and receiving a response that does not take the violence seriously can undermine the battered woman's efforts to take control over her life and stop the violence. [103] This survey's findings about the connection between battered women's efforts to confide in others about the abuse and her willingness to call the police provides strong evidence that, contrary to prevailing stereotypes, battered immigrants do take steps to bring an end to domestic violence even when they have not chosen to separate from their abusers.

Since many women who are in violent relationships actively seek help either though informal or formal methods, it is important that those persons they are most likely to talk to are educated about how to respond appropriately. The majority of battered immigrant women turn to a female friend or female relative when they are ready to speak to someone about the abuse they are experiencing.[104] Therefore, it is important to impart information about domestic violence, laws and social services available to victims to all females in immigrant communities.

This information needs to be adapted and translated for use in diverse immigrant populations. Battered women's programs, police, and courts considering translating domestic violence outreach materials for various immigrant populations should not merely hire translators to translate existing materials developed for English-speaking, U.S. born battered women. Rather, they should contract with community-based organizations that have experience serving battered immigrants from various immigrant groups and have the organization's experts adapt and interpret the outreach materials. This approach will ensure that the resulting outreach materials will be culturally competent and work most effectively in reaching the targeted groups of immigrant victims.[105] Outreach and educational campaigns geared toward immigrant women

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[101] *See,* Mary Ann Dutton, EMPOWERING AND HEALING THE BATTERED WOMAN: A MODEL FOR ASSESSMENT AND INTERVENTION 41 (1992).

[102] Id.; *See,* Lee Bowker, *Marital Rape: A Distinct Syndrome?*, 64 SOCIAL CASEWORK: THE J. OF CONTEMP. SOCIAL WORK 347-52 (1983).

[103] See discussion, *infra*, regarding this survey's findings that police were handling calls for battered immigrants appropriately and not taking the domestic violence reported by immigrant victims seriously.

[104] Dutton, *Supra* note 2, at 259: A study on the effectiveness of protection orders made similar findings with regard to battered women generally. National INSTITUTE FOR JUSTICE, U.S. DEP'T OF JUSTICE, CIVIL PROTECTION ORDERS: VICTIMS' VIEWS ON EFFECTIVENESS 2 (1998).

[105] Not all community-based organizations working in immigrant communities will be competent to undertake this work. They must have a depth of experience working with domestic violence victims from that immigrant community so that they can adapt materials to address specific challenges that domestic violence victims from that cultural community face. To identify community based organizations with expertise and cultural competency working on domestic violence victims in particular immigrant communities seek a group that is a member of the National Network to End Violence Against Immigrant Women. To identify an appropriate organization contact one of the National Network's co-coordinating organizations: The Immigrant Women Program of NOW Legal Defense

should be designed to reach both the victim and the women she turns to for help. When women who are turned to for support are informed, they are better able to effectively aid the victim in understanding that the violence is not her fault and to help her take appropriate steps to increase the victim and her children's safety including escaping the abuse.[106] In order for police to best help the victims, they should employ female officers more often. Victims may be more likely to open up to a woman officer just as they are more willing to talk to female friends and family members.

Through community policing, officers can establish relationships with immigrants and thus increase the chance that the victim or someone in whom she has confided will attempt to get legal help. Community policing efforts need to be designed to specifically involve immigrant community members. Departments may need to have separate meetings with various immigrant communities to create an opportunity for community members to address issues important to them. However, community policing in immigrant communities will only be effective in addressing domestic violence issues if female members of the community become actively involved. Police will have difficulty reaching immigrant women if the community members attending community-policing activities are predominately male. To address the problem of how to reach female members of the immigrant community, police should collaborate with community-based organizations that work with immigrant women and victims of domestic violence.

Identifying and collaborating with community-based organizations serving battered immigrant women has other advantages for the police. Professionals in these organizations can work closely with police on individual cases by offering assistance with translation and offering a place that police can bring immigrant victims for culturally competent services. Through such collaborations, police can also receive specialized training about the various needs of immigrant domestic violence victims and of immigrants, and thus will be better prepared to handle calls for help from battered immigrant women. Police domestic violence units and programs that collaborate with victim advocacy programs should work with victim advocacy groups to ensure that the services of these collaborations are accessible to immigrant victims. Ideally, bilingual, bicultural advocates should be hired and interpreters with training in domestic violence should be hired to assist with languages other than those spoken by police department personnel and victim advocates.

The police can also take a leadership role in identifying other professionals who need to learn about domestic violence and the dynamics of domestic violence in immigrant communities. In their outreach efforts, police can involve professionals who come in contact with immigrant women in their work. There are many professionals from whom battered immigrants seek services that never identify domestic violence victims or make information about domestic violence available to those who seek their professional services. These professionals along with

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and Education Fund (202) 326-0040, iwp@nowldef.org, the Family Violence Prevention Fund (415) 252-8900 x16, leni@endabuse.org, or The National Immigration Project of the National Lawyer's Guild gail@nationalimmigrationproject.org. Additionally, the Immigrant Women Program of NOW Legal Defense and Education Fund has developed outreach materials providing an overview of legal rights for immigrant victims that organizations can use to adapt for their use in their own communities. These materials can be obtained by calling the number listed above.

[106] Dutton, *supra* note 50, at 282.

the police should receive training on domestic violence and should become part of outreach efforts on the issue. The professional services that immigrant women seek mostly include: immigration lawyers, maternal and child health care providers, child care and reproductive health care providers, public benefits agencies from which they seek services for their children, emergency medical services, and English classes.[107]

Community based organizations and the police should work together to develop outreach campaigns designed to educate battered immigrants and their support persons and ensure that they can call the police without fear of being reported to the INS. These community education campaigns should also include the distribution of educational materials to crime victims by the police and community based organizations. These materials should be available in all relevant languages, describe VAWA immigration relief and U visa protections, and contain referrals to local agencies that can help immigrant victims. Additionally, police should be encouraged to bring immigrant crime victims to community-based agencies that can offer them culturally competent services.

b. Training Officers Not to Inquire Into the Immigration Status of Crime Victims

Police departments must undertake a variety of activities to increase the likelihood that battered immigrant victims of domestic violence will call the police for help. First and foremost, they should identify the significant language minority and immigrant populations within the community. Police should then develop collaborative working relationships with community-based organizations, grassroots women's groups and churches that serve the identified immigrant community.

