AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

NEW YORK CITY'S 'SANCTUARY' POLICY AND THE EFFECT OF SUCH POLICIES ON PUBLIC SAFETY, LAW ENFORCEMENT, AND IMMIGRATION

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

FEBRUARY 27, 2003

Serial No. 4

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://www.house.gov/judiciary

U.S. GOVERNMENT PRINTING OFFICE

85–287 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
JOHN R. CARTER, Texas
TOM FEENEY, Florida
MARSHA BLACKBURN, Tennessee

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SÁNCHEZ, California

PHILIP G. KIKO, *Chief of Staff-General Counsel*
PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

JOHN N. HOSTETTLER, Indiana, *Chairman*

JEFF FLAKE, Arizona
MARSHA BLACKBURN, Tennessee
LAMAR SMITH, Texas
ELTON GALLEGLY, California
CHRIS CANNON, Utah
STEVE KING, Iowa
MELISSA A. HART, Pennsylvania

SHEILA JACKSON LEE, Texas
LINDA T. SÁNCHEZ, California
ZOE LOFGREN, California
HOWARD L. BERMAN, California
JOHN CONYERS, JR., Michigan

GEORGE FISHMAN, *Chief Counsel*
LORA RIES, *Counsel*
ART ARTHUR, *Full Committee Counsel*
CINDY BLACKSTON, *Professional Staff*
NOLAN RAPPAPORT, *Minority Counsel*

CONTENTS

FEBRUARY 27, 2003

OPENING STATEMENT

	Page
The Honorable John N. Hostettler, a Representative in Congress From the State of Indiana, and Chairman, Subcommittee on Immigration, Border Security, and Claims	1
The Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	3
The Honorable Lamar Smith, a Representative in Congress From the State of Texas	9

WITNESSES

Mr. John Feinblatt, Criminal Justice Coordinator, City of New York	
Oral Testimony	10
Prepared Statement	12
Mr. Michael J. Cutler, former Senior Special Agent, New York District Office, Immigration and Naturalization Service	
Oral Testimony	13
Prepared Statement	15
Mr. John Nickell, Officer, Houston Police Department	
Oral Testimony	17
Prepared Statement	18
Ms. Leslye E. Orloff, Immigrant Women Program, NOW Legal Defense and Education Fund	
Oral Testimony	20
Prepared Statement	23

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Executive Order 124, City Policy Concerning Aliens, New York City	4
General Order, Houston Police Department	58
Immigration and Naturalization Service Memo	61

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

The Honorable Sheila Jackson Lee, a Representative in Congress From the State of Texas, and Ranking Member, Subcommittee on Immigration, Border Security, and Claims	67
The Honorable John Conyers, Jr., a Representative in Congress From the State of Michigan, and Ranking Member, Committee on the Judiciary	68

NEW YORK CITY'S 'SANCTUARY' POLICY AND THE EFFECT OF SUCH POLICIES ON PUBLIC SAFETY, LAW ENFORCEMENT, AND IMMIGRATION

THURSDAY, FEBRUARY 27, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 9:07 a.m., in Room 2237, Rayburn House Office Building, Hon. John Hostettler [Chairman of the Subcommittee] presiding.

Mr. HOSTETTLER. The Subcommittee will now come to order.

On December 19, 2002, a 42-year-old mother of two was abducted and forced by her assailants into a hideout near some railroad tracks in Queens, New York. She was brutally assaulted before being rescued by a New York Police Department canine unit.

The NYPD arrested five aliens in connection with that assault. According to records that the Judiciary Committee has received from the INS, four of those aliens entered the United States illegally. Three of those four had extensive arrest histories in New York City. The fifth alien, a lawful permanent resident, also had a criminal history prior to the December 19, 2002, attack.

Despite the criminal histories of the four aliens, however, it does not appear from the records that the Committee has received that the NYPD told the INS about these aliens until after the December 19 attack.

These heinous crimes prompted extensive public discussion of whether New York City police were barred from disclosing immigration information to the INS, a policy that may have prevented the removal of these aliens prior to the December 19 attack.

Some suggested that the only reason that the three illegal aliens were in the United States, despite their extensive arrest histories, was because the NYPD officers who arrested these aliens previously were barred by a so-called "sanctuary" policy from contacting the INS. That policy, critics claimed, prevented NYPD officers from contacting the INS when they arrested an illegal alien.

We will examine New York City's policy on the NYPD's disclosure of immigration information to the INS. New York's Executive Order, or E.O. 124, barred line officers from communicating directly with the INS about criminal aliens. That executive order was

issued by Mayor Ed Koch in 1989 and reissued by Mayors Dinkins and Giuliani.

Two Federal provisions, both of which were passed in 1996, preempted this executive order. In particular, section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act bars States and localities from prohibiting their officers from sending immigration information to the INS. New York City challenged that provision in Federal court and lost.

We will examine whether New York City continued E.O. 124, amended it, or scrapped it altogether. We will also examine what guidance the city has sent to its officers on the street about reporting criminal aliens to the INS.

At this hearing, the Subcommittee will also explore what effect any New York City sanctuary policy had on the fact that the three illegal aliens with arrest histories had not been deported. We will also examine the INS's responsiveness to the information that it receives from New York City about arrested criminal aliens if, in fact, the INS does receive such information. In addition, we will examine similar policies that other localities have implemented.

In particular, Officer John Nickell of the Houston Police Department will discuss that department's policy concerning officer contacts with the INS about criminal aliens. That policy bars Houston officers from contacting the INS about suspected illegal aliens, unless the suspected illegal alien is arrested on a separate criminal charge other than a class of misdemeanors "and the officer knows the prisoner is an illegal alien."

Significantly, despite this knowledge, requirement for contacting the INS, Houston officers are barred from asking arrested criminal suspects their citizenship status.

The Subcommittee will assess the effect that such policies have had on law enforcement, immigration enforcement, and public safety as well as their consistency with Federal law.

Joining us today are four witnesses. First of all, John Feinblatt is the criminal justice coordinator for the City of New York. He received his law degree from Columbus School of Law at Catholic University, and his bachelor of arts degree from Wesleyan University in Connecticut. He has served as a criminal defense attorney in New York, executive director of victim services, and director of the Midtown Community Court and the Center for Court Innovation.

Michael Cutler is a retired senior special agent with the Immigration and Naturalization Service, New York District Office. He received his bachelor of arts degree from Brooklyn College and the City University of New York in 1971 before joining the INS that same year as an immigration inspector at JFK airport. He also served as a green card adjudicator before becoming an INS criminal investigator, working with the Israeli national police and the FBI.

He was the INS representative to the Unified Intelligence Division of the DEA in New York. Finally, in 1991, Mr. Cutler was assigned to the Organized Crime Drug Enforcement Task Force. Mr. Cutler last testified before this Subcommittee as a witness for the minority in March 2002.

John Nickell is an officer with the Houston Police Department. Officer Nickell has served with the Houston Police Department for 11 years, specializing in DWI detection and drug recognition enforcement. He served 6 years in the United States Marine Corps and is a Desert Storm veteran.

Ms. Leslye Orloff is the director of the Immigrant Women Program for the National Organization for Women's Legal Defense and Education Fund. She received her law degree from UCLA, and her bachelor of arts degree is from Brandeis University. She has previously worked as the director of the Latino Project at the George Washington University National Law Center, the director of the Clinica Legal Latina, and director of Ayuda's national policy program. She has also written and testified extensively.

Before I go to the witnesses, I would like to now turn to the Ranking Member of the Subcommittee, Ms. Jackson Lee, for any opening remarks she may have.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

As we begin the 108th Congress with the very first hearing for our Subcommittee, I want to express to you my belief that we'll have an opportunity to work together and work together on issues and commonality for the good of this Nation. And as well, hopefully, to reflect the values that we both have, though they may be distinctive, that we do have the responsibility to govern and oversee the very effective policies of immigration laws here in the United States, many of which are reminding us that we are a Nation of immigrants as we are a Nation of laws.

And so I look forward to the challenges that we will have, and I hope that as we proceed, even in our different perspectives, we'll have an opportunity to be able to serve this Country and present very effective resolutions to some problems that we will face.

This morning, obviously, we are pursuing an issue that needs addressing. And certainly, we are told of accounts, many accounts, that deal with immigrant issues and the criminal system.

In particular, we are aware of an incident that occurred in New York—Queens, New York, in particular—that an alleged group of young and homeless men surrounded a couple sitting on a bench in an isolated part of Queens, New York. And the allegations of a criminal incident that occurred where they beat and robbed the man and raped the woman.

Apparently, it was alleged that four of the men were undocumented aliens from Mexico who had been arrested previously.

One of the questions for this hearing, as was stated, is whether a New York City policy prevented the police involved in the previous arrest from reporting the men to the Immigration and Naturalization Service.

The policy in question is set forth in Executive Order No. 124, which was issued by New York Mayor Ed Koch on August 7, 1989. It is entitled, "City Policy Concerning Aliens."

[The New York Executive Order follows:]

Municipal Reference and Research Center
RECEIVED
AUG 9 1989
31 CHAMBERS STREET
NEW YORK CITY

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

Executive Order No. 124

August 7, 1989

CITY POLICY CONCERNING ALIENS

By virtue of the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Definitions. As used herein,

a. "Alien" means any person who is not a citizen or national of the United States.

b. "Line worker" means a person employed by any City agency whose duties involve contact with the public.

Section 2. Confidentiality of Information Respecting Aliens.

a. No City officer or employee shall transmit information respecting any alien to federal immigration authorities unless

(1) such officer's or employee's agency is required by law to disclose information respecting such alien, or

(2) such agency has been authorized, in writing signed by such alien, to verify such alien's immigration status, or

(3) such alien is suspected by such agency of engaging in criminal activity, including an attempt to obtain public assistance benefits through the use of fraudulent documents.

b. Each agency shall designate one or more officers or employees who shall be responsible for receiving reports from such agency's line workers on aliens suspected of criminal activity and for determining, on a case by case basis, what action, if any, to take on such reports. No such determination shall be made by any line worker, nor shall any line worker transmit information respecting any alien directly to federal immigration authorities.

c. Enforcement agencies, including the Police Department and the Department of Correction, shall continue

to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity. However, such agencies shall not transmit to federal authorities information respecting any alien who is the victim of a crime.

Section 3. Availability of City Services to Aliens. Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law.

Section 4. Effective Date. This order shall take effect 30 days after publication in the City Record.

EDWARD I. KOCH
MAYOR

Statement of Basis and Purpose of Executive Order. Section 3 of the New York City Charter provides that the Mayor "shall be the chief executive officer of the city." The New York State Court of Appeals has stated that the Mayor's authority in that capacity "does, of course, include the power to enforce and implement legislative enactments." Under 21 v. City of New York, 65 N.Y. 2d 344, 356 (1985).

Many services provided by New York City, including education and police protection, are available to all City residents regardless of their citizenship or immigration status. However, many aliens who reside in the City fail to make use of such services, largely from fear that any contact with a government agency will bring them to the attention of federal immigration authorities. It is to the disadvantage of all City residents if some who live in the City are uneducated, inadequately protected from crime, or untreated for illness. Regardless of their immigration status, aliens should not be discouraged from utilizing those City services to which they are entitled. On the contrary, the public welfare requires that they be encouraged to do so. Yet many aliens will continue to avoid City agencies as long as they fear that they will be reported to federal immigration authorities.

Federal law places full responsibility for immigration control on the federal government. With limited exceptions, the City therefore has no legal obligation to report any alien to federal authorities. The executive order, in recognition of this lack of obligation and the importance of providing the services covered herein, requires City agencies to preserve the confidentiality of all information respecting law-abiding aliens to the extent permitted by law. City agencies are also prohibited hereby from arbitrarily excluding aliens from eligibility for services which are available to all. In this way, it is hoped, aliens will be encouraged to make use of City services to which they are entitled by law.

This order prohibits the transmission of information about an alien to the Immigration Service. But the prohibition has three exceptions, one of which is for the situation in which the alien is suspected of engaging in criminal activity. And I repeat that again. There is an exception. The police did have discretion.

This order, therefore, did not prevent the police from reporting the homeless men to the Immigration Service when they were arrested previously. The pertinent issue regarding that case is whether New York Police Department should have been required by Federal law to report the homeless men to the Immigration Service.

I believe it is imperative to assess the challenges that local police have. They have enormous challenges. And so the question is whether or not you add to them the responsibility of enforcing immigration law.

But when we ask that question, we have to look to the issue of whether or not, by definition, immigration equates to either terrorism or criminal activity.

I think the statistics would prove that that is not the case, so discretion is appropriate. That means that when there is suggestion of criminal activity, when there is any activity—whether it be misdemeanor level or otherwise—and they are engaged in a criminal activity, discretion does come about.

We have to realize that our immigrants do many things. They work for us. They live in our communities. They provide police officers with insight and information about criminal activity going on in their particular communities. They speak, sometimes, two languages. If they've learned the English language, which they will and eventually do, and therefore are able to provide information because they are bilingual or maybe even multilingual.

Immigration law is a complicated body of law that requires extensive training and expertise. It is also not a body of only criminal law or criminal law at all. It is a civilian body of law. It is a law that deals with immigrants accessing the process of citizenship.

Local law enforcement officials do not have the training and expertise that is necessary to determine who is presently lawfully in the country and who is not.

Community-based policing is one of the most powerful law enforcement tools available. I know for a fact that it is utilized in New York. I know for a fact it is utilized in Houston. It is effective.

Police get to understand and know the community, and people, by their very nature of wanting to be law-abiding—no matter who they are, immigrant or citizen—come to respect and admire the police and provide them with information to help them solve cases and problems.

By developing strong ties with local communities, police departments are able to obtain valuable information that helps them to fight a crime, even in a bilingual immigrant community or a single-language immigrant community. The development of community-based policing has been widely recognized as an effective tool for keeping kids off drugs, combating gang violence, and reducing crime rates in neighborhoods around the country.