The next step is to address immigrant victim's fears that police and other justice system officials will report them to the INS for deportation .Departments should train all officers to refrain from asking the immigration status of victims who call the police for help. Officers must be informed that there is no federal law that requires that state and local police inquire about the immigration status of crime victims or witnesses. The training should explain current immigration law requirements, clarify that no officer has an obligation to ask a crime victim questions about immigration status or report to INS persons who may be undocumented, and eliminate officer misunderstandings about reporting.

It is important to note that individual police and justice system personnel in some jurisdictions have misconstrued provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)[73] and have used that incorrect reading of the law to justify an individual officer's voluntary choice to ask battered immigrants and other immigrant crime victims questions about their immigration status. There have been isolated incidents in which police, prosecutors and judges have reported victims to the INS.[74] If battered immigrants believe

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[107] *Id.* at 286.

[73] Illegal Immigration Reform and Immigration Responsibility Act of 1996, pub. L. No. 104-208, 110 stat. 3009, 8 U.S.C. § 1101 et. Seq. (Supp. II. 1996) [hereinafter IIRAIRA].

[74] Leslye E. Orloff et al., *Ensuring that Battered Immigrants who Seek Help from the Justice System are not Reported to the INS, in* SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED

that police will report them to the INS when they call for police protection from their abusers, women and children will continue to endure ongoing abuse rather than call for help and their abusers' crimes will go unpunished. Such a confusion and fear is bound to increase among immigrant women in light of the prevailing post-September 11th conditions of Homeland Security.

Much confusion about reporting stems from common misunderstandings about particular provisions of IIRAIRA that became law in 1996. IIRAIRA preserved and expanded protections for battered immigrants that had been included in VAWA 1994. However, IIRAIRA contained many revisions to the immigration law that were intended to be harmful to immigrants in general. One such provision was designed to outlaw sanctuary city ordinances under which local jurisdictions mandated that their employees not inquire into the immigration status of persons who came into contact with city government. Section 287(g)(10) of the Immigration and Nationality Act (INA) was amended by IIRAIRA to require that all jurisdictions allow any officer or state government worker who chooses to do so to communicate with INS regarding the immigration status of any individual.[75] This section also allows any state employee to choose to voluntarily cooperate with INS in identification, apprehension, detention and removal of any persons not lawfully present in the United States.[76]

Some police officers, prosecutors and judges have misinterpreted section 287(g) (10) of the INA to justify their decision to inquire about the immigration status of crime victims. Some go so far as to argue that inquiries into immigration status of crime victims are mandatory.[77] From the face of the statute, this is untrue. Local law enforcement does have not authority to enforce the civil provisions of immigration law.[36] There are some instances in which a local, state or federal law enforcement officer would be required, under federal law, to ask questions about immigration status. Perpetrators arrested by law enforcement officers for drug-related offenses must be referred to the INS if the officer has reason to believe that the perpetrator may not be lawfully residing in the United States.[78] The Anti-Terrorism and Effective Death Penatly Act of 1996 provides state and local police, if authorized by state or local law, with limited authority to arrest non-citizens in the U.S. when the non-citizen is present illegally **and** has previously been convicted of a felony and was deported or left the U.S. after such a conviction.[37] The only other instance in which state officials can be required to seek information about the immigration status of persons they encounter and then report such information to the INS is if the

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IMMIGRANT WOMEN: A "HOW TO" MANUAL FOR BATTER D WOMEN'S ADVOCATES AND SERVICES PROVIDERS, 279 (Leslye E. Orloff and Rachel Little, eds., 1999).

[75] INA Section 287(g)(10)(A).

[76] INA Section 287(g)(10)(B).

[77] Orloff, *Supra* note 74, at 282.

[36] Gonzales v. Peoria, 722 F.2d 468, 476-477 (9th Cir. 1983). *But see* U.S. v. Santana-Garcia, 264 F.3d 1188, 1193-1194 (10th Cir. 2001), where the court held that state law enforcement officers have general authority to investigate and make arrests for violations of federal immigration law. However, the court did not consider the distinction between civil and criminal provisions of the INA and all of the authorities upon which it relied involved arrests for criminal immigration violations. Santana-Garcia should not be read as having decided state and local police have the authority to enforce civil provisions of immigration law because the court did not adequately analyze that issue.

[78] INA Section 287(d).

[37] The police officer must obtain confirmation from INS of the status of such individual and may keep the individual in custody only as long as necessary for INS to take the person into federal custody for removal. AEDPA §439, 8 U.S.C. 1252(c) (1996).

state has a contract with the U.S. Attorney General to carry out immigration investigations.[79] As of the writing of this article, the only jurisdiction in which local law enforcement officers have been deputized to enforce the civil provisions of immigration law is Florida. [38]

No police officer or justice system official is required, as matter of law, to inquire into the immigration status of crime victims who turn to the system for help. When individual officers choose to inquire into the immigration status of crime victims, they are essentially deciding that volunteering to help the INS is more important to them than bringing criminals to justice. Officers who adopt this approach undermine community relations between the police department and immigrant communities and encourage the commission of crimes against immigrant victims. This approach can and has led to the deportation of battered immigrant victims who qualified for legal immigration status under VAWA, but who were deported without ever being informed of that right or being given an opportunity to prove their eligibility.

The results of this survey underscore that police departments and other justice system officials must take active steps to counter perceptions that immigrant victims cannot safely turn to the police for help without risk of being reported to the INS. To counter these perceptions, police departments should train their officers not to inquire into the immigration status of crime victims.[39] The training should explain in detail how voluntary reporting by individual officers undermines immigrant community trust in the police and will discourage immigrant crime victims from calling the police. Police departments should also meet with domestic violence service providers and groups providing legal and social services to the immigrant community to publicly explain that police officers have been trained not to ask questions about the immigration status of victims.

Conclusion

Survey results among Latina immigrant battered women provide important information for advocates, attorneys and law enforcement officials about battered immigrant women. Despite the fact that they must overcome significant challenges to do so, many battered immigrant women are willing to call the police for help to curb domestic violence. One of the most significant factors affecting their willingness to call a battered immigrant woman's own immigration status and her fear of deportation if she contacts law enforcement officials. Those who had stable immigration status called the police more often than those who did not. Yet, despite this finding, this group of Latina women regardless of their immigration status, still called the police less often than the general population of battered women.