In immigrant communities, it is particularly difficult for the police to establish the relationships that are the foundations for such successful police work. Many immigrants come from countries in

which people are afraid of police who may be corrupt or even violent, and the prospect of being reported to the Immigration Service would be further reason for distrusting the police here in the United States of America.

In some cities, criminals have exploited the fear that immigrant communities have of all law enforcement officials, and certainly that should not be the case. For instance, 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, and they may be—may have been under legitimate agricultural visas and provisions to be in this Country.

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. These immigrants are left vulnerable to 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 said that the suspected murderer, her former boyfriend, threatened to report her to the INS if she did not do what she was told.

We realize that there are sex slaves. There are young women who are brought into this country and held for months and years at a time, because I know that they are fearful of the police as well.

Many communities find it difficult financially to support a police force with the personnel and equipment necessary to perform regular police work. Requiring State and local police forces to report to the Immigration Service would be, I believe, an imbalanced, misdirected use of these limited resources.

Remember, it is important to note that the police have discretion, that as they encourage and become familiar and involved with the immigrant community, as the police forces are diversified with Hispanics, African Americans, Asians, individuals from the Muslim community, Arab community—those are individuals who are men and women who believe in upholding the law.

Let them become familiar with these neighborhoods, and I can assure you that crime will come down and problems will be solved.

The Immigration Service has limited resources, yes. But as we look toward this new year—the Homeland Security Department, the Justice Department—we know that we'll be refining these resources and adding training to these particular law enforcement agencies as we give more dollars to the first responders.

Let us be reminded of the terrible, horrific act of the snipers here in this region and the information that was important that was given to solve those problems by immigrants who were first allegedly targeted as the perpetrators, and it was not the case.

The immigrant service does not have the resources it needs to deport dangerous criminals, prevent persons from unlawfully entering or remaining in the United States, and we must give them those resources. And we need to have the INS with the resources that it needs to enforce immigration laws in the interior of the country.

That is what we will be working on. That is an important responsibility, and that is a responsibility that I support.

Having to respond to every State and local police officer's report of someone who appears to be an illegal alien would prevent the Immigration Service from properly prioritizing its efforts and working to ensure that its major work of getting those dangerously in our Country deported would be delayed.

Local police can and should report immigrants to the immigration service in many situations. I encourage them to do so. With that kind of process and policy, we can work collectively together, keeping our responsibilities as a Federal Government and keeping our responsibilities to our local constituents in the work that the local official should be doing. The decision to contact Immigration Service, however, should be a matter of police discretion and not a Federal law decision.

I would simply say, Mr. Chairman, that this will be an important hearing.

I welcome Mr. Nickell to this particular hearing, and he certainly is a very able representative of the Houston Police Department, of which I count many of them as my friends.

And I want to acknowledge publicly the greatest respect I have for the great work that you do.

And I know that as I listen to you, I will be attentive and certainly know that the police department in my community has been able to work within the laws of this land, with the Federal laws as they are, and your laws using your discretion, your expertise, and of course, your commitment to the community as the basis of serving us.

Thank you very much for your service.

Mr. HOSTETTLER. Thank you, Ms. Jackson Lee.

The Chair now recognizes the gentleman from Texas, Mr. Smith, for an opening statement.

Mr. SMITH. Thank you, Mr. Chairman, and I won't take up the whole time. I just really want to congratulate you on being selected to chair such an important Subcommittee.

You know and we all know that immigration is a complex, sensitive, and sometimes controversial issue. And I can't think of anybody better to serve at the helm of this Subcommittee than you. So I'm looking forward to many hearings, such as the one we're having today.

And I might say also I think immigration is sometimes underestimated as an issue. But I think today is a typical day. There were three immigration articles in the two Washington papers. And so I think immigration is becoming more and more recognized as an issue that affects the lives of every single American every day, and I think that that's going to give us plenty to have hearings on in the future.

I also want to compliment you on this particular hearing, and it's very obvious from the memo that we received that a lot of work and preparation has gone into this hearing, and that's a tribute to you as well.

Finally, I noticed that today's hearing is on the general subject of criminal aliens. In other words, individuals in the country illegally who have committed serious crimes. And I remember from past hearings we've had in the last couple of years, a figure that

is absolutely astounding to me, and that is that approximately 20 percent of all Federal prisoners today are, in fact, illegal aliens.

And that may even be a low figure because they are self-identified, and a lot of people might not really say that they're in the country illegally or whatever. But I think if the general American people knew that 20 percent of our Federal prisoner population were illegal aliens, I think there would be a revolt against the immigration policies that contribute to that situation.

And clearly, if we want to do something about the crime rate in America, one way to do something about that crime rate is to have more secure borders and have fewer individuals who are in the country illegally who then commit crimes. And if you take the Administration's word for it that there are 8 million to 9 million illegal aliens in the country today, that's about 3 percent of the population.

Well, 3 percent of the population is committing 20 percent of the serious Federal crimes. That means that in a criminal alien—or I should say an illegal alien is about seven times more likely to commit a serious crime than the rest of the population.

And that's a serious, serious problem, and I'm looking forward to hearing from our witnesses today how we're going to reduce that problem.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. Thank you, Mr. Smith. And the Chair recognizes your years of experience and contribution to immigration policy in this Country.

Do any of the other Members have an opening statement that you'd like to make? If not, the Chair once again thanks the witnesses for your being here, and each of you will be given 5 minutes to make opening statements. Without objection, your full written statement will be offered to the record.

And, Mr. Feinblatt, if you would be so gracious as to go first, we'd appreciate it. Also the Subcommittee apologizes, but you'll have to share today one microphone. And we hope that one's working.

STATEMENT OF JOHN FEINBLATT, CRIMINAL JUSTICE COORDINATOR, CITY OF NEW YORK

Mr. FEINBLATT. Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to appear here today before you. My name is John Feinblatt. I am the Criminal Justice Coordinator for the City of New York, and I serve as the mayor's chief policy adviser on criminal justice.

You have called this hearing to examine New York City's Executive Order 124 and whether that order prevents the New York City Police Department from contacting the Immigration and Naturalization Service when a noncitizen is arrested.

As an example of the general policy, you have focused on a brutal and a tragic rape that occurred December 19, 2002, in a park owned by the Metropolitan Transportation Authority in the borough of Queens. Four of the five individuals arrested in connection with that case were undocumented aliens, three of whom had been arrested previously by the NYPD.

Let me begin by making one thing crystal clear: New York City has no sanctuary policy for undocumented aliens.

The New York City Police Department follows Federal law regarding the reporting of undocumented aliens to Federal immigration authorities. The NYPD does not restrict the ability of its officers to report undocumented aliens to the Immigration and Naturalization Service.

Indeed, section 2(a)(3) of Executive Order 124, which was issued in 1989 by Mayor Edward I. Koch, states explicitly that officers and employees of a city agency may transmit information about undocumented aliens to Federal immigration authorities if "such alien is suspected by such agency of engaging in criminal activity."

In addition, section 2(c) makes clear that the NYPD should continue to cooperate, as it always has, with Federal authorities in investigating and apprehending aliens suspected of criminal activity.

The order could not be clearer, and any suggestion that the City of New York maintains a policy that interferes with such cooperation is simply incorrect.

Let me briefly explain the policy behind Executive Order 124. It was based upon the concern that the public's health, welfare, and safety could be harmed if, out of fear of being reported to the INS, immigrants were reluctant to make use of city services.

For the instance, the city wanted to ensure that undocumented aliens would get vaccine shots for their children from city hospitals and that undocumented aliens who were the victims of crime—the innocent victims of crime—would call the police.

As the Subcommittee is aware, however, the reporting provisions of the order were generally preempted in 1996 by the Illegal Immigration Reform and Immigrant Responsibility Act. It is very important to note that while the Illegal Immigration Reform and Immigrant Responsibility Act forbids State and local governments from prohibiting or placing restrictions on the reporting of immigration status to the INS, it does not transform the NYPD into an investigative arm of the INS by imposing an affirmative duty on police officers to report.

Accordingly, when the New York City police officers arrest or investigate a person believed to be an undocumented alien for criminal activity, they are free to report information about that undocumented alien to the INS. The city does nothing to prevent them from doing so.

However, I must point out that the first obligation of the New York City police officer is and always will be to take suspects into custody, render aid to innocent victims, interview witnesses, collect precious and often fleeting evidence, and bring defendants promptly before a judge, all within the 24 hours that is required by our law.

In regard to the rape that occurred in Flushing Meadow Park, Queens, on December 19, 2002, we know now that four of the five individuals who have been charged with this crime are undocumented aliens, and three of those four have prior arrest records.

We also know that shortly after four of the suspects were arrested, detectives contacted the INS, though under Federal law they had absolutely no obligation to do so. We are reviewing whether the police officers who had previously arrested these defendants

knew of their undocumented status and reported that status to the INS.

In preparation for this hearing, I have also spoken to law enforcement representatives in New York City to evaluate the level of cooperation they have received from INS when dealing with undocumented aliens in police custody. The common experience of police officers and the common experience of prosecutors in New York City appears to be that the level of cooperation could be improved.

The INS can be extremely difficult to contact and, when reached, often reluctant to take any action against undocumented aliens who have been arrested. Although we fear that current INS practice may produce a chilling effect on police officers and prosecutors who are otherwise inclined to report, we are encouraged by the opportunity to strengthen our ongoing relationship with INS as it is transitioned into the new Department of Homeland Security.

In closing, let me remind you, New York City is the safest big city in America. And as crime rates have risen in other cities, New York City's crime rate declined to an historic 48-year-old low. And it has accomplished this in the face of unprecedented tragedy and fiscal crisis. We in New York are proud of the job that our police department performs.

Thank you.

[The prepared statement of Mr. Feinblatt follows:]

PREPARED STATEMENT OF JOHN FEINBLATT

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to appear before you. You have called this hearing to examine the New York City Executive Order 124 and whether that order prevents the New York City Police Department (NYPD) from contacting the Immigration and Naturalization Service (INS) when a non-citizen is arrested. As an example of the general policy, you have focused on a brutal rape that occurred December 19, 2002 in a park owned by the Metropolitan Transportation Authority in the borough of Queens. Four of the five individuals arrested in connection with that case were undocumented aliens, three of whom had been arrested previously by the NYPD.

Let me begin by making one thing crystal clear: New York City has no "sanctuary" policy for undocumented aliens. The New York City Police Department ("NYPD") follows federal law regarding the reporting of undocumented aliens to federal immigration authorities. The NYPD does not restrict the ability of its officers to report undocumented aliens to the Immigration and Naturalization Service ("INS").

Indeed, section 2(a)(3) of Executive Order 124, which was issued in 1989 by Mayor Edward I. Koch, states explicitly that officers and employees of a City agency may transmit information about undocumented aliens to federal immigration authorities if "such alien is suspected by such agency of engaging in criminal activity . . ." In addition, Section 2(c) makes clear that the NYPD should continue to cooperate as it always has with federal authorities in investigating and apprehending aliens suspected of criminal activity. The order could not be clearer, and any suggestion that the City of New York maintains a policy that interferes with such cooperation is simply incorrect.

Let me briefly explain the policy behind Executive Order 124. It was based upon the concern that the public's health, welfare and safety could be harmed if, out of fear of being reported to the INS, immigrants were reluctant to make use of City services. For instance, the City wanted to ensure that undocumented aliens would get vaccine shots for their children from City hospitals, and that undocumented aliens who were victims of crime would call the police. As the Subcommittee is aware, however, the reporting provisions of the Order were generally preempted in 1996 by the Illegal Immigration Reform and Immigrant Responsibility Act, found in 8 U.S.C. sec. 1373.

It is very important to note that, while the Illegal Immigration Reform and Immigrant Responsibility Act forbids state and local governments from prohibiting or placing restrictions on the reporting of immigration status information to the INS,

it does not transform the NYPD into an investigative arm of the INS by imposing an affirmative duty on police officers to report. Accordingly, when New York City police officers arrest or investigate a person believed to be an undocumented alien for criminal activity, they are free to report information about that undocumented alien to the INS; the City does nothing to prevent them from doing so. However, the first obligation of New York City police officers is and always will be to ensure that defendants are taken into custody and promptly brought before a judge as required by law.

In regard to the rape that occurred in Flushing Meadow Park, Queens on December 19, 2002, we know now that four of the five individuals who have been charged with this crime are undocumented aliens, and three of those four have prior arrest records. We also know that, shortly after four of the suspects were arrested, detectives contacted the INS though, under federal law, they had no obligation to do so. We are reviewing whether the police officers who had previously arrested these defendants knew of their undocumented status and reported that status to the INS.

In preparation for this hearing, I have also spoken to law enforcement representatives in New York City to evaluate the level of cooperation they have received from INS when dealing with undocumented aliens in police custody. The common experience of police officers and prosecutors in New York City appears to be that the level of cooperation could be improved. The INS can be extremely difficult to contact and, when reached, often reluctant to take any action against undocumented aliens who have been arrested.

Although we fear that current INS practice may produce a chilling effect on police officers and prosecutors who are otherwise inclined to report, we are encouraged by the opportunity to strengthen our ongoing relationship with INS as it is transitioned into the new Department of Homeland Security.

In closing, let me remind you that New York City is the safest big city in America, and as crime rates rose in other cities in 2002, New York City's crime rate declined to an historic low. Thank you.

I would be glad to take any questions at this time.

Mr. HOSTETTLER. Thank you, Mr. Feinblatt.

Mr. Cutler?

STATEMENT OF MICHAEL CUTLER, FORMER SENIOR SPECIAL AGENT, NEW YORK DISTRICT OFFICE, IMMIGRATION AND NATURALIZATION SERVICE

Mr. CUTLER. Chairman Hostettler, Ranking Member Ms. Jackson Lee, Members of the Congress, distinguished members of the panel, ladies and gentlemen, I would like to start out by thanking Chairman Hostettler and his staff for this invitation to appear before you this morning.

This hearing is being held to attempt to understand why a young woman in Queens, New York, was viciously assaulted by a number of aliens who had no lawful right to be in the United States at the time that they carried out this heinous crime against that woman.