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[79] INA Section 287(g)(1)-(9).

[38] Even in Florida only 35 officers have been designated and have received the required training to be are legally empowered to act as INS officials. See Memorandum of Understanding between the State of Florida and the U.S. Attorney General signed July 2, 2002, pp.1 and 4.

[39] At least one jurisdiction has gone one step further. Seattle, Washington has passed and ordinance which states as follows: "Not withstanding Seattle Municipal Code Section 4.18.010, unless otherwise required by law or by court order, no Seattle City officer or employee shall inquire into the immigration status of any person, or engage in activities designed to ascertain immigration status of any person." There is an exception for cases in which the "officer has reasonable suspicion to believe : (1) has previously been deported from the United States; (2) is again present in the United States; and I s committing or has committed a felony criminal law violation." This in large part to enhance protection for battered immigrants and other immigrant crime victims. Seattle Municipal Code Section 4.18

In addition to the immigration status, the women's willingness to call the police was influenced by the type, level, and frequency of violence they experienced. Women who experienced more severe forms of abuse, who endured injuries and who experienced more frequent incidents of violence were more willing to call the police for help. If a battered immigrant woman's children witnessed the violence, she was significantly more likely to call the police for help. Finally, a key finding in the survey was that without regard to the severity of the violence, no battered immigrants reported called the police for help unless they had previously spoken to someone else about the domestic violence. The persons immigrant women chose to talk to about the abuse were almost always other women. This finding underscores the importance of communicating to women in immigrant communities that immigrant women can and should call the police for help when they or a friend of theirs has been a victim of domestic violence, sexual assault or trafficking. If immigrant women learn from police behavior in their communities that calling the police means that they will be reported to INS, it will have a chilling effect on immigrant victim calls for assistance and it will become virtually impossible to prosecute abusers, traffickers and sexual assault perpetrators if their victims are non-citizens.

These findings have clear public policy and training implications. It is extremely important law enforcement personnel to increase their knowledge about the avenues for legal immigration status currently open to battered immigrants and other immigrant crime victims, including VAWA self-petitioning, VAWA cancellation, the T visa for trafficking victims and the U visa for immigrant crime victims. Police officers should actively participate in providing information and referrals to immigrant victims and providing certifications and documentation that will assist immigrant victims in obtaining legal immigration status. These efforts will both enhance safety to victims and further law enforcement efforts to hold perpetrators of crimes against immigrant victims accountable.

Further, as a matter of public policy supported by this Congress, law enforcement officers should not be inquiring into the immigration status of crime victims who call the police for help. Encouraging police to report crime victims to INS rather than encouraging police to arrest and prosecute abusers of immigrant victims will deter immigrant victims from calling the police for help out of fear of their own deportation and abusers and perpetrators will be free to continue their abuse and to endanger other members of the community at large.

Florida Department of Law Enforcement

STATEMENT

OF

E. J. PICOLO
Regional Director
Florida Department of Law Enforcement
Co-Chairperson
Southwest Florida Domestic Security Task Force
Ft. Myers, Florida

REGARDING A HEARING ON

STATE AND LOCAL AUTHORITY to ENFORCE IMMIGRATION LAW: EVALUATING A UNIFIED APPROACH FOR STOPPING TERRORISTS

BEFORE THE

SENATE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY
AND CITIZENSHIP COMMITTEE ON THE JUDICIARY

April 22, 2004
2:30 PM
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Mr. Chairman and distinguished Members of the Committee.

I would like to begin by thanking this Committee for the opportunity to represent the 35 state and local officers throughout Florida, who are designated to serve in the first of its kind 287(g) Cross Designation Program. All of these men and women have served on Florida's Regional Domestic Security Task Forces, and are committed to a partnership with federal law enforcement to ensure the domestic security of our citizens. These partnerships are vital in protecting our citizens against future terrorist attacks.

After the atrocities of September 11, 2001, the State of Florida quickly assessed its abilities to detect and respond to domestic security and terrorist events. Governor Jeb Bush directed then FDLE Commissioner James T. (Tim) Moore and Florida Department of Emergency Management, Director Craig Fugate to lead Florida's efforts in determining its preparedness. Within one month, over 1,000 agencies spanning Law Enforcement, Fire, Emergency Management, Health and private sector were polled in this project. From these efforts, the State of Florida created seven regional domestic security task forces (RSDTF's), generally coinciding with the FDLE Regional Operations Centers. These task forces have served as the cornerstone of Florida's efforts in domestic security and anti-terrorism efforts since that time, and have achieved great success.

In November 2001, the Florida Legislature met in special session and codified the domestic security task force structure into statute. These task forces serve under the policy direction of a

multi-disciplined oversight board and at the regional level are co-chaired by a sitting sheriff and the FDLE Operations Regional Director.

From the very beginning, these regional domestic security task forces have been engaged in ongoing intelligence and investigative operations. The RSDTF concentrates full-time on domestic security and counter terrorism specific investigative efforts. These task forces have had on-going and active working relationships with our federal partners to include the FBI, the INS, U.S. Customs Service now Immigrations and Customs Enforcement (ICE), and other federal law enforcement partners dictated by individual investigative need. From the very beginning, our investigative efforts would encounter alien residents both legal and illegal. Many times it took far too long to get immigration related questions answered, due in some cases to a lack of available federal resources. For example, in the region which I personally represent, Southwest Florida, no INS agent was assigned full-time anywhere between Miami and Tampa.

As a result of these difficulties, the Florida Department of Law Enforcement initiated negotiations with the Immigration and Naturalization Service to establish its 287(g) Cross Designation Program. In July 2002, a Memorandum of Understanding was entered into granting 35 state and local officers in Florida 287(g) authority as signed by Attorney General John Ashcroft and Florida Governor Jeb Bush. In December 2003, this Memorandum of Understanding was renewed as signed by Department of Homeland Security Under Secretary Asa Hutchinson and Florida Governor Jeb Bush.