I also understand that the Subcommittee is concerned about cities around the country which have prohibited their employees from contacting the INS when they encounter aliens who are illegally in the United States.

An example of this is Executive Order 124, which was promulgated by Mayor Ed Koch of New York City nearly 15 years ago. Because of my assignment to the Organized Crime Drug Enforcement Task Force, I was not personally stymied by that executive order. However, I know from colleagues that I've had over the years at the INS at New York City that this order made their jobs more difficult.

In the 1970's, prior to issuance of Executive Order 124, when I was assigned to the Frauds Unit, the access that I had to the office that had oversight over the New York City welfare system enabled me to determine if a person who filed a petition for a spouse to re-

ceive resident alien status based on their marriage was also receiving welfare as a single parent, an obvious discrepancy which indicated that either welfare fraud or immigration fraud was being committed.

I can tell you from personal experience that when you're sworn in as a law enforcement officer, you learn from day one that you are obligated to enforce all of the laws that come under your purview and to also notify other appropriate law enforcement organizations when you encounter violations of law that do not fall under your immediate jurisdiction.

Law enforcement officers cannot view the laws as a patron sees the entrees in a restaurant's menu. You don't get to pick and choose. Your obligation is to enforce all of the laws dispassionately and objectively.

New York City's Executive Order 124 may well have been promulgated with the intention of showing sympathy to our illegal alien population. But in this day and age, it sends a wrong and a very dangerous message. Additionally, criminals often mistake kindness for weakness.

As I said during a previous hearing in which I participated, the enforcement of the immigration laws on what I have come to refer to as the "Immigration Enforcement Tripod." The inspectors enforce the laws at ports of entry. Border Patrol agents enforce the laws between ports of entry, and the special agents of the INS, soon to be referred to as the Bureau of Immigration and Customs Enforcement, comprise the interior enforcement effort and back up the other two components of the enforcement program.

They are also supposed to lend integrity to the benefits program and assist other law enforcement agencies in carrying out various investigations and enforcement activities where aliens are involved. It is in this area that the INS should have become involved with at least some of the attackers, but apparently did not.

I do not know if any effort was made to contact the INS about any of these criminals, or if the INS failed to respond. But either way, a young woman was viciously attacked. Sadly, this is not an isolated incident.

While only a small percentage of aliens living in our country become involved in committing serious crimes, a large percentage of our criminal population is, in fact, comprised of aliens.

When I was assigned to the Unified Intelligence Division of the DEA in New York, I did an analysis of the arrest records of individuals who were arrested by the DEA in New York approximately 10 years ago, and I found that some 60 percent of the people arrested in New York were identified as being foreign born, while nationwide some 30 percent were identified as being foreign born.

I have always felt that the interior enforcement program was terribly understaffed and, in general, neglected. The proof of this is incontrovertible when you consider the various estimates concerning how many aliens currently live and work illegally in the United States.

The most recent estimates that I've seen range from 9 million to more than 12 million. Certainly, these numbers make the failings of the INS clear. Cooperation among law enforcement agencies enables those agencies to use their limited resources more efficiently.

I can tell you from personal experience that when law enforcement officers work cooperatively—pooling resources, authority, and experiences—the effect is one of synergy, where the total is greater than the sum of the parts.

For example, I don't know the precise statistic, but I do know that a significant percent of the FBI's—of the criminals on the FBI's "10 Most Wanted" list don't get arrested by the FBI, but rather get arrested by police officers making routine vehicle and traffic law stops.

That being said, if the INS is going to respond to local law enforcement agencies, we need to have many more special agents to enforce the laws within the United States.

In the mid 1970's, the New York office of the INS had some 250 special agents assigned to that office. Today, the New York office of the INS has, from what I have been told, fewer than 100 special agents.

I would rather prevent a crime than solve a crime. Law enforcement is most effective when it is able to act as a deterrent against criminal activities. In order for law enforcement—I'm sorry. It needs to be able to develop a reputation for being effective at enforcing the laws which fall under its jurisdiction.

The horrible reputation that the INS has acquired over the years does little to deter aliens, especially aliens bent on committing crimes, from coming to the United States. We need to make certain that the aliens who come to our Country understand that we take our laws seriously.

When we fail to enforce the laws that these aliens generally encounter when they come here, whether it's because the Federal Government has failed to provide enough resources to enforce these laws—which, as we saw on September 11, 2001, are an intrinsic part of national security—or because local governments are sending a dangerous message of ambivalence where the immigration laws are concerned, these failings act to encourage illegal immigration not just by aliens who seek illegal employment, but by those who seek to engage in criminal activities.

It is estimated that nearly 50 percent of the aliens who live illegally in our country entered the United States through a port of entry. The terrorists who attacked our Nation on 9/11 also entered the United States through ports of entry and not by running the border. The Border Patrol could not have prevented their entry.

Once in the Country, only the special agents can take appropriate action against aliens who are illegally in this Country.

I look forward to your questions.

[The prepared statement of Mr. Cutler follows:]

PREPARED STATEMENT OF MICHAEL W. CUTLER

Chairman Hostettler, Ranking Member Ms. Jackson Lee, Members of the Congress, distinguished members of the panel, ladies and gentlemen:

I would like to start by thanking Chairman Hostettler and his staff for this invitation to appear before you this morning.

This hearing is being held to attempt to understand why a young woman in Queens, New York was viciously assaulted by a number of aliens who had no lawful right to be in the United States at the time that they carried out this heinous crime against that woman. I also understand that the Subcommittee is concerned about cities around our country, which have prohibited their employees from contacting the INS when they encounter aliens who are illegally in the United States. An ex-

ample of this is Executive Order 124, which was promulgated by Mayor Ed Koch of New York City nearly 15 years ago. Because of my assignment to the Organized Crime Drug Enforcement Task Force, I was not personally stymied by that executive order; however, I know from my colleagues at INS who were assigned to other units at the NYC District Office, that this order made their jobs more difficult. In the 1970s prior to the issuance of Executive Order 124, when I was assigned to the Frauds Unit, the access I had to the office that had oversight over the NYC Welfare system enabled me to determine if a person who filed a petition for a spouse to receive resident alien status based on their marriage was also receiving welfare as a single parent—an obvious discrepancy which indicated either welfare fraud or immigration fraud was being committed.

I can tell you from personal experience, when you are sworn in as a law enforcement officer, you learn from day one, that you are obligated to enforce all laws that come under your purview and to also notify other appropriate law enforcement organizations when you encounter violations of law that do not fall under your immediate jurisdiction. Law enforcement officers cannot view the laws as a patron sees the entries in a restaurant's menu. You don't get to pick and chose. Your obligation is to enforce all the laws dispassionately and objectively.

New York City's Executive Order 124 may well have been promulgated with the intention of showing sympathy to our illegal alien population, but in this day and age it sends a wrong and dangerous message. Criminals often mistake kindness for weakness.

As I said during a previous hearing in which I participated, the enforcement of the immigration laws rests on what I have come to refer to as the *"Immigration Enforcement Tripod."* The inspectors enforce the laws at ports of entry, the Border Patrol enforces the laws between ports of entry and the Special Agents of the INS, soon to be referred to as the Bureau of Immigration and Customs Enforcement, comprise the interior enforcement effort and back up the other two components of the enforcement program. They are also supposed to act to lend integrity to the benefits program and assist other law enforcement agencies in carrying out various investigations and enforcement activities where aliens are involved. It is in this area that the INS should have become involved with at least some of the attackers but apparently did not. I do not know if any effort was made to contact the INS about any of these criminals, or if the INS failed to respond. Either way, a young woman was viciously attacked. Sadly this is not an isolated incident. While only a small percentage of aliens living in our country become involved in committing serious crimes, a large percentage of our criminal population is, in fact, comprised of aliens. When I was assigned to the Unified Intelligence Division of the DEA in New York, I did an analysis of the arrest records of individuals who were arrested by the DEA in New York approximately 10 years ago. I found that some 60% of the people arrested were identified as being foreign born while nation-wide some 30% were identified as being foreign born.

I have always felt that the interior enforcement program was terribly understaffed and in general, neglected. The proof of this is incontrovertible when you consider the various estimates concerning how many aliens currently live and work illegally in the United States. The most recent estimates that I have seen range from 9 million to more than 12 million. Certainly these numbers make the failings of the INS clear. Cooperation among law enforcement agencies enables those agencies to use their limited resources more efficiently. I can tell you from personal experience that when law enforcement officers work cooperatively, pooling resources, authority and experiences, the effect is one of synergy where the total is greater than the sum of the parts. For example I don't know the precise statistic, but I do know that a significant percent of criminals on the FBI's "Ten Most Wanted" list don't get arrested by FBI Special Agents, but rather by police officers making routine Vehicle and Traffic Law stops.

That being said if, the INS is going to respond to local law enforcement agencies we need to have many more Special Agents to enforce the laws within the United States. In the mid 1970s the New York Office of the INS had some 250 Special Agents assigned to the office. Two Special Agents were assigned to the Organized Crime Strike Force while the other Special Agents conducted investigations that were primarily focused on administrative goals, the deportation of aliens who were illegally in the United States and the conducting of investigations in support of applications for benefits. Today the New York office of the INS has, from what I have been told, fewer than 100 Special Agents, even though the INS contributes Special Agents to a number of multi-agency law enforcement organizations such as the Joint Terrorism Task Force, the Violent Gang Task Force, the Organized Crime, Drug Enforcement Task Force and the Organized Crime Strike Force. Additionally, much of the work performed by INS Special Agents is of far greater complexity

where the ultimate goal may include the removal of deportable aliens, but also focuses on the criminal prosecution of individuals who violate the criminal provisions of the Immigration and Nationality Act.

I would rather prevent a crime than solve a crime. Law enforcement is most effective when it is able to act as a deterrent against criminal activities. In order for a law enforcement organization to be an effective deterrent against criminals, it needs to develop a reputation for being effective at enforcing the laws, which fall under its jurisdiction. The horrible reputation that the INS has acquired over the years does little to deter aliens, especially aliens bent on committing crimes, from coming to the United States. We need to make certain that aliens who come to our country understand that we take our laws seriously. When we fail to enforce the laws that these aliens generally encounter first when they come here, whether it is because the Federal government has failed to provide enough resources to enforce these important laws, which, as we saw on September 11, 2001, are an intrinsic part of national security, or because local governments are sending a dangerous message of ambivalence where the immigration laws are concerned, these failings act to encourage illegal immigration not just by aliens who seek illegal employment, but by those who seek to engage in criminal activities. It is estimated that nearly 50% of the aliens who live illegally in our country entered the United States through a port of entry. The terrorists who attacked our nation on 9/11 also entered the United States through ports of entry and not by running the border. The Border Patrol could not have prevented their entry. Once in the country, only the Special Agents can take appropriate action against aliens who are illegally in the United States.

I look forward to your questions.

Mr. HOSTETTLER. Thank you, Mr. Cutler. And your comments and those by the Ranking Member about the importance of the adequate amount of resources to enforce the immigration laws are taken, and this Subcommittee will most, indeed, be looking at that issue in the coming months.

Mr. CUTLER. I appreciate that. Thank you, Mr. Chairman.

Mr. HOSTETTLER. Thank you.

Mr. Nickell?

STATEMENT OF JOHN NICKELL, OFFICER, HOUSTON POLICE DEPARTMENT

Mr. NICKELL. Mr. Chairman, Members of this Committee, I thank you for having me here today. I know I have written testimony that I prepared that I turned into you, but I'm actually just going to be speaking to you just on some highlights and basically on what I know is on my mind, what's going on in Houston and nationwide.

I am an 11-year veteran of the Houston Police Department, all of it being on the street. My main concern for this, on the street-level experience, is the number of people that we come in contact with on the street and are required or not required or cannot inquire into their citizenship status while we're out there on the street may be preventing further crimes from someone if we have them loaded into our database.

And that our computers are able to connect with INS and their IDENT system for any felony warrants they may have issued through the INS. As is now, we cannot do that, we will not do that, and we are barred from doing that by policy, our General Order 500–5.

It's my contention that officers should have the ability out there on the street to do this. We will link—we gladly link up with DEA. We gladly link up with FBI to get high-profile, hard drug bust cases with Customs down at the Port of Houston. We'll gladly do that. But we refuse to look upon on the INS and help them out in

any way, even though they are a Federal agency and they do enforce Federal laws.

My contention is this: If we can link into the NCIC and those types of systems, why should we not be able to link into the IDENT system, if we have someone stopped on a probable cause, whether it be on traffic or we've been called to a scene or whatever the case may be?

If we've already had probable cause to come into contact with that person because they've violated a law—not in a dragnet style of "let me see your papers," but a probable cause for a violation of law—if we check them on our computers with their vehicles, or if they have no ID and they've been placed under arrest and we take them down to our central police station, we're having them fingerprinted and live-scanned, as we call it, those systems should be hooked up with INS so that we should know if they are in violation of any type of INS law or have felony INS warrants out for their arrest.

I spoke with a supervisor in the INS region office in Houston last week, and he said that is the main thing that they are having trouble with, that HPD will not even acknowledge felony warrants being issued out for illegal immigrants. And that is a problem.

As you know, the New York City has this case here. But down in Texas, we also had the Angel Resendiz case, who now sits on death row for serial murders throughout three or four States. That is a problem.

Law officers, regardless of where they're at in the country, should be able at least, when they run a check through the computer, be able to access INS systems and see if they cannot at least keep this person off the street any further.

With immigration, this type of law enforcement, which is proactive, kind of like DWI enforcement, as you all know, you never know the end result of what you may have prevented. If I stop someone for DWI, I do not know if I kept them from killing someone down the road, and that's the drawback. You can't keep a statistic on proactive policing, which is what everyone is for, proactive policing instead of reactive policing.

So if we can have someone and some way of checking them while we have them in our custody for a violation through INS, we may prevent further crimes down the road.

And another thing that comes to mind is the liability placed upon issues or on cities, municipalities, or police departments. We have someone in our custody, yet we refuse to acknowledge INS or their laws, what liability comes back on that municipality or that department or that individual officer per se if we did not do everything that we could do to enforce all the laws, release that person, and they end up committing another crime or violent crime down the road? That leaves a question for officers out there on the street also.

I thank you for your time and your patience and your hearing me out. Thank you.

[The prepared statement of Mr. Nickell follows:]

PREPARED STATEMENT OF JOHN NICKELL

Mr. Chairman, Members of the Committee,

Thank you for the opportunity to testify here before you today on this important issue. As you know, immigration is a huge problem in our society and our country as a whole. An even larger problem is the restriction of local law enforcement officers, by their respective agencies, from enforcing immigration laws.

Even though the main topic of discussion is a case involving the New York Police Department (NYPD) and five illegal immigrants, these types of crimes, I believe, continue on a regular basis throughout the country without our knowledge. When local agencies around the country enact a "sanctuary law" type of policy, society at large is placed at risk. Sanctuary laws undermine the authority and effectiveness of street level officers and completely render them ineffective to prevent potential further criminal activity. With this type of policy, authorities may never know if an individual is in the United States illegally and if they could have been removed before they had the opportunity to commit a criminal act.

This similar type of "sanctuary law" policy is in effect with the Houston Police Department as well. We are specifically told we "shall not inquire as to the citizenship status of any person, nor detain or arrest any persons solely on the belief that they are in this country illegally."

This General Order also states: "As police officers, we must rely upon the cooperation of all persons, including citizens, documented aliens, and undocumented aliens, in our effort to maintain public order and combat crime." This same General Order further states: "Undocumented alien status is not, in itself, a matter for local law enforcement." I fail to see the logic in this thinking.

Here we have a many contradictions within law enforcement itself. First, we know that "undocumented alien" is someone who has either entered this country illegally or has overstayed his or her visa. If an individual is considered an "illegal alien," in any aspect, then we must allow all law enforcement officers to pursue every lawful action when this individual is taken into custody. Second, the Houston Police Department General Order states "we must rely upon the cooperation of all persons." Is it reasonable to even think we can expect cooperation from an individual whose first act in this country was to violate its entry laws? Should we expect cooperation from someone that refuses to adhere to the agreements of their visa and overstays their legal visitation? The third and possibly largest contradiction in this matter is the "pick and choose" type of association with other agencies. Police agencies, nationwide, enthusiastically join with the FBI and DEA for drug busts and other high profile cases. However, we refuse to even consider working with the INS for politically expedient and correct reasons.

Inconsistent policies such as this take away from the first line of interior enforcement of immigration laws. When we shackle law enforcement officers in such a manner, instead of protecting U.S. citizens, and people who are here legally, the danger to society greatly increases by allowing potential violent criminals to freely roam our cities. The case in New York points to this, as well as the Angel Resendiz case. Angel Resendiz committed one of his many murders in the Houston area while on his multi-state killing spree.

What if we, as a police agency, come into contact with an individual such as the criminals in New York or Angel Resediz, and refuse to work with the INS by not inquiring into that individual's immigration status? What if, after an individual was handled by an agency that has a "sanctuary law" policy, that individual is turned loose and then commits a violent crime? Who do we hold responsible for criminal acts they commit after being released? Could working closely with the INS databases, which may help to identify potential offenders, have prevented this crime? If we can run criminal checks through NCIC and we can perform background checks on law abiding American citizens who wish to purchase firearms, why can we not work with the INS?

According to a September 27th article in the Washington Times, entitled "Loss of agents hinders effort to secure border," the author tells us that Border Patrol agents are "leaving in staggering numbers." According to the article "The U.S. Border Patrol is facing a 15 percent attrition rate that threatens to increase to more than 20 percent by the end of the year."

How can we, as a nation, expect any type of immigration control or enforcement with these kinds of attrition rates in our Border Patrol and refusing to allow local law enforcement officers to participate in immigration enforcement? The answer is, we can't! To allow these types of policies to continue within individual police departments is a great disservice to the law-abiding, tax-paying people of the United States.

The Sunday, February 23, 2003, Houston Chronicle carried an opinion article by Baltimore Mayor, Martin O'Malley, about America's continued vulnerability. The Mayor states "Most of America's population centers, and most of its economic infrastructure, are nearly as vulnerable now as they were on Sept. 11, 2001." If the

Mayor of a city like Baltimore is making this strong of a point on this particular issue, how can we, as local law enforcement agencies, continue to refuse to help in the enforcement of immigration laws? We in the law enforcement community should not be restricted from working with each other by mandates and policies such as these. Whether the law that is being violated is Federal, State, or local, we cannot afford to arbitrarily choose the laws we wish to enforce. If we continue this practice, we do so at the Nation's peril.

Mr. HOSTETTLER. Thank you, Mr. Nickell.

Ms. Orloff?

STATEMENT OF LESLYE ORLOFF, IMMIGRANT WOMEN PROGRAM, NOW LEGAL DEFENSE AND EDUCATION FUND

Ms. ORLOFF. Thank you. Thank you, Chairman Hostettler, and Ranking Member Jackson Lee, for inviting me to speak today.

My name is Leslye Orloff. I'm the director of the Immigrant Women Program at NOW Legal Defense and Education Fund. I'm also co-founder of the National Network to End Violence Against Immigrant Women, which is about a 500- to 700-member strong organization made up of advocates, attorneys, shelter workers, social workers, and others, who provide assistance to immigrant victims of domestic violence, sexual assault, and trafficking.

I've been working personally on issues around battered immigrant victim advocacy for about 20 years. And I first want to start by thanking the many Members of Congress and many Members of this Subcommittee for the work that you've done in the past years in supporting legislation that helps immigrant victims of domestic violence, sexual assault, and trafficking—notably, the Violence Against Women Act, provisions in both IIRAIRA and the welfare reform legislation in '96, and other pieces of legislation.

I want to start today. I'm going to not—I'm going to summarize some key points in my testimony and submit the rest for the record.

But I want to start with a story about a woman named Lucia. She lives in south Florida. She's 35 years old and has been married for quite some time to a U.S. citizen who is an abuser, who never filed immigration papers for her. They have two U.S. citizen children and continue living together.

And this story illustrates the problems when law enforcement becomes INS, when there are MOUs like in the memorandums of understanding in South Florida in which police are enforcing INS laws, and what happens in immigrant communities when this occurs.

Lucia had suffered numerous, numerous beatings on behalf of her—from her husband. So much so that the neighbors heard them and saw bruises a number of times, and heard her screams of pain.

Her husband never filed immigration papers for her, although he clearly could as a U.S. citizen, and told her repeatedly, as we hear all over the country, that, "If you call for help, the police will turn you in to INS and deport you. And you'll never see your children again."

And so, she didn't call for help, and she refused to go to the hospital, no matter how bad her injuries were. Ultimately, her neighbor, who was also a foreign-born immigrant, took her to a local legal services—or basically a local agency that worked with immigrant victims of domestic violence. And both the neighbor and

Lucia told the advocates at that agency that the reason she never called the police was because of the advertising on television and on radio about the fact that if you call the police they turn you over to INS.

The fear for her was so great that she kept putting up with the beatings because she believed she had no other option.

We see this happening all over the country in different places. And so that what we—the issues about police reporting to INS really do have dangers and harm, if it happens routinely for immigrant victims of domestic violence, rape, sexual assault, and trafficking.

Domestic violence is not higher in any particular race, class, or ethnic group in the U.S. The rates are approximately the same across group lines. But immigrant victims are at greater risk of longer exposure to abuse due to systemic barriers that they have to overcome when they seek help.

And those include things like police reporting and concerns about if they call the police for help whether they'll be turned in and the fact that there are very few culturally competent services in this country to help immigrant victims of domestic violence.

Now, over the years, thanks to Members of Congress, the Violence Against Women Act has done a lot to change this. But for immigrant victims, it has not been wholly successful, and that is no small part due to the fact that, although not required by Federal law, there are law enforcement officers across the country who routinely ask immigration status questions of victims who call for help.

There are judges in protection order cases that will ask the victim her immigration status and call INS. And instead of holding the abuser accountable and giving her a protection order, INS will pick her up.

And so, this is a tremendous problem that we're trying to make sure that whatever you do on this issue, that you keep in mind the effect that it has on the very victims whose cooperation is key to prosecution of people committing crimes in our communities.

There is a history of insufficient police training around issues, both of working through community policing with immigrant communities and also on domestic violence. Researchers found that among immigrant victims of domestic violence, only one in four are willing to call the police for help, no matter how bad the violence, how matter how long, and no matter how severe.

The reporting rate for U.S. women generally is one in two, and if you look at the undocumented immigrant population, the reporting rate drops to one in seven. And we're talking about serious domestic violence cases with numerous incidents of abuse.

And what happens is for immigrant victims, because abusers use control over immigration status as a tool and threats to turn her in to INS, when they hear on the radio and television that police are, in fact, reporting or they hear from their friend in the community who is their support system that her sister was turned into INS when she called for police to help her on a domestic violence case, it is the penultimate barrier.

Women won't call for help. Women won't cooperate in getting abusers prosecuted. And so—and it has an incredible chilling effect.

Whereas, what should be happening is 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 Act of 1994 and 2000 wanted us to do—to prosecute perpetrators of domestic violence, perpetrators of rape and sexual assault, and traffickers in women and children.

And that if we don't, our communities will suffer. It's not just the individual victims who can't get protection and are harmed, but their children grow up learning that violence is okay. And what we know from domestic violence and sexual assault perpetrators is that if they 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.

And so, what—and that the other thing that's important to understand is that with immigrant victims, all of them, many of them, if they're coming to the attention of the police and they have suffered injuries, which are usually the kinds of things that lay the ground for the probable cause determinations that you heard about a minute ago. They are, by definition today, immigrant victims of domestic violence, rape, or sexual assault who can qualify for immigration protection under either the Violence Against Women Act, the U visas—the crime victim visas—or the T visas for trafficking victims.

And we want to encourage that cooperation with police that ensures that victims are not jeopardized with questions about immigration status; so that they can feel free to call the police; and so that the prosecutions happen.

Mr. HOSTETTLER. Ms. Orloff, would you be able to wrap up?

Ms. ORLOFF. Okay. And let me just say that it is as you look into this issue that the kinds of bipartisan efforts for the criminal justice system to find a—we seek a consensus that there shouldn't be inquiries into immigration statuses of victims who call for help from police and that understanding that if those questions are asked, you're needlessly endanger innumerable immigrant victims and their children.

Thank you very much.

[The prepared statement of Ms. Orloff follows:]

PREPARED STATEMENT OF LESLYE E. ORLOFF

Safety Implications of Police Response to Calls for Help From Battered Immigrants

I. Introduction

Domestic violence does not occur at a higher frequency within one socio-economic class, racial group, or geographic area.[2] 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.[3] Immigrant women who encounter language barriers, cultural differences, and stereotyping by mainstream society are often invisible to the anti-domestic violence movement.[4] 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.[5] 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 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. Indeed, appropriate police intervention has been found to have a significant impact in lowering the rate of subsequent domestic violence.[6] 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.

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[7] 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 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 and the South , immigrants now have an increasingly significant presence in the Northeast and

Midwest. 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. 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, understanding, and cultural competency reports of police violence and discrimination against and indifference towards the safety of minorities have increased.

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, 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 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 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, adequate access to interpreters 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.

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. 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, 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. 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 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. In light of these problems and practices, it is not surprising that anecdotal 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.

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. 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 a data collected in a survey conducted among Latina immigrant women conducted 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. 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 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

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 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.

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 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 than 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. Despite this fact and despite the fact that many experience isolation power and control tactics, 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.

2. The Victim's Fear that She Will Be Deported

Most importantly, the results of this survey suggests 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. 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. In some instances the country has no laws that make domestic violence a crime or that offer protection to domestic violence victims. In other instances a law exist, 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. 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.

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 domestic violence crimes committed in a state and/or who reside in a state without regard to the protection order applicant's immigration status.

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 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 regarding 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.

IV. 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 ("Violence Against Women Act"). 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. 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 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 hat 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 fore 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 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 key. 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 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] The 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 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 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 official 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 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 conditions of Home 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 to justify their decision to inquire about the immigration status of crime victims have misinterpreted section 287(g) (10) of the INA. 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. There are only two 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 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 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.

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. 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.

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.

**The footnotes referenced in this statement were not available at the time of this hearing.*

Mr. HOSTETTLER. Thank you, Ms. Orloff. We'll now turn to questions of the witnesses and attempt to hold to the 5-minute mark.

First of all, Mr. Feinblatt, in your statement you say, "Let me begin by making one thing crystal clear: New York City has no sanctuary policy for undocumented aliens. Indeed, section 2(a)(3) of Executive Order 124, which was issued in 1989 by Mayor Edward I. Koch, states explicitly that officers and employees of a city agency may transmit information about undocumented aliens to Federal immigration authorities if 'such alien is suspected by such agency of engaging in criminal activity.' "

Now, if that is the case, why did the 2nd Circuit Court of Appeals in 1991 say that "the executive order is in its face a mandatory noncooperation directive"? Likewise, why would the court also say the order had the effect of "outlawing even voluntary cooperation" and that it did "forbid all voluntary cooperation by State or local officials with particular Federal programs"?

And they cited specifically sections 434 and 642 of the Personal Responsibility and Work Opportunity Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, respectively. But why would they say that?

Mr. FEINBLATT. It's absolutely clear on its face that E.O. 124 had a carve-out for law enforcement. In fact, it's been the practice in New York City to cooperate in many instances between INS and law enforcement.

Clearly, we understand that the Federal law of 1996 preempted the reporting—many of the reporting requirements in E.O. 124. And we in New York City are in complete compliance with the law now.

But let me point out the history of cooperation. Our probation department has the INS computer system. Our corrections department has two INS agents stationed permanently at our jail. We have 1,000 police officers on anti-terrorism duty that are participating every day with the INS.

We are working currently with the Governor's office and with INS to arrange that every rap sheet in New York State be imprinted with the status of noncitizens. New York City is cooperating at every step in the way with INS in order to do better law enforcement.