The Memorandum of Understanding outlines a number of terms and conditions for this 287(g) authority. All Regional Domestic Security Task Force members assigned to the Cross Designation Program had to commit to serve a minimum of one year under this authority. All members were subject to a full background not only from the RSDTF, but also INS/ICE. All training was provided by INS/ICE and was carefully monitored. Under the terms of this Memorandum of Understanding, all investigative efforts undertaken under this Cross Designation authority must not only be supervised by an INS/ICE officer, they must have a nexus to domestic security and counter terrorism.

All 35 state and local designees attended a six-week intensive training course pursuant to this Memorandum of Understanding in Orlando, Florida during July and August 2002. Subsequent to graduation, the INS assigned a supervisory special agent full-time to each RSDTF. Since that time our efforts have been extremely successful. Several hundred investigative and intelligence operations have been conducted with numerous arrests.

An area in which the State of Florida and the RSDTF extended considerable energy prior to establishing this program, was in communicating with the various ethnic groups regarding concerns. This program received considerable publicity in Florida during its development in part because this was a new concept, but also due to Florida's highly diverse population. Many immigrant groups expressed significant concerns related to any INS authority being delegated to state and local officers. In conjunction with the Office of the Governor, the RSDTF's and INS/ICE extended considerable effort in communicating exactly what our intentions were with this program to many ethnic groups including Hispanic and Haitian. In addition, we have visited

many religious groups to include Christian, Jewish and Muslim. We also did not miss an opportunity to speak with the news media including print, radio and television in reassuring those with concerns of our program intent. I am proud to say in my own area, while significant concerns were expressed particularly by groups representing seasonal workers at the duration of our Cross Designation project, we have stuck to the spirit and letter of our Memorandum of Understanding. There have been no situations where fields have been raided, labor camps infiltrated, nor would such be tolerated. As of today, not one formal complaint has been filed with FDLE, related to this program.

The reorganization of a number of federal agencies including INS into the Department of Homeland Security has had some negative impact on our Cross Designation Program. Not only has the Department of Homeland Security undertaken the massive responsibility of deciding appropriate roles and relationships within its structure, the Florida Department of Law Enforcement itself in October 2003 received a new Executive Director, Commissioner Guy Tunnell. During the months between September and December 2003, no action could be taken by our Cross Designated agents, as the Memorandum of Understanding had not been renewed, and was under review. In addition, through normal attrition and promotions, a number of our original Cross Designated agents have been reassigned and are no longer a part of the program.

Florida has strongly supported an additional Cross Designated class and could easily support an additional 35 Cross Designated agents. In addition, it has been our experience again in part due to the reorganization of INS/ICE that the seven originally assigned INS/ICE supervisors, have for the most part now received significant additional responsibilities at their home agencies,

taking them away from our RSDTF efforts. The hiatus experienced in renewing the agreement coupled with the reorganization of INS/ICE threatened to cause this valuable and important program to drift into merely "standby" status—used only when an emergency prompted a need for the use of the specially designated state and local officers. From Florida's perspective, and indeed from Washington's, this was not what anyone wanted to occur.

Three weeks ago, members of FDLE to include Commissioner Tunnell, several regional directors, the FDLE office of Statewide Intelligence, Collier County Florida Sheriff Don Hunter and others met with ICE representatives from Washington and Tampa Bay to work on these issues. The outcomes are still under review. The ICE renewed its commitment to making the continued project an ongoing and proactive effort, and to prevent it from becoming simply a "stand-by" program. ICE has agreed to renew its supervisory commitment to the Regional Domestic Security Task Forces under the terms of the Memorandum of Understanding.

In addition, FDLE and ICE have agreed to support another Cross Designation class, which will provide additional Cross Designated state and local officers in support of our efforts and fill the few vacancies that have developed in the initial group of 35 officers trained in this project.

In closing, Florida strongly supports the continuation of the 287(g) Cross Designation Program. We believe this authority provides a strong force multiplier for our federal partners and our collective efforts to limit the possibility of another terrorist attack. We remain ready and willing to assist our federal partners in these efforts. By remaining committed to our use of the trained personnel in domestic security related investigative efforts, we are assuring that these highly trained officers will be put to the best use—thereby better protecting Florida and the nation.

Americans Talk About Illegal Immigration

Final Report Prepared by RoperASW

Negative Population Growth

March, 2003

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Introduction and Method Overview

This survey was undertaken on behalf of Negative Population Growth to explore several issues surrounding American attitudes toward illegal immigration and to gauge support for various measures to reduce it.

Sample

This report presents the findings of a nationally representative survey of 1,012 American adults (18+) who live in the continental United States. All sample was drawn randomly from an RDD (random digit dialing) list.

Interviewing dates, method and timing

All interviews were conducted by telephone from March 7-9, 2003. Each interview lasted approximately 7 minutes.

Sampling error

All samples are subject to some degree of sampling "error"—that is, statistical results obtained from a sample can be expected to differ somewhat from results that would be obtained if every member of the target population were interviewed. In this report, the maximum margin of error at a 95% confidence level is within +/- 2 percentage points for base sizes of 1,012. Subsample margins of error will be higher.

Weighting

Completed interviews were weighted by age, sex, income, and region to ensure reliable and accurate representation of the target population.

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Percentages not totaling 100%

For tabulation purposes, percentage points are rounded off to the nearest whole number. As a result, percentages in a given table column may total slightly higher or lower than 100%.

In questions that permit multiple responses, columns may total significantly more than 100%, depending on the number of different responses offered by each respondent. Similarly, when only selected responses are shown, percentages may total less than 100%.

Asterisks (*) are used when percentages fall below 0.5%. A dash (-) indicates 0%.

About RoperASW

RoperASW, an NOP World Company, is the merger of two of the world's leading marketing research and consulting firms, Roper Starch Worldwide and Audits & Surveys Worldwide. For over 75 years, RoperASW has conducted public opinion polls and remains one of most respected names in the business.

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I. General Attitudes Toward Immigration

Attitudes Toward Number of Legal Immigrants

Currently, immigration is the driving force behind population growth in the U.S. If present trends continue, the nation's population is expected to be about 400 million people by the year 2050, up from 293 million now.

Most immigrants live in this country legally and have a visa, citizenship papers, or have gone through other official channels. The U.S. accepts about one million new legal immigrants a year.

Asked what they think is a "desirable" number of legal immigrants per year, most Americans (76%) would prefer immigration be kept *below* current levels (i.e., they say they would like to see less than one million per year admitted).