Mr. HOSTETTLER. Would you be able to supply for the Committee a copy of the new executive order as redefined after the Court of Appeals? Is there another executive order that repeals the provisions of the old executive order that were found to be unlawful?

Mr. FEINBLATT. If you look at the 2001 charter in New York City, you see specifically that it authorizes the mayor of the City of New York to promulgate regulations about confidentiality. And the legislative history, in no uncertain terms, actually references the 1996 Federal law and makes clear that any new promulgation of any kind of executive order around confidentiality has to be totally congruent with the law.

Mr. HOSTETTLER. Okay. So to get it straight, we have the old executive order. We have a new city charter. Is there a new executive order?

Mr. FEINBLATT. New York City is now working on a drafting of a new executive order, and it is clear by the most recent charter that that executive order will comport completely with Federal law.

So it is not only—it is not only the practice in New York City to work with INS and law enforcement, it is clear in the charter that those are the steps that we will be taking.

Mr. HOSTETTLER. What is the guidance that you are now giving the police officers? Are there new procedures in place to inform and train the officers with regard to the charter?

Mr. FEINBLATT. You know, in the instant case, the tragic instant case that is the subject of this hearing, we know, as you do, the detective called the INS. There is absolutely no question that police officers on the beat understand their responsibility.

You know, my grandmother used to always say the proof is in the pudding. Well, I think that call to the INS that resulted in detainers is the proof. It applies here.

Mr. HOSTETTLER. Well, with all due respect, I'm over my time almost. But subsequent to the new charter, prior to the arrest, some of these individuals were arrested by New York Police Department. And so, while the proof is in the pudding after the fact that a woman was raped, my concern is that today in New York City, are New York police officers directed and/or——

Mr. FEINBLATT. New York City police officers are following the Federal law. The Federal law does not require police officers to report. It does not impose an affirmative duty. That is the law passed by Congress.

What the Federal law requires is that we not interfere with a police officer or other officials' actions to report. We are in complete compliance with Federal law.

And in fact, I can tell you again that by stationing INS agents at our city jails, by having INS computers at the probation, by working with INS to have our rap sheets embolded with immigration status, we as a city are clearly going beyond any obligation that was imposed by the Federal law.

Mr. HOSTETTLER. Thank you, Mr. Feinblatt.

Ms. Jackson Lee?

Ms. JACKSON LEE. Thank you very much, Mr. Feinblatt. Thank you for your testimony, and I will pointedly question you this morning.

Welcome. And let me again—even though cities are competitive, let me, first of all, acknowledge the spirit of New Yorkers and reckoning what you all have experienced over the last 2 years, let me applaud you for the statement of having the lowest—or one of the lowest crime rates for a big city in America. You are to be applauded, and I congratulate my fellow Americans, if you will.

Let me ask a question along the lines of the Chairman, pointedly. Do the procedures that you have in place now, do you believe, inhibit, prohibit, undermine the police work of the NYPD? Are you able to pursue lines of investigation that you think are appropriate as you are following your own policies and the Federal law?

Mr. FEINBLATT. I think the number-one inhibitor to any law enforcement agent, whether they're in New York City or in any other city in this country, for working with INS is the response that INS has given law enforcement.

Ms. JACKSON LEE. So with that in mind——

Mr. FEINBLATT. In prep——

Ms. JACKSON LEE. Let me just pursue it, and I know where you're going.

Mr. FEINBLATT. Yes.

Ms. JACKSON LEE. With that in mind, your police officers feel comfortable in providing information that they obtain in the course of their duties, investigating criminal activities—they feel comfortable in making reports?

Mr. FEINBLATT. Our officers feel comfortable in making reports. It is in their discretion, as the Federal law clearly states, for them to make reports, and they do make reports, as evidenced in the brutal rape.

Ms. JACKSON LEE. And what would be helpful, of course, as you've already said, clearly, is for the INS to be more responsive and to respond to the information that they freely receive from NYPD at this time?

Mr. FEINBLATT. We have—in preparation for this hearing, we interviewed police officers and prosecutors and other law enforcement agents. Time after time, we heard stories about the response that they got from the INS in serious cases. A–1 felonies punishable by up to 25 years to life, the only way they got response from the INS was with high-level intervention.

Other cases, prosecutors reported actually the selling of fake green cards. It took high-level intervention to get any response from the INS.

We have time and time again been unable to reach INS on the phone. When we reach them on the phone, they require that we write a letter. When we write a letter, they require that it be by a superior.

Law enforcement requires split-second decisions and split-second actions.

Ms. JACKSON LEE. But there is no—you have no bar within your policies to bar your officers from communicating with the INS? Is that a yes or no?

Mr. FEINBLATT. New York is in full compliance with the 1996 law.

Ms. JACKSON LEE. Appreciate it very much, Mr. Feinblatt.

Mr. Nickell, thank you for your testimony. As I was reviewing the so-called sanctuary policy from the Houston Police Department, I think the language specifically states that we are told that we shall not inquire as to the citizenship status of any person or detain or arrest any person solely on the belief that they're in this country illegally.

Which means that if that is the singular reason for having a dialogue or reporting them, it does not, as I read the order, bar any officer who believes someone is engaged in criminal activity from pursuing their duties. Specifically, the order states it is—undocumented alien status is not in itself a matter for local law enforcement, and so it has nothing to do with the idea of them participating in criminal activity.

But my question to you is knowing the diversity of Houston—certainly, New York represents a very diverse city—would you believe that teachers in elementary schools need to haul first-graders out

because they believe that they're illegal aliens? Or hospitals, like the Harris County Hospital Department, needs to haul out people in the emergency room because they believe that they're illegal aliens?

Mr. NICKELL. No, ma'am. And that wouldn't be a probable cause of a criminal act.

Ms. JACKSON LEE. But are you now, Mr. Nickell, barred, when someone is engaged in a criminal act, to not provide information to the INS? And if so, it is not clear by this policy because the policy does not suggest in Houston that there is any bar to preventing you, when you find someone engaged in criminal activity.

Mr. NICKELL. Yes, ma'am. The prevailing attitude in HPD is that you are barred from working with INS whatsoever. And very specifically, in that general order in the last paragraph very specifically states that we will not deal with INS, particularly on any INS raids, unless we have authority from the chief, and they go in there for some other criminal activity, and then only with the chief's authority going in and working with them.

And as I said in my statement, what my contention is, is that we should have everything at our disposal on the street level, just on the databanks, working—if we have probable cause that they have violated a law, that's the only place that I'm looking for any intervention to take place.

Ms. JACKSON LEE. Well, I think it may be distinctive on what distinctive perspective that we're both saying. I think there is no bar for you reporting these individuals involved in criminal activity. There may be a bar from actual collaborative work, and I think that is different. But I do appreciate your testimony.

And I would only say that the language included in your statement does not indicate that there is a bar from the HPD cooperating in reporting criminal individuals that are illegal aliens involved in criminal activities.

Mr. Chairman, as I see that that clock moves quite quickly for both of us, I would like to ask Ms. Orloff—I would ask for an additional 1 minute.

Mr. HOSTETTLER. Without objection.

Ms. JACKSON LEE. Thank you very much.

Just quickly, and I'll just simply say because your point is so important about battered women. And you heard my question about school teachers and hospital officials.

Just simply, do you have any idea of how we can encourage or how important immigrant—if you will, immigrant cooperation with the law enforcement is important in making us safe and making the immigrant community safe, simply?

Ms. ORLOFF. Well, I think training would be key. I mean, we now have new crime victim visas that most police departments don't know about, don't know about the certifications they can do. INS has not fully implemented the new crime victim visas, the U visas.

And so a combination of getting good regs out from INS that has the Vermont Service Center, the very good division of INS adjudicating these cases that's sensitive to the issues. And getting police officers trained and getting the information out from the police department to the community that we're a safe place to come if you're

a victim. We're not going to harm you. We're not going to turn you in, and there are laws to protect you.

So that the police could actually be a conduit to victim services providers and other—and access to legal immigration status through INS, which they are not now serving as. Thank you.

Ms. JACKSON LEE. Thank you.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. Thank the gentlelady.

The gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Feinblatt, I was glad to hear you say that you were totally complying with the 1996 Federal law, and I assume that that means that you are ignoring many parts of the old Executive Order 124. Is that right?

Mr. FEINBLATT. We are in complete compliance with the law. As you know the 1996——

Mr. SMITH. To the extent that it conflicts with Executive Order 124, you would be ignoring 124?

Mr. FEINBLATT. 1996 law preempted many of the provisions of E.O. 124.

Mr. SMITH. Okay. So they would be ignored since they're preempted?

Mr. FEINBLATT. They've been preempted.

Mr. SMITH. Okay. I assume—well, that's a technical term. Are you also, shall we say, preempting the mayor's statement after 9/11 where he said that illegal aliens in New York City didn't need to worry about the INS?

Mr. FEINBLATT. I think that any statement the mayor made about that was, again, about making sure that essential city services——

Mr. SMITH. I think he was talking about law enforcement, not services.

Mr. FEINBLATT [continuing]. Were provided to it.

Mr. SMITH. To the extent he was talking about law enforcement, you would have to ignore it then, right?

Mr. FEINBLATT. Law enforcement, we have devoted 1,000 police officers to anti-terrorism activities. We are in daily contact with the INS since 9/11. We have the lowest crime rate of any major city in the United States. We are working with the INS——

Mr. SMITH. No, no. That wasn't my question. Mr. Feinblatt, let me go back to my question, which was to the extent that the mayor suggested that the police department not contact the INS, that would be ignored, would it not?

Mr. FEINBLATT. I think that the New York City's record in dealing with law enforcement——

Mr. SMITH. Okay. If you don't want to answer the question, just tell me you don't want to answer the question.

Mr. FEINBLATT [continuing]. Speaks for itself.

Mr. SMITH. It's better than giving a long answer.

Let me be reassured on one other point, and that is that no one within the police department is discouraging any police officer from contacting the INS. Is that right?

Mr. FEINBLATT. The—that is correct.

Mr. SMITH. Okay.

Mr. FEINBLATT. That is correct.

Mr. SMITH. You made the point you're not required. I'm making the point that—or asking you if anyone is being discouraged from contacting the INS?

Mr. FEINBLATT. No. We are in full compliance with Federal law.

Mr. SMITH. Okay. Thank you.

Mr. Cutler, this is just a statement——

Mr. FEINBLATT. I think you might also note, and I think that when you asked me about the statements of the mayor after 9/11——

Mr. SMITH. Yes.

Mr. FEINBLATT [continuing]. That was Mayor Rudy Giuliani, the law enforcement mayor of the United States, not the current mayor of New York City.

Mr. SMITH. No. I'm sorry. That's incorrect. It was Mayor Bloomberg who made the statement.

Mr. FEINBLATT. Directly after 9/11?

Mr. SMITH. Yes. As amazing as it sounds, that's the case.

Mr. FEINBLATT. He wasn't mayor at the time. He wasn't mayor at the time.

Mr. SMITH. He wasn't mayor at the time.

Mr. FEINBLATT. Was not mayor after 9/11.

Mr. SMITH. But Mayor Bloomberg made that statement subsequent to 9/11 was my point.

Mr. Cutler, it seems to me that lives would be saved and traumas avoided if cities with sanctuary policies cooperated with the INS rather than obstructed the INS, and I assume that you agree with that?

Mr. CUTLER. Couldn't agree with you more.

Mr. SMITH. Maybe I should just say I appreciate your strong statement on that.

It seems to me, by the way, that there is a common thread here, at least between—among three of the witnesses, and that is a lack of cooperation and a lack of—with the INS. That they're not coming through as they are mandated, and that's a disappointment. And that's something for us to maybe tackle at another hearing.

But the fact that they aren't giving you the help that you ask for is a disappointment.

Ms. Orloff, I just want to mention—I can go back to you. You said that police should not enforce immigration laws. That's at odds with both the opening statements of the Chairman and the Ranking Member. But it seems to me there's a little bit of a double standard there. You say police shouldn't enforce the laws, but they should help aliens get immigration benefits.

Don't you think if you're going to have the police help them get benefits, you ought to at least have the police enforce the law as well?

Ms. ORLOFF. Well, the problem is if the police enforce the law against victims who call for help, as opposed to their perpetrators, nobody is going to call for help, and there is no laws to enforce, and the perpetrators go free.

Mr. SMITH. I was going to say your general statement, you want it narrowed to you would be in favor, therefore, of the police, say, arresting a criminal alien if they had the opportunity to do so?

Ms. ORLOFF. We would have no problem with that. The only caveat is in domestic violence, there's a lot of problems.

Mr. SMITH. Right.

Ms. ORLOFF. One of the things we found is police officers arrive on the scene; they do not speak the language. They listen to the citizen English-speaking husband and arrest her, and then she qualifies. So that's the caveat.

Mr. SMITH. You did answer my question. You did answer my question. I appreciate that you support the arrest of criminal aliens.

Ms. ORLOFF. We have no problem with that.

Mr. SMITH. Okay. Thank you very much. Thank you, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentleman from Texas.

The gentleman from Iowa, Mr. King.

Ms. JACKSON LEE. Mr. Berman?

Mr. HOSTETTLER. The gentleman from California. I apologize for not seeing you walk in, Mr. Berman.

Mr. BERMAN. Thank you very much, Mr. Chairman.

Ms. JACKSON LEE. That's all right. He's down at the end.

Mr. BERMAN. Thank you, Ms. Jackson Lee.

Well, just following up, Ms. Orloff, on Mr. Smith's question. I haven't yet met the person who is against arresting criminal aliens.

But there was a case which led to a proposed rule, promulgated near the end of the Clinton administration, essentially saying that people would be eligible for asylum if they were fleeing gender-based persecution.

It resulted from a Guatemalan case where a woman who had been repeatedly abused by her husband fled, and notwithstanding the facts of that case, the Board of Immigration Appeals had rendered a decision which essentially ordered her returned to that country.

And the implication of that regulation affects not only victims of abuse, but victims of trafficking and other kinds of issues.