In fact, a majority (58%) would prefer fewer than 300,000 enter per year.

Opinions vary somewhat by age, with older Americans taking a harder line against legal immigration; in fact, one in four of those age 65+ (25%) would prefer to see *no* legal immigrants enter per year, whereas only one in twenty (5%) of those 18-24 have the same view.

Attitudes Toward Illegal Immigration

About 400,000 immigrants come to this country each year *illegally*, and it is estimated that 8 to 10 million illegal immigrants reside in the U.S. today.

Americans agree (85%) that illegal immigration is a "serious" problem, and over half (55%) say it is "very serious."

Older Americans are particularly likely to hold this view. For example, persons age 65+ are twice as likely as 18-24 year olds to say illegal immigration is a "very serious" problem.

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Setting Goals

As a measure of their concern about illegal immigration, most Americans approve setting as goals:

- Completely halting illegal immigration (68%) and
- The reduction of the number of illegal immigrants now present in the United States to near zero (67% agree)

Again, older Americans are particularly likely to agree these are worthy goals, with about twice as many 65+ year-olds than 18-24 year-olds "strongly agreeing" that such goals should be implemented.

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Three Americans in Four Would Reduce Number of Immigrants Allowed Annually Into the U.S.
- % who say number is "desirable" number of immigrants per year -

Base: Americans 18+.

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Less than one million (net)	76	76	76	78	76	74
None	18	5	19	19	18	25
Fewer than 100,000	23	25	23	24	21	24
100,000 to under 300,000	17	24	17	19	15	11
300,000 to under 600,000	9	8	5	9	14	7
600,000 to under one million	9	14	12	7	8	7
One million or more	12	19	14	12	9	7
One million to two million	6	10	6	5	5	2
Over two million	5	8	7	5	3	3
Refused	1	1	1	2	1	2
Don't know	12	5	10	8	15	20

What do you think would be the most desirable number of all types of immigrants to allow into the U.S. each year? Do you think we should allow... (Q1)

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Virtually All Americans Believe Illegal Immigration Is a "Serious" Problem; Majority Believes It Is "Very Serious"

Base: Americans 18+.

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Very/somewhat serious	85	68	84	88	90	86
Very serious	55	31	52	56	63	62
Somewhat serious	31	38	33	32	26	24
Not very/at all serious	13	31	16	8	10	8
Not very serious	9	21	11	5	8	4
Not serious at all	4	10	4	3	2	4
Refused	1	1	--	*	1	1
Don't know	2	--	--	3	*	5

How serious of a national problem do you think illegal immigration into the U.S. is? Do you think it is very serious, somewhat serious, not very serious, or not serious at all? (Q2)

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Majority of Americans Believe U.S. Should Set the Goal of Completely Halting Illegal Immigration

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Agree	68	61	72	71	71	59
Strongly	47	29	45	51	55	48
Moderately	14	21	17	13	14	7
Mildly	7	11	10	7	2	3
Neither agree nor disagree	3	1	2	3	2	6
Disagree	24	33	24	18	22	28
Strongly	10	10	8	9	10	15
Moderately	10	10	14	7	9	9
Mildly	4	13	2	2	3	4
Refused	1	1	1	*	1	--
Don't know	5	5	2	7	5	7

And another statement: "Congress should set a goal of halting completely the annual entry of an estimated 400,000 new illegal immigrants." Do you agree or disagree with this statement? (Q6)

Majority of Americans Believe U.S. Should Set the Goal of Reducing Number of Current Illegal Immigrants to "Near Zero"

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Agree	67	64	61	69	70	68
Strongly	45	28	37	47	54	50
Moderately	16	24	18	16	12	13
Mildly	6	12	6	6	4	5
Neither agree nor disagree	2	3	1	3	1	5
Disagree	26	29	37	24	24	22
Strongly	12	11	21	11	8	10
Moderately	10	10	14	10	10	8
Mildly	4	8	2	3	6	4
Refused	1	1	--	--	1	1
Don't know	4	4	1	5	5	5

Here's the first statement: "Congress should set a goal of reducing the number of illegal immigrants now present in the U.S. to near zero." Do you agree or disagree with this statement? (Q3)

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II. Approval of Methods to Deal With Illegal Immigration

Halting Immigration

Americans support taking tough measures to halt illegal immigration, including:

- Mandatory detention and forfeiture of property, followed by deportation, for anyone here illegally (83%; 56% "strongly agree")

Support remains solid, though declines somewhat, when instead of detention, illegal immigrants would face:

- A mandatory *prison term* and forfeiture of property, followed by deportation, for anyone here illegally (70%; 45% "strongly agree")

Americans also agree that a "practical way" of halting illegal immigration would be to make penalties for illegal presence here so severe that no illegal immigrants would come here or remain here out of fear of being caught (63% agree, 42% agree "strongly"). Older Americans are especially likely to "strongly agree."

Reducing the Number of Illegal Immigrants

Americans also support taking the same tough measures to reduce the number of illegal aliens currently in the U.S. to "near zero," including:

- Mandatory detention and forfeiture of property, followed by deportation, for anyone here illegally (78%; 51% "strongly agree")

Support declines somewhat, though still remains, when instead of detention, illegal immigrants would face:

- A mandatory *prison term* and forfeiture of property, followed by deportation, for anyone here illegally (69%; 46% "strongly agree")

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Americans also agree that a "practical way" of achieving this goal would be to make to make penalties for illegal presence here so severe that illegal immigrants would leave voluntarily rather than run the risk of being caught and made to pay the consequences (64% agree, 44% agree "strongly"). Older Americans are especially likely to "strongly agree" with the soundness of this approach.

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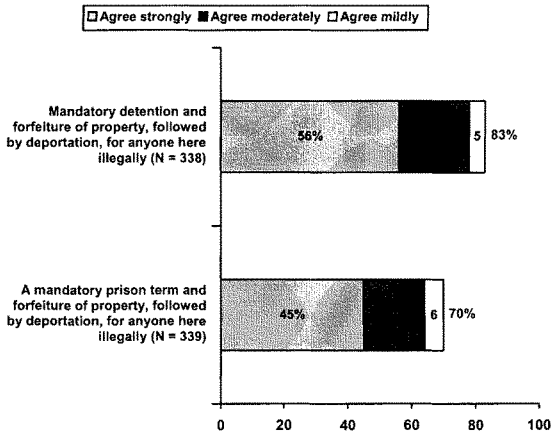
To Halt Illegal Immigration, Policy of Mandatory Detention of Illegals Is Preferred Over Prison, but Both Have Strong Support

Base: Agree congress should set a goal of halting completely the annual entry of an estimated 400,000 new illegal immigrants. Split sample (A/B)

To achieve the goal of halting completely the annual entry of new illegal immigrants, Congress should authorize tough measures to do it, up to and including...