I've heard that there is an effort, in these waning moments of INS status in the Justice Department, for the Attorney General to withdraw that rule and, in fact, have promulgated a substitute regulation which will render ineligible anyone in that class—people who have been subject to physical violence, sex trafficking, these kinds of issues—and make them ineligible for asylum and required to be deported back to the country where they face that abuse, notwithstanding the failure of the government in that country to do anything about that.

Do you know anything about this?

Ms. ORLOFF. Yes. We have heard the same thing. And in fact, our grave concern about it is that if Attorney General Ashcroft decides to recertify himself, which it sounds like we've heard that he may, and reverse R–A, what the Board of Immigration Appeals decided in R–A was they denied her asylum saying that he didn't beat her because she was a woman, he would beat any woman who was his wife.

Therefore, she didn't get asylum. And it makes no sense. Because we're gravely concerned because essentially——

Mr. BERMAN. Guatemala does not have a same-sex marriage law.

Ms. ORLOFF. Right. And so the issue is that we're concerned because there are battered women who, you know, flee from countries where they are severely abused, where they can not get protection. They find the courage to make their way here. And we want our laws, like the laws of Canada and Britain and other Westernized countries, to offer protection to those victims.

And we have heard that Ashcroft is planning on recertifying himself, issuing a set of regulations on these gender issues, particularly domestic violence and trafficking and those kinds of things, are dramatically different from what was proposed. And we're very concerned about that.

And we're very concerned about the repercussions that it would have for domestic violence victims generally.

Mr. BERMAN. Thank you. And as I understand it, the current regulations, which may be possibly rescinded, don't mandate asylum, they simply don't render the person ineligible for asylum?

Ms. ORLOFF. Absolutely. And not every battered woman who comes to this country will get asylum. She will have to prove that she could not get protection in her home country. So it's a much narrower category of people, but a much more severely needy category of people.

Mr. BERMAN. Mr. Nickell, I'm just curious. You started off—I missed your initial testimony.

Mr. NICKELL. Yes, sir.

Mr. BERMAN. But I looked quickly at just the summary, and your first sentence sort of—first paragraph caught my attention. You basically—if I could just get the exact quote here, so I don't—"Thank you for your opportunity to testify here before you today on this important issue. As you know, immigration is a huge problem in our society and in our country." You mean immigrants or——

Mr. NICKELL. No, sir. Illegal immigration.

Mr. BERMAN. Only illegal. You aren't talking about immigration.

Mr. NICKELL. No, sir, just illegal immigration.

Mr. BERMAN. There are some people who are here as immigrants——

Mr. NICKELL. Yes.

Mr. BERMAN [continuing]. Legally, aren't there?

Mr. NICKELL. Yes, sir, there are.

Mr. BERMAN. You might have been a little more particular in how you drafted your statement.

But, in any event, I guess what I'd ask any of the witnesses, do you think, to the extent that a population of immigrants who came here illegally, against the law—over-stayers of visas, people who cross the border illegally—thought that if they reported a crime committed against them, and particularly against others, or witnessed a crime, that the fact that they would subject themselves to deportation might impede their willingness to either report the crime or to indicate they were a witness to the commission of a crime?

Mr. NICKELL. I don't believe so. I've——

Mr. BERMAN. Oh, you don't think that somebody—"Oh, I'm here, out of status. I watched a murder in front of my house. I can identify the witness. But if I make myself available and let people know

that I saw this, I will be deported." That isn't a deterrent to encouraging cooperation with local law enforcement?

Mr. NICKELL. I don't believe so, because I've been on numerous, numerous scenes where it's either fatality accidents or it's domestic violence or it has been murder scenes or major assault scenes, where this person spoke no English whatsoever but we took their statement right there at the scene, either through an interpreter or letting them right it down.

Mr. BERMAN. This was in Houston?

Mr. NICKELL. Yes, sir.

Mr. BERMAN. Where you don't have a policy of asking the person what their legal status is?

Mr. NICKELL. Correct. It's a catch-22.

Mr. BERMAN. That's my point.

Mr. NICKELL. But——

Mr. BERMAN. Mr. Feinblatt, do you have any reactions to—do you think the notion that you are going to be inquired about your legal status and subject to deportation if you report a crime will deter you in any fashion from reporting a crime or your role as a witness to a crime?

Mr. FEINBLATT. The greatest tool of law enforcement is information. It's important that police officers be able to get information from witnesses, from victims, from people who know about the facts of a crime. And that is why I think the Federal law wisely gives discretion to police officers to use their judgment.

Mr. BERMAN. Thank you.

Mr. HOSTETTLER. I thank the gentleman.

Ms. JACKSON LEE. Mr. Chairman, would you yield just for a moment? I just want to indicate that I have a hearing dealing with the Columbia 7 tragedy, and I appreciate very much your indulgence and your pardoning me from continuing, at this point.

Mr. HOSTETTLER. I thank the gentlelady.

Ms. JACKSON LEE. Thank you very much. Thank you very kindly.

Mr. HOSTETTLER. The gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

I would direct my first question to Ms. Orloff, please. You stated in your discussion of Lucia that, if you call for help, the INS will come and deport you was the fear that kept her from calling for help, and that she believed that she had no other option but submit to the beating and subsequent tragedy.

What, not having another option, what was her real fear, then?

Ms. ORLOFF. Well, we actually have done some research on this, and we've done a lot of work on immigrant victims. And what we found is that, actually, the fear of deportation is the greatest fear, and it blocks everything. We're not talking about that, sure, they'd like to get a green card tomorrow. That's not the issue. The issue is they don't know that they can talk to the police, that they can talk to prosecutors, that they can talk to victim services without——

Mr. KING. The fear of deportation, and would take her back to her home country. What did she fear there that was greater than——

Ms. ORLOFF. Never seeing her children again. Having her children raised by the abuser. That, for women, is the main thing. It's

that—she's married to a U.S. citizen. She's got two kids here. He's going to——

Mr. KING. I appreciate your clarification, and maternal instincts are very strong. And that's a good point.

There's also a comment that you made: Domestic violence rates are approximately the same among immigrants as they are among nonimmigrants. And if they underreport as immigrants and, in fact, illegal immigrants, then how do we know that domestic violence is similar?

Ms. ORLOFF. There's been research—being done in immigrant communities that has specifically aimed at—basically immigrant survivors of domestic violence doing the interviews themselves and disclosing in the interview process that this is a problem that happens to everyone. And we are not talking about law enforcement reporting data. We are looking at data among—that is done within community among women that's more trustworthy in that respect.

Mr. KING. Survey information?

Ms. ORLOFF. Pardon?

Mr. KING. Survey information?

Ms. ORLOFF. Survey information, that is consistent, more or less, with the numbers we're seeing nationally.

Mr. KING. Thank you very much, Ms. Orloff.

Ms. ORLOFF. Sure.

Mr. KING. And then also I'd ask—direct to Mr. Feinblatt. As I listen to your testimony, and the discussion here, three of the four perpetrators had prior arrest records. And you state that, let me see, three of the four have prior arrest records?

Were they not adjudicated? What were the arrest records for? And if New York City had been able to apply the full force of the law would not that have been preventive police work in the end?

Mr. FEINBLATT. Well, let's start with what the Federal law requires. It does not require an affirmative duty of police officers——

Mr. KING. We understand that.

Mr. FEINBLATT [continuing]. To report. But the most striking thing——

Mr. KING. What could you have done to prevent this, as a police department?

Mr. FEINBLATT. The most striking thing about the records of the three illegal aliens who had arrest records were that their prior arrest records were for minor events: jumping the turnstile, which means not paying your fare on the subway; misdemeanor marijuana possession; trespass.

It is our experience in New York City, and I think the experience of law enforcement throughout the country, that INS responds—that when INS responds, it only will respond in the most serious, the most notorious, the most heinous cases.

Mr. KING. And I would state that if Mayor Giuliani's approach to preventing crime on the streets could be applied through the INS, I think we might see even better crime statistics in New York City.

And just quickly a question to Mr. Nickell, or more a comment: I'd ask you if you could elaborate on the situation of—you said HPD, the Houston Police Department, will not acknowledge INS warrants?

Could you elaborate on that, please?

Mr. NICKELL. That was a conversation I had with one of the supervisors at the INS regional office last week. I was speaking to him exactly what I'm speaking here today abut just trying to link into the IDENT system, so at least have one more database link to find out anymore warrants or anymore—another agency that may want this person we have in custody at that time.

And his statement to me was that they couldn't even—or had trouble getting the Houston Police Department to even acknowledge felony warrants that they were issuing out, and they were coming across through NCIC, just because it dealt with INS. They were having trouble just, even on that level, of getting cooperation.

Mr. KING. Thank you, Mr. Nickell.

Thank you, Mr. Chair.

Mr. HOSTETTLER. Thank the gentleman.

The Chair now recognizes the gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman. I appreciate your holding this hearing.

I would like to, first of all, thank Ms. Orloff for putting the face of Lucia on the immigrant community. I want to assure you, knowing the Members of this Committee, that we all have a very strong feeling that we want to help people like Lucia.

We also have a very strong feeling for the victim of this crime and the other victims of crime in America that are committed by illegal immigrants. This is a difficult, confused, and a very emotionally charged issue.

I understand that we have Fox News here today, who is shooting video for Bill O'Reilly, for his show tonight. And so I suspect we all are going to be on cable TV again.

Hi, Bill. I want you to remember, I am a hardliner on crime, please.

You know, as you look at the panel, you represent radically different views, geographically different, philosophically different. This Committee, of course, reflects many of those fundamental differences.

But in this area we have—there are some things that we agree on in the area that's confused. And I'd hope to take a couple minutes to get a consensus. You can nod, and I'll point out for the record whether you nod or whether you disagree with me.

But I'd like to ask a series of questions that help us focus on what we're dealing with here, because over the next couple of years, I would hope that we can actually create a context where police can enforce the law more effectively, where we can get assistance from Mexico in enforcing the law against its citizens, and where we can help prevent both the problems with people who are here illegally and suffering because they live in the shadows, and also people who are here illegally and committing crimes and being protected because they're living the shadows, as that goes.

I mean, it's absolutely clear that you have many crimes in the illegal community, is it not, probably a disproportionate number of crimes among illegals as elsewhere?

I think—I would hope you would all agree, and I think despite the very different perspectives you come from, that a large por-

tion—a large part of the reason why we have a disproportionate criminal rate there is because, in our illegal community, we have people living in the shadows.

You can nod or shake, I mean, if you disagree with that.

Actually, I'm looking at you, Mr. Feinblatt. I'd like to respond—do you agree or not? I mean, the fact is, we have these people living in the shadows. Is that not a fundamental problem? Go ahead, if you have a——

Mr. FEINBLATT. Okay. Well, it's a problem when you're living in the shadows, but you're dealing with a lot of issues. You're dealing with abject poverty——

Mr. CANNON. I understand that you're dealing with lots of issues here, but the fact is, criminals hide because people——

Mr. FEINBLATT. Oh, absolutely——

Mr. CANNON [continuing]. Illegals won't answer the door when a cop or when an INS agent comes to knock.

Mr. FEINBLATT. But it's also the criminals who come here because they may be fleeing prosecution in their home country as well.

Mr. CANNON. Absolutely. And so where do you—if you're going to flee prosecution, where do you go?

Mr. FEINBLATT. The United States.

Mr. CANNON. You go to a place where you can hide.

Mr. FEINBLATT. Absolutely.

Mr. CANNON. And the fact that we have people living in the shadows is a big part of our problem. And that's an agreement, right?

Mr. FEINBLATT. Yes, in that perspective, yes.

Mr. CANNON. I mean, what you have here, you've created a safe haven in America for criminals to flee from Mexico, who are dealing with drugs, to flee from Guatemala or from various other countries, including Asia. We have a problem because of our immigration laws, which encourage people to be here, which make it—in fact, let me just ask.

Is it possible to get rid of 8 to 11 million illegal aliens and not have a police state? A yes or no from each of you, please.

Mr. FEINBLATT. Absolutely not.

Mr. CUTLER. No.

Mr. NICKELL. No.

Ms. ORLOFF. No.

Mr. CANNON. The whole panel has said no, but we only have one microphone there.

The fact is, we can't do that, can we? And that's the essence of the problem. When you have a problem this big, we have a huge problem and I see my time is about expired. There are a number of issues upon which we're going to agree.

This debate is not going to go forward in America; we are not going to solve this problem if we focus on a rape victim or a victim of domestic violence. What we have to solve is the problem of how we deal with 8 to 11 million people. And there are a lot of people that are both sides.

I'll tell you in Utah, the census numbers were low. So I'm inclined to think that that illegal alien population is on the upper end of that—those guesstimates.

With that many illegal aliens, it means we either become a police state and start kicking down doors and Heaven help us if your daughter marries a Mendoza or a Martinez, because then she's going to become the focus of that kind of police action.

The other side of it is that we create a program in America where people can—in fact, I'd like an assent or a disagreement here—a program, without the details, because the details are very important here, but we need a program where people self-identify. They come forward and say, "I'm here. I have a job. I'm contributing. I want a temporary status." And when we do that, then you who are enforcing the law can focus on those people who don't come forward. Is that not correct?

Mr. CUTLER. Yes.

Mr. NICKELL. Yes, it is.

Mr. FEINBLATT. Yes.

Ms. ORLOFF. Yes.

Mr. CANNON. The whole panel is agreeing with that.

Now, we have a big problem in this panel to figure out how we're going to do that. It's a huge problem. We have great divisions. But underlying that debate is a very firm, common ground where we agree as Americans on certain things.

And if we had more time, we could elaborate more. But I appreciate your participation in the process of trying to identify what we have in common as we face this problem.

Mr. Chairman, I yield back.

Mr. HOSTETTLER. I thank the gentleman from Utah.

With the Subcommittee's indulgence, and that of the panel, I would like to open a second round of questioning and begin that by asking Mr. Nickell—and, first of all, thanking him for his service to our country in Desert Storm.

Let me ask you, are you familiar with the charter of the City of Houston, Texas?

Mr. NICKELL. No, sir, not in depth. No, sir.

Mr. HOSTETTLER. Are you trained on the policy regarding—as it applies to the police department, of provisions within the charter of Houston?

Mr. NICKELL. No, sir. Just really the general orders and SOP of the Houston Police Department itself, not the city charter itself. No, sir.

Mr. HOSTETTLER. All right. So if policy had changed within the charter of the City of Houston, that would not—it's not your experience in 11 years with the Houston Police that provisions within the charter of the City of Houston would be given to you and you'd be trained based on those provisions.

So my question is, if there was an executive order that was philosophically regarded within that charter of the City of Houston, you would not necessarily know that executive order had been changed as a result of that?

Mr. NICKELL. No, sir, not when it comes to the city council doing that business, and the mayor, no, sir, just what comes from the chief down.

Mr. HOSTETTLER. All right, okay.

Mr. Feinblatt, you understand my line of questioning. I don't really have a question for you, except to state that my line of ques-

tions earlier was that there was—I understand the change that was made in the charter.

Line officers don't necessarily have that information. And so we don't have a member of the New York Police Department here, and so I won't speak for them. But it's difficult for the Chair to understand how a philosophical annotation within the charter of a city is going to somehow change the policy and the procedures of the department with regard to the police.

And that's why I'm going to ask you to provide for the Committee the executive order and all policy guidelines that are in place now in New York to change the policy and/or guidelines affected by Executive Order 124 since 1989.

And so if you would provide that to the Committee, that would be very much appreciated.

Mr. Cutler, I have a question for you, actually.

Mr. CUTLER. Yes.

Mr. HOSTETTLER. You stated that you worked for the INS prior to the issuance of Executive Order 124. What sorts of information were you able to obtain from the New York City government prior to the issuance of that order?

Mr. CUTLER. Well, as I mentioned during my opening remarks, one of the things I was doing was to investigate marriage fraud. And it was extremely helpful that I could walk in and actually get access to the welfare computer and make a determination—we would have a young lady, for example, who would say, "Well, I'm married to my husband for the past 4 years. I want him to become a resident of the United States. We plan to live forever and ever as husband and wife." And we would think, "Well, that's wonderful."

And then you go and check with the welfare folks and you found out, for the last 4 years, she's been collecting welfare, claiming to be a single parent with four children. Well, she either was lying to welfare or she was lying to the INS or maybe she was lying to everybody.

And by our working cooperatively with the city officials, we were able to accomplish a couple things. We were able to break the marriage frauds. We were also able to get people off of the welfare roles who had no lawful right to gain welfare because they were committing fraud on their applications.

It was a real symbiotic relationship.

We also were, I think, doing perhaps a little bit better, at that time, getting cooperation with the New York City parole and probation folks.

You know, one of the things that sometimes happens, when there are orders that are out there that say "don't cooperate," police officers, like anybody on any job, want to be successful. INS agents are the same way. So you approach your job by saying, "What do I need to do so that I can do the best job I know how, but without stepping on any toes, without getting fouled up by running into a law or regulation or an executive order that can do harm to my career?"

And if they hear the general phrase, "INS is a problem," then INS becomes radioactive.

Mr. HOSTETTLER. Let me ask you a question with regard to that. I'm sorry to butt in.

Mr. CUTLER. Yes.

Mr. HOSTETTLER. Are you suggesting that you in the INS, a Federal agency, perceive that your career path may be affected by interaction with a non-Federal agency and the response that that action may have——

Mr. CUTLER. We wouldn't get jammed up by working with the cops. But I think that some police officers or probation people may have had concerns that if they talk to the INS and they weren't supposed because of Executive Order 124, the easiest thing—if I said to you a particular type of food may or may not have bacteria, you may say, "Well, gee whiz, I'll just avoid that whole form of food and not worry about it." Well, it's the same kind of thing here.

If there's a regulation out there that restricts what I can and can't say to an immigration agent, I'm better off avoiding those guys. That doesn't mean that police officers didn't work cooperatively with us. They did.

In the early '70's, or the mid-'70's, when I became and agent, I worked very closely with the police officers in the 71st Precinct, tracking down folks from the Caribbean who were primarily, in that neighborhood, involved with gunrunning and narcotics and that sort of thing. And it was a wonderful working relationship.

And as I've said before, there's a synergy that exists when you can get various law enforcement organizations to work together. We don't have a national police force, but what we do have are these task forces, whether it's the Joint Terrorism Task Force, and I spent some time working with them. I spent 10, 12 years working with the Organized Crime Drug Enforcement Task Force. What happens is a lot of the barriers come down.

If you're riding day in and day out with people from other agencies—a police officer, an FBI agent, an ATF agent—we work cooperatively because that's the nature of law enforcement. You rely on each other to go home in one piece at night.

And you find that you can accomplish a lot more than if you were working as an isolated officer in one little corner. Cops and agents working together are a dynamite team. And INS winds up getting ostracized.

I feel bad for people that are being exploited or being abused or being assaulted. You know the one point I want to make, and I think it's important, is to understand that when I went to work as an Immigration agent, it wasn't me against the alien community. I wasn't there because they were my opponents. I was there to enforce the laws that concerned aliens. Aliens weren't our enemies.

But when these rules come out, it makes it sounds as though we're the heavies. "Oh, there's that INS agent. You don't want to talk to those guys. They pick on those poor illegal aliens."

One other fast point that I would like to make: Illegal aliens are fearful, at times, to interact with law enforcement authorities because of the fact that they're illegally in the country. I feel awful to hear stories of abuse.

In fact, I've arrested illegal aliens who abused their wives. We had a few of those, where the guy would do a number on his wife and she'd come in and say, "You know, I don't understand my hus-

band. I filed for him to get a green card. And then the guy goes home, gets drunk, beats the hell out of me and my two children." So we would go out and arrest him, and he was the abuser.

But what you have to understand, though, is that if aliens are reluctant to come forward because they're illegally in the country, that maybe you want to have a certain dynamic concern about, "Should I talk to the law enforcement authorities if I shouldn't be in this country in the first place?" I'm not talking about victims of spousal abuse. That's a heinous situation. That's horrible.

And when you talk—I know Mr. Berman isn't here, but he was talking about whether or not people would talk to the police if they were illegally in the country, for fear of what might happen. They might also be fearful of getting killed by the killer.

There are lots of concerns, and I'm sure, as a police officer, you'll bear this out. Many people have many concerns about going to the authorities to report crimes and what they observed, and that sort of thing. There's a lot of barriers that you have to overcome in law enforcement to get people to open up to you.

But I also think that if someone is illegally in the country and they have concerns, that we have to do something to discourage the whole world from coming illegally into the United States. You know, this is a two-headed thing.

So I certainly have tremendous sympathy for any spouse who gets abused. I don't want to be misunderstood. I have tremendous sympathy and empathy for victims of crime, but I also think we need to have a better control over who is coming into the country, because, again, it creates the kind of environment that we were talking about earlier, of people living in the shadows, where other people come in to those environments and manage to hide.

And that's a real serious problem for our country. Look at the number of people that get arrested for criminal activities that are part of the alien community. It's a small percentage of the alien community, but it's a big part of our criminal problem.

I hope I've answered your question.

Mr. HOSTETTLER. Yes, sir. Thank you very much.

Mr. KING. Thank you, Mr. Chairman.

I would direct my question to Mr. Feinblatt. In the previous questioning, I asked about the level of crimes that were committed by the illegal aliens. And one of the things you mentioned was turnstile jumping. And as I look at this list that I had provided to me, I also see crimes such as criminal possession of marijuana entered more than—on a number of these defendants, and also criminal trespass and criminal possession of a weapon, assault with intent to cause physical injury, unlawful imprisonment, and criminal possession of stolen property, attempted robbery in the second degree. That's just some that I pick out of here.

And then I refer you back to the statement you made that the first obligation of New York City police officers is and always will be to ensure that the defendants are taken into custody and promptly brought before a judge as required by law.

I wonder if you might rethink that. And I'd ask you if that first obligation might be the safety of the people, all the people in the jurisdiction, and also to uphold the Constitution and rule of law, if those might be paramount to the first obligation, as you stated.

Mr. FEINBLATT. New York City is enjoying 48-year lows in crime. There is absolutely no question that the New York City Police Department is 100 percent committed to the safety of its citizens, both those whole live in New York City, those who work in New York City, and those who visit New York City.

And it is because we have been so effective that we've been able to drive those crime rates down while they are increasing in other cities.

Mr. KING. While we are making comments that tend to, I think, gloss over this subject—turnstile jumping versus the list of these other deportable crimes——

Mr. FEINBLATT. Let's look at the record.

Mr. KING. Aren't the victims—aren't the families of the victims looking at this from a different viewpoint in that they may have their family member alive had there been an opportunity to do a better job of cooperating, coordinating, and networking with all the law enforcement agencies in the country?

Mr. FEINBLATT. First of all, in this case, I think we have to make absolutely clear that we are examining the records, and we do not know whether INS was contacted or not. We are reviewing those records.

Second, I think that we should look at the cases. Three of the illegal aliens had arrest records. In 100 percent of the cases, the police department asked the defendants about their citizenship. In seven out of the 12, the defendants falsely claimed that they were U.S. citizens. And, therefore, in the split-second decisions that a police officer has to make, he was confident that they were not illegal aliens.

Of the five cases remaining in which the defendants admitted they were not citizens, four were misdemeanors: One was a fare beat, a victimless crime. One was marijuana possession, which under the laws of New York State can be dismissed by judge over the objection of a prosecutor. The second was a fistfight. And the third was a shoplift case.

Do we take those cases seriously? Absolutely. But they are misdemeanor cases.

The one remaining case in which one of the defendants said that they were noncitizen was a robbery case, which is a felony. However, I would like to point out that the victim of that case was Jose Hernandez, who was one of the other defendants in this case. And that case went nowhere.

I would also like to point out to you the response by the INS. In an internal memo that we have from the INS, which I would like to share with you, it directs INS agents how to respond when local law enforcement request detainers, which are holds.

It says, and it instructs INS personnel to do the following: First, explain to the requesting agency the risks and financial burdens on the localities of lodging a detainer. It specifically says: First, explain that the alien could concede to deportability and then, therefore, leave the country. And also explain that by contacting the INS, it could place the defendant in custody out of State, causing the local entity to have to bear transportation costs.

It then goes on to say that if the official persists with their requests, advise them the following: They must make their request

in writing. The letter must come from a person in a position of authority, not a police officer or an assistant D.A.——

Mr. KING. Thank you, Mr. Feinblatt.

Mr. FEINBLATT [continuing]. But a bureau chief.

Mr. KING. I see that our time is up.

Mr. FEINBLATT. The letter must state that they understand the risks. And finally, the decision of the INS can only be made by the assistant district director.

In a case of jumping the turnstile, in a case of shoplifting, in a case of marijuana possession, which would be disposed of in any jurisdiction either the same day of an arrest or the next day, it would probably take INS weeks to fulfill their own directive.

We report. We were never under E.O.–124 told we could not report. In fact, there was a specific carve-out——

Mr. KING. Mr. Feinblatt, thank you very much. You've made your point.

Mr. FEINBLATT. And in the instant case——

Mr. KING. And, Mr. Chairman, I see my time is up.

Mr. FEINBLATT [continuing]. We did report.

Mr. KING. And I'd ask unanimous consent for a minute for a further question.

Mr. HOSTETTLER. Without objection.

Mr. KING. Thank you.

I find your testimony factual, and I find it to be passionate, and I find it to be somewhat defensive, as well. I do understand that the INS is short of resources, and it's difficult to cooperate. And I recognize that you do a great job in New York, protecting the people in the City of New York, and also that there are problems and difficulties with the cooperation.

And so I would like to—my last question to you, Mr. Feinblatt, will be, what is your recommendation? From the perspective of the New York City Police Department, what could you have done better under the circumstances that we had? And in a very brief moment, without going into resources for INS and cooperation, was there a mistake made by the New York City Police Department? Would you do that over again? And then, what is your recommendation for policy?

Mr. FEINBLATT. As I have explained, when the detectives made the arrest in the rape case, they report it to the INS. There is no question about that. And detainers followed.

In the previous cases that we have discussed, in those cases where the defendant actually said, no, they were not citizens, we have not finished our review to find out whether the INS was contacted. Even if they were contacted, I think I have made it clear, and I think all of us who are familiar with the INS know that it is unlikely that anything else would have happened. I regret that, because I regret that there was a victim who was caused immeasurable harm in this case.

What I would suggest for the future is, we have to look to technology. The probation department of New York City has installed an INS computer. We are now working on having our rap sheets labeled, whether somebody is here in the country legally.

At every time there is an arrest in any city of the United States, that should be able to connect to an INS computer.

Let me just tell you that, in New York City in 2002, there were 337,000 arrests. There were 15,000 appearance tickets. And there were 375,000 summons. That's over 700,000 cases.

New York is committed to using technology to further law enforcement ends. We have done it in our COMSTAT program. We will do it in this instance. And that will continue to drive crime down.

Mr. KING. Thank you, Mr. Feinblatt.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. The Chair now recognizes the gentleman from Arizona, Mr. Flake.

Mr. FLAKE. No questions at this time, Mr. Chairman.

Mr. HOSTETTLER. Thank the gentleman.

I have another round of questions. I would like to read to Officer Nickell the procedure, and with unanimous consent, I would also ask for the General Order 500–5 of the Houston Police Department to be offered into the record.

[The Houston Police Department order follows:]

General Order
Houston Police Department

ISSUE DATE	NO.
June 25, 1992	500-5

REFERENCE: Supersedes General Order 500-5, dated January 3, 1990

SUBJECT: IMMIGRATION

PURPOSE

The purpose of this General Order is to establish the policy of the Houston Police Department regarding illegal aliens.