And another statement: "To achieve the goal of halting completely the annual entry of an estimated 400,000 new illegal immigrants, Congress should authorize tough measures to do it, up to and including mandatory detention and forfeiture of property, followed by deportation, for anyone here illegally." Do you agree or disagree with this statement? (Q7)

And another statement: "To achieve the goal of halting completely the annual entry of an estimated 400,000 new illegal immigrants, Congress should authorize tough measures to do it, up to and including a mandatory prison term and forfeiture of property, followed by deportation, for anyone here illegally." Do you agree or disagree with this statement? (Q8)

Majority of Americans Believe a "Practical" Way of Halting Illegal Immigration Is to Enact and Enforce Penalties So Severe That Illegals Would Leave Voluntarily

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Agree	63	53	63	60	69	69
Strongly	42	25	39	41	49	52
Moderately	15	16	19	14	15	12
Mildly	6	13	5	5	5	4
Neither agree nor disagree	3	1	3	5	2	3
Disagree	30	45	33	31	24	23
Strongly	16	25	18	15	14	14
Moderately	10	10	11	13	7	5
Mildly	4	11	3	3	4	4
Refused	*	1	--	--	1	--
Don't know	3	--	1	4	5	6

And next: "A practical way to halt the annual entry of new illegal immigrants is for Congress to make penalties for illegal presence here so severe that no illegal immigrants would come here or remain here." Do you agree or disagree with this statement? (Q10)

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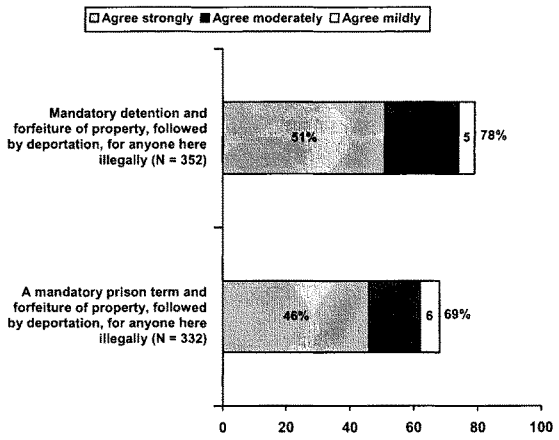
To Reduce Number of Illegal Immigrants to "Near Zero," Policy of Mandatory Detention of Illegals Is Preferred Over Prison, but Both Have Strong Support

Base: Agree congress should set a goal of reducing the number of illegal immigrants now present in the U.S. to near zero. Split sample.

To achieve the goal of reducing the number of illegal immigrants now living here permanently to near zero, Congress should authorize tough measures to do it, up to and including...



Here's another statement: "To achieve the goal of reducing the number of illegal immigrants now living permanently in the U.S. to near zero, Congress should authorize tough measures to do it, up to and including mandatory detention and forfeiture of property, followed by deportation, for anyone here illegally." Do you agree or disagree with this statement? (Q4)

And here's another statement: "To achieve the goal of reducing the number of illegal immigrants now living here permanently to near zero, Congress should authorize tough measures to do it, up to and including a mandatory prison term and forfeiture of property, followed by deportation, for anyone here illegally." Do you agree or disagree with this statement? (Q5)

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Majority of Americans Believe a "Practical" Way of Reducing Number of Illegal Immigrants to "Near Zero" Is to Enact and Enforce Penalties So Severe That Illegals Would Leave Voluntarily

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Agree	64	50	62	68	69	67
Strongly	44	24	43	46	49	51
Moderately	15	15	15	16	16	13
Mildly	6	11	4	6	5	3
Neither agree nor disagree	3	1	2	4	4	4
Disagree	28	47	34	24	22	20
Strongly	15	25	16	14	13	12
Moderately	10	14	14	8	8	5
Mildly	3	8	4	3	1	2
Refused	*	1	--	--	1	--
Don't know	5	2	2	5	4	10

And next: "A practical way to reduce to near zero the number of illegal immigrants now living here permanently is for Congress to make penalties for illegal presence here so severe that illegal immigrants would leave voluntarily rather than run the risk of being caught and made to pay the consequences." Do you agree or disagree with this statement? (Q9)

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III. Views Regarding the Role State and Local Governments Should Play In Thwarting Illegal Immigration

Americans also believe state and local governments have a role to play in the effort to reduce illegal immigration. In fact, many believe the Federal government should pass laws to ensure that state and local governments do their part.

Specifically majorities agree that:

- Congress should pass a law requiring state and local government agencies to notify both the Immigration and Naturalization Service (INS) and their local law-enforcement agency when they determine that a person is here illegally, or has presented a false identification document (88% agree; 68% "strongly" agree, particularly older Americans)

- Congress should pass a law requiring state and local governments, and law enforcement agencies, to apprehend and turn over to the INS illegal immigrants with whom they come in contact (85% agree; 62% "strongly" agree, particularly older Americans)

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Majority of Americans Agree Congress Should Require State/Local Government Agencies to Notify Both Immigration and Naturalization Service (INS) and Local Law-Enforcement Agencies When They Determine a Person is Here Illegally or Has Presented a False ID

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Agree	88	84	89	90	89	86
Strongly	68	39	65	76	76	71
Moderately	14	30	18	9	9	12
Mildly	6	15	6	5	1	3
Neither agree nor disagree	1	1	2	1	1	2
Disagree	8	14	9	5	7	8
Strongly	3	3	4	2	4	5
Moderately	3	5	5	2	2	2
Mildly	2	6	*	1	1	1
Refused	*	1	--	*	1	--
Don't know	3	1	1	4	4	5

And next: "Congress should pass a law requiring state and local government agencies to notify both the Immigration and Naturalization Service (INS) and their local law-enforcement agency when they determine that a person is here illegally, or has presented a false identification document." Do you agree or disagree with this statement? (Q15)

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Majority of Americans Agree Congress Should Require State/local Governments and Law Enforcement Agencies to Apprehend and Turn Over to the INS Illegal Immigrants with Whom They Come in Contact

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Agree	85	77	58	88	89	82
Strongly	62	39	59	69	65	67
Moderately	16	23	18	13	16	13
Mildly	7	15	9	6	8	2
Neither agree nor disagree	2	1	3	1	1	3
Disagree	11	21	12	8	8	11
Strongly	5	5	7	4	4	5
Moderately	3	8	3	2	3	4
Mildly	2	9	2	2	1	2
Refused	*	1	--	--	1	--
Don't know	2	1	1	4	2	4

And next, "Congress should pass a law requiring state and local governments, and law enforcement agencies, to apprehend and turn over to the INS illegal immigrants with whom they come in contact." Do you agree or disagree with this statement? (Q16)

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IV. Penalties For False Identification Documents

Americans also support a hard line when it comes to using and producing false IDs, with majorities agreeing that Congress should pass a law calling for a *mandatory* prison sentence for possessing, printing or selling false identification documents (89% agree; 74% "strongly" agree, particularly older Americans).

Many also agree Congress should pass laws requiring people to go through a verification check of their U.S. citizenship or lawful presence when:

- Applying for a driver's license (82% agree)
- Opening a bank account (75%)
- Enrolling in a school or college for oneself or a child (73%)
- Seeking medical care at a hospital (49%)

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Majority of Americans Agree Congress Should Pass a Law Requiring a Mandatory Prison Sentence for Possessing, Printing or Selling False Identification Documents

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Agree	89	87	87	86	93	91
Strongly	74	54	71	71	83	84
Moderately	11	26	10	10	8	6
Mildly	4	7	6	5	2	*
Neither agree nor disagree	1	--	2	2	1	2
Disagree	8	10	12	10	4	6
Strongly	4	6	3	5	2	4
Moderately	2	1	6	3	1	1
Mildly	2	4	3	2	1	1
Refused	*	1	--	--	1	--
Don't know	2	3	--	2	2	2

And next: "Congress should pass a law calling for a mandatory prison sentence for possessing, printing or selling false identification documents." Do you agree or disagree with this statement? (Q17)

Americans Support Verification of U.S. Citizenship/Lawful Presence for a Variety of Activities
- % agree "strongly/moderately/mildly" -

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Applying for a driver's license	82	71	81	86	86	78
Opening a bank account	75	68	78	77	76	71
Enrolling in a school or college for oneself or a child	73	61	71	75	78	72
Seeking medical care at a hospital	49	38	47	49	53	52

Some people have said that Congress should pass a law that requires people to go through a verification check of their U.S. citizenship or lawful presence when applying for certain things like a driver's license, a bank account, and the like. The verification would be conducted by the institution, such as the DMV or bank, by accessing a U.S. government database over the phone or online. The idea is that such verification would make it difficult for illegal immigrants to live and work in the U.S. Please tell me if you agree or disagree that such a check be done when... [READ EACH ITEM. PROBE FOR EACH]. (Q14)

V. Views Toward Employers and Illegal Immigration

Americans agree that one way to impede illegal immigration is to crack down on the people who employ them. Majorities agree the following actions should be taken:

- The Federal government should strictly enforce present laws calling for criminal penalties for employers who, after having been repeatedly fined, continue to knowingly hire illegal immigrants (87% agree; 69% "strongly" agree, particularly older Americans).
- The Federal government should strictly enforce present laws calling for heavy fines for employers who knowingly hire illegal immigrants (79% agree; 67% "strongly" agree, particularly older Americans).
- The Federal government should require all employers to verify U.S. citizenship or lawful presence for each job applicant by a telephone or online check to a central data base maintained by the U.S. government (79% agree; 58% "strongly" agree, particularly older Americans).

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Majority of Americans Agree Federal Government Should Require Employers to Verify U.S. Citizenship/Lawful Presence for Job Applicants by a Telephone/Online Check to a Central Database Maintained by the U.S. Government

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Agree	79	72	76	81	83	78
Strongly	58	40	57	59	66	61
Moderately	17	26	14	18	13	15
Mildly	4	6	5	5	5	2
Neither agree nor disagree	3	2	4	3	2	2
Disagree	16	26	18	14	12	13
Strongly	10	13	10	10	8	9
Moderately	4	8	6	2	3	3
Mildly	2	5	3	2	1	1
Refused	*	1	--	--	1	--
Don't know	3	--	2	3	3	7

And next: "The Federal government should require all employers to verify U.S. citizenship or lawful presence for each job applicant by a telephone or online check to a central data base maintained by the U.S. government." Do you agree or disagree with this statement? (Q13)

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Majority of Americans Agree the Federal Government Should Enforce Present Laws For Heavy Fines for Employers Who Knowingly Hire Illegal Immigrants

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Agree	79	71	83	88	90	79
Strongly	67	40	64	74	74	70
Moderately	12	17	13	12	13	6
Mildly	5	14	6	3	3	3
Neither agree nor disagree	2	3	3	1	--	3
Disagree	12	25	15	8	8	11
Strongly	7	14	11	4	2	7
Moderately	3	5	3	2	3	3
Mildly	2	6	2	1	3	1
Refused	*	1	--	--	1	--
Don't know	3	1	--	4	2	7

And next: "The Federal government should strictly enforce present laws calling for heavy fines for employers who knowingly hire illegal immigrants." Do you agree or disagree with this statement? (Q11)

Majority of Americans Agree the Federal Government Should Enforce Present Laws For Criminal Penalties for Employers Who Knowingly and Repeatedly Hire Illegal Immigrants

Base: Americans 18+

		Age				
	Total	18-24	25-34	35-49	50-64	65+
(Unweighted base)	(1,012)	(104)	(133)	(272)	(258)	(213)
	%	%	%	%	%	%
Agree	87	79	83	91	91	81
Strongly	69	48	62	78	77	69
Moderately	13	18	16	12	11	11
Mildly	4	13	5	2	3	2
Neither agree nor disagree	1	3	1	1	1	2
Disagree	10	17	16	5	5	12
Strongly	6	12	9	3	2	7
Moderately	3	5	7	2	2	3
Mildly	1	1	*	--	1	3
Refused	*	1	--	--	1	--
Don't know	2	--	--	3	3	5

And next: "The Federal government should strictly enforce present laws calling for criminal penalties for employers who, after having been repeatedly fined, continue to knowingly hire illegal immigrants." Do you agree or disagree with this statement? (Q12)

COUNTY OF SAN DIEGO
SUITE 430 • 440 FIRST STREET, N.W. • WASHINGTON, D.C. 20001
TELEPHONE • (202) 737-7523 • FAX (202) 737-6788
WASHINGTON OFFICE

FAX DATE: April 20, 2004

The Honorable Edward M. Kennedy
Ranking Minority Member
Subcommittee on Immigration, Border Security
And Citizenship
Committee on Judiciary
United States Senate
SD-520 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Kennedy:

I am writing to reiterate the San Diego County Board of Supervisors opposition to opposition to S. 1906, the *Homeland Security Enhancement Act.*

Control of the borders is a Federal responsibility, and the Federal government's failure to do so has cost local governments such as the County of San Diego millions of dollars that could have been spent for services to legal citizens. The provisions of S. 1906 would compound that impact on local governments by requiring States and local jurisdictions to assume the Federal responsibility for enforcing immigration law, and penalize them if they fail to do so by withholding funding under the SCAAP program – the only reimbursements State and local governments currently receive for their costs related to illegal immigration.

S. 1906 would not only create a new, significant unfunded mandate on State and local governments, it would also detract from the primary public safety missions and responsibilities of those agencies. The County of San Diego and Sheriff Bill Kolender are responsible for protecting the safety of the citizens of San Diego. This mission has grown even more demanding with the new responsibilities associated with local homeland defense activities. S. 1906 would add yet another burden on already-overtaxed local resources and funding, and detract and distract from the existing, fundamental mission of local law enforcement agencies.

Please oppose the S. 1906 and work with your colleagues on the committee to ensure that it is not enacted.

Sincerely yours,

Thomas Walters

Thomas P. Walters
Washington Representative

TPW:jaw

The Washington Times ★ PAGE B4 / SUNDAY, JUNE 1, 2003

JAMES EDWARDS JR.

Homeland security begins at home

In the midst of trying to secure the homeland, the interior of the United States remains woefully — and frighteningly — unsecured. This should be plain from the FBI's recent warning that al Qaeda is recruiting within the United States, another smuggling job with tractor-trailer full of illegal aliens going bad and the number of aliens who never left after being ordered deported having grown from 314,000 last year to 389,000 today.

For all the talk about securing the borders (which we still haven't done), the vast territory between the borders remains our nation's soft underbelly. The missing link in this "loose and looser" situation is to apply the resources at hand: state and local police.

There's a lot of talk about relying on "first responders," but little action to really help our police officers do a better job against foreign lawbreakers.

Most local law enforcers and police departments already try to do their duty and go after immigration violations. But the common complaint is that they caught an illegal alien, called federal authorities and were told the feds couldn't come get them, so let them go.

If securing the homeland is paramount, "let them go" isn't good enough.

Untold hundreds of thousands of alien terrorists, criminals, gang members and lawbreakers of every kind live, travel and quietly undermine U.S. national and economic security within our borders every day.

Some aliens seek to kill innocent Americans. Others intend to violate our employment laws. Still others aid and abet violent offenders by providing ethnic enclaves, safe havens, fraud schemes and fake identification documents. Many provide entree to jobs in the underground economy that turn more and more occupations into so-called "jobs Americans won't do."

The rogues' gallery of criminal illegal aliens has included Ingmar Guandique, the suspected killer of Chandra Levy; Lee Malvo, the suspected Washington, D.C., sniper; four homeless Mexicans accused of brutally gang-raping a woman in New York last December; and Rafael Resendez Ramirez, the serial "Railroad Killer."

Nondescript illegal aliens should bear the blame, too. Run-of-the-mill Latin American illegal aliens helped some of the September 11, 2001, hijackers to exploit loopholes and fraudulently obtain Virginia driver's licenses.

Without the concerted help of America's local police officers, crime will continue to rise from these foreign lawbreakers.

Yet, the situation isn't hopeless. About 700,000 law enforcement officers patrol every community and every road, 24 hours every day. They know their area. They can spot extraordinary people, things and behavior.

Getting the immigration authorities to be more responsive to local police should become a top priority. Cooperation must be a two-way street. So must information-sharing. Flexibility and creativity will lead to solutions to detaining, processing, transporting and rapidly deporting alien lawbreakers.

Attorney General John Ashcroft has done more than anybody in the administration to empower state and local officers. He sought their assistance in interviewing Middle Eastern aliens right after September 11. He ordered more information-sharing among federal, state and local law enforcement agencies. He put more information about immigrant violators at the fingertips of local police through the National Crime Information Center database.

Perhaps most importantly, Mr. Ashcroft — a former governor — has reaffirmed the common-sense principle that states as sovereign entities have inherent authority to enforce the laws of the land.

The Bureau of Immigration and Customs Enforcement (BICE) at the new Department of Homeland Security has begun to take immigration violations seriously. Its release of a list of "Ten Most Wanted Fugitive Criminal Aliens" goes in the right direction. Now DHS must rectify the multitude of problems of the old Immigration and Naturalization Service's culture of laxity and nonresponsiveness toward state and local police.

The good news is: It can work. Law enforcers in several central Ohio counties have stepped up deportation efforts against illegal aliens they come into contact with on routine calls.

For instance, a Mexican illegal alien was charged for driving without a license in Licking County. Not only was he jailed, but immigration agents were alerted and actually responded.

The best news: Local authorities haven't done anything different. According to the Columbus Dispatch, "Deputies say their routines have not changed." Only now, some BICE agents are doing their part.

Homeland security ultimately relies on eyes and ears — and handcuffs and jail cells — at the community level. Treating seemingly routine immigration violations as the precursor crimes they are, combined with better coordination and cooperation with state and local law enforcement, is the only way to prevent another September 11 or the ongoing terrorist attempts inside America.

James R. Edwards Jr. is coauthor of "The Congressional Politics of Immigration Reform" and an adjunct fellow with the Hudson Institute. This article is adapted from the new Center for Immigration Studies Backgrounder, "Officers Need Backup."