1 **BACKGROUND**

The City of Houston has attracted many residents from countries outside the United States. A number of these residents are not citizens, are undocumented and live in Houston without legal sanction. The Houston Police Department is committed to the principle that effective law enforcement depends upon good relationships between the Department and the community it serves. As police officers, we must rely upon the cooperation of all persons, including citizens, documented aliens, and undocumented aliens, in our effort to maintain public order and combat crime.

2 **POLICY**

Undocumented alien status is not, in itself, a matter for local police action. Unlawful entry into the United States is not to be treated as an on-going offense occurring in the presence of a local police officer. Houston police officers may not stop or apprehend individuals solely on the belief that they are in this country illegally.

3 **PROCEDURES**

Officers shall **not** make inquiries as to the citizenship status of any person, nor will officers detain or arrest persons solely on the belief that they are in this country illegally. Officers will contact the Immigration and Naturalization Service (INS) regarding a person only if that person is arrested on a separate criminal charge (other than a class C misdemeanor) and the officer knows the prisoner is an illegal alien.

In keeping with this policy, officers are prohibited from participating in INS raids where the primary purpose is the arrest of persons for their undocumented status. Houston police officers will assist INS agents on criminal matters of mutual concern, but only when requested and only in situations in which the involved Houston police officers will be clearly exercising their police powers under the laws of the State of Texas. Even in these limited circumstances officers shall obtain authorization from an Assistant Chief prior to participation.

Sam Nuchia
Chief of Police

Mr. HOSTETTLER. Officer Nickell, you're probably familiar with this, but if I can read it to you: Officers shall not make inquiries as to the citizenship status of any person, nor will officers detain or arrest persons solely on the belief that they are in this country illegally. Officers will contact the Immigration and Naturalization Service regarding a person only if that person is arrested on a separate criminal charge—parenthetically, other than a Class C misdemeanor—and the officer knows the person is an illegal alien.

Officer Nickell, could you explain to me what a Class C misdemeanor is?

Mr. NICKELL. It's the lowest form of misdemeanor. Anything like public intoxication, urinating in public, anything of that—just a low level of $500 maximum fine and one night in jail type of violation.

It's equivalent—a traffic violation and a Class C misdemeanor would be about the same thing.

Mr. HOSTETTLER. All right, so a traffic violation, a routine stop, is essentially a Class C misdemeanor?

Mr. NICKELL. Yes, sir, they're the equivalent. Yes, sir.

Mr. HOSTETTLER. The equivalent.

Mr. NICKELL. Yes, sir.

Mr. HOSTETTLER. So the most prevalent type of activity by a line officer is precluded from being—from discussion with the INS about the person that is an illegal alien, potentially?

Mr. NICKELL. Yes, sir. And that is my contention, because last year, the Houston Police Department wrote more tickets than any police agency in the United States, 880,000 citations. Plus we average over 100,000 automobile accidents a year and normally average anywhere from 4,000 to 6,000 DWI arrests a year. That's just in traffic-related accidents.

That's close to 1 million contacts that we're coming across we're not able or allowed to even inquire into their status just by database alone.

That's my contention, is that we at least be able to connect to the database with INS so we can get the answer over our computers in the car, or, if they're arrested and taken—if they have no ID and they're arrested and taken to jail, we can then fingerprint them, what we call over-the-counter, which is a live scan. If that was also linked into INS, we would also know then if that person—just a Class C misdemeanor—we would know then if they're wanted with anything with INS, on any type of warrant.

Mr. HOSTETTLER. But this order would preclude you from even doing that, if you had the capability, wouldn't it?

Mr. NICKELL. Well, that's what I'm trying to get changed as of right now, also.

Mr. HOSTETTLER. Right.

Mr. NICKELL. Right now, I have a legal challenge to this general order, up through our chief, through our legal services, for a legal opinion from our county attorney, our city attorney, and the U.S. Attorney General's office there in Houston. So I'm challenging this whole general order, not just here today, but I'm also challenging it back in Houston, its validity and legality, as it relates to police officers, from precluding them from enforcing all laws of the United States.

Mr. HOSTETTLER. Right, because, traditionally, that's what law enforcement does at the local level, is to help to enforce laws on the local, State and Federal level. Is that not——

Mr. NICKELL. Yes, sir. And that's, like I stated in my opening statement, is, we'll gladly join hands with the DEA and the FBI if it's a high-profile case. But yet, the INS is a red herring. We want nothing to do with it.

So if you went down on the streets of Houston right now and asked any line officer down there any of these questions, "Are you barred from asking anything about immigration?" they would tell you yes, because that is what they see this policy is, is a barring policy from asking any questions along those lines.

Mr. HOSTETTLER. Very good. Thank you.

Mr. Feinblatt, I have a question with—regarding the directive that you have submitted, and we will submit, without objection, to the record, from the INS.

[The INS directive follows:]

Immigration and Naturalization Service

NYCINV 90/16.3-P
NYCINV 50/2.1-P P-73

New York City District Office
Investigations Division
8th Floor
26 Federal Plaza
New York, NY 10278

NOV - 2 2000

ADDI DIRECTIVE

MEMORANDUM FOR THE DEPUTY ASSISTANT DISTRICT DIRECTOR
CHIEF, CRIMINAL ALIEN SECTION
CHIEF, FRAUDS/ASU/JTTF/VGTF SECTION
CHIEF, WORKSITE ENFORCEMENT SECTION
CHIEF, OCDETF
SUPERVISORY SPECIAL AGENT, OPERATIONS SUPPORT

FROM: Daniel Molerio
Assistant District Director for Investigations
New York City

SUBJECT: Lodging "detainers" against aliens who have pending criminal charges

Over the years, there have been occasions upon which we have been asked, primarily by local authorities or outside jurisdictions, to lodge detainers[1] against aliens who have pending criminal charges. However, the practice of lodging detainers under such circumstances is one accompanied by various unintended consequences. Therefore, effective immediately, all Investigations Branch officer personnel will explain the potential unintended consequences to outside authorities when an outside authority makes such a request. Use the following paragraph as a guide to advise outside authorities when requests for detainers are received.

First, an alien may be automatically remanded to INS custody by way of a detainer at which time the alien might concede to their own deportability. This could enable the alien to be removed from the United States and avoid prosecution. Further, it is possible that the entire process, including physical removal, could be effected without the knowledge of the outside authority even though they had originally requested that a detainer be lodged. Second, an alien remanded to INS custody by way of a detainer might not be placed in a local detention facility and may need to be housed in an out-of-state facility. Here, the outside authority having a prosecutorial interest in the alien would have to assume transportation and/or officer overtime escort costs, at the discretion of the Detention and Deportation Branch, should the alien's presence be required locally for trial or other legal purposes.

[1] From 8 CFR, "Immigration Detainer – Notice Of Action", commonly referred to as a "detainer."

If the official persists with their request to have a detainer lodged, Investigations personnel are to advise that such a request must be made in a letter addressed to the Assistant District Director for Investigations or to the Acting Assistant District Director. The letter must emanate from a person in authority, such as a bureau chief or section chief or higher within the District Attorney's Office, United States Attorney's Office, or other jurisdiction having an interest in the alien. Investigations personnel will remind the requester that their request must contain language demonstrating that the writer is aware of the unintended consequences of lodging a detainer against an alien who has pending criminal charges.

Most often, once outside authorities have had the potential unintended consequences associated with lodging a detainer explained to them, they ultimately decide against it. In no case will the decision to lodge a detainer against an alien who has unresolved criminal charges be made without prior consultation with and the permission of the Assistant District Director for Investigations or the official "acting" designate.

Mr. HOSTETTLER. You understand that this is informative to local police. And it seems to me to be very helpful to educate, to inform, New York City of the potential costs of detaining an illegal alien.

I would think that would be very helpful. Now, are you——

Mr. FEINBLATT. Generally, if there is a hold on an illegal alien because bail has been set, that would supersede any detainer, and so you couldn't take somebody out of the jurisdiction.

Mr. HOSTETTLER. Right.

Mr. FEINBLATT. As long as bail had been set. And so, in fact, in most cases, they would not be removed to another jurisdiction.

But clearly the important thing here is, in law enforcement, we have to work in—make split-second decisions and split-second actions, and this is not a split-second process.

Mr. HOSTETTLER. You mean because of the cost involved?

Mr. FEINBLATT. No. Because if a prosecutor wants to get a detainer, they want to get it because they're fearful that somebody might make bail who is in custody. And so writing a letter, getting your superior to write a letter, restricting INS to only be—that the decision by INS has to be made by an assistant district director, by the time that process is done, somebody is going to make bail, and it's going to be impossible to actually hold them. And that's why a local prosecutor or police would generally seek a detainer.

Mr. HOSTETTLER. Mr. Cutler, you have a remark you would like to make?

Mr. CUTLER. If I could, the point is that INS only takes aliens into custody and puts them at the INS detention facility or a jail space that we've arranged for, that sort of thing, for only one reason, and that's to be able to remove the alien from the United States.

I have many disagreements with INS management in New York, but this is one instance where I understand what Mr. Molerio, who is the assistant district director for investigations, was trying to say.

And what he was trying to say here is that if we take custody of somebody who is facing criminal charges, we only hold on to him in our very limited immigration facilities to effect his removal from the United States.

If INS had an alien in custody and that alien said, "Here's my passport. I want to go home," INS is supposed to remove him.

We can't go beyond the bail that's set at a State level or a city level. In other words, if this guy makes bail and INS picks him up, the risk there, and it's happened in some cases, is that we could inadvertently, or whatever, wind up deporting somebody who is facing criminal charges. Now he's back in his country. And if you wanted to pursue that prosecution beyond that, you'd have to extradite him back into the United States.

So that's counterproductive. I sometimes think that INS works in very unwieldy ways, and I could tell you that are many times when I think that management decisions aren't always done the way they should be done, and sometimes it's against our own best interests. But as far as the process of lodging detainers, that's only done to bring someone into INS custody so we could effect his departure. Otherwise, we have to put the guy back out on the street.

Let's say bail is set at $10,000 in a robbery case. We take custody. He makes the bail. How can we then hold on to him after he's made bail, unless we're planning to deport him at that point?

So that's the reason that this ruling came down. This memo is reminding people about the reasons why INS would lodge a detainer in the first place. I hope that clarifies it for you.

Mr. HOSTETTLER. Yes.

Mr. CUTLER. But one other thought, if I could just take the moment. Maybe what needs to be done is better cooperation, in terms of education. In other words, sometimes local prosecutors allow an alien to plea bargain away a deportable offense in the interest of what's expedient. Now, that doesn't help anybody.

If you've got a drug charge and then the guy winds up with disorderly conduct, why give up that drug charge that could render him deportable?

And on the other hand, if you've got an illegal alien who is an extreme risk of flight, maybe there needs to be cooperation and coordination so that an INS agent, if you can get somebody done, or even an INS attorney, could go and speak to the judge in the State case to explain risk of flight.

I know I have done that a number of times and that's been a very effective avenue.

So there are cooperative arrangements that I think should be made so that people wouldn't be tripping over each other but rather working with each other. That's just, you know, from a field agent's perspective, I think that could be a much more effective way of doing business, to maybe prevent this sort of thing from happening in the future and getting the most out of each agency's authority and resources, as a suggestion to you.

Mr. HOSTETTLER. Thank you. Very helpful.

And, Ms. Orloff, I apologize. We have detained you too long. You are excused from this panel, if you so desire, to make that flight.

Ms. ORLOFF. Thank you very much. I'm going to try.

Mr. HOSTETTLER. Sure.

Any questions from the Committee, Subcommittee?

Well, if not, I really want to thank——

Mr. FEINBLATT. Mr. Chairman, can I make a clarification?

Mr. HOSTETTLER. Yes, Mr. Feinblatt.

Mr. FEINBLATT. I want to be clear about what Mayor Bloomberg did say after the tragic events of September 11th. He said that he would provide services to people and make sure that those services were delivered. He said that the Federal Government should enforce the immigration laws. They should not have immigration laws on the books if they are not going to enforce them.

Mayor Bloomberg never said that the New York Police Department will not report people to the INS.

Mr. HOSTETTLER. I thank the gentleman.

And I once again thank the witnesses for your indulgence.

We will enter Executive Order 500–5 into the record, which it has been, the directive. And we will leave the record open for 3 days for comments, from any members of the panel or the Subcommittee.

And, once again, Mr. Feinblatt, I would like to ask you to supply to this Subcommittee guidance that has been given to the NYPD

or the process that is now ongoing to create guidance to the NYPD to allow the facilitation of communication with the INS.

And with that, the work of the Subcommittee is over, and we are adjourned.

[Whereupon, at 11 a.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

According to newspaper accounts, on December 19, 2002, a group of young, homeless men surrounded a couple sitting on a bench in an isolated part of a Queens, New York, park. They beat and robbed the man and savagely raped the woman. Apparently, four of the men were undocumented aliens from Mexico who had been arrested previously. One of the questions for this hearing is whether a New York City policy prevented the police involved in the previous arrests from reporting the men to the Immigration and Naturalization Service.

The policy in question is set forth in Executive Order No. 124, which was issued by New York Mayor Edward Koch on August 7, 1989. It is entitled, "City Policy Concerning Aliens." This order prohibits the transmission of information about an alien to the immigration service, but the prohibition has three exceptions, one of which is for the situation in which the alien is suspected of engaging in criminal activity. This order, therefore, did not prevent the police from reporting the homeless men to the immigration service when they were arrested previously.

The pertinent issue regarding that case is whether the New York Police Department should have been required by federal law to report the homeless men to the immigration service.

I do not want local police forces to enforce immigration law. Immigration law is a complicated body of law that requires extensive training and expertise. Local law enforcement officials do not have the training and expertise that is necessary to determine who is present lawfully and who is not.

Community-based policing is one of the most powerful law enforcement tools available. By developing strong ties with local communities, police departments are able to obtain valuable information that helps them to fight crime. The development of community-based policing has been widely recognized as an effective tool for keeping kids off drugs, combating gang violence, and reducing crime rates in neighborhoods around the country.

In immigrant communities, it is particularly difficult for the police to establish the relationships that are the foundations for such successful police work. Many immigrants come from countries in which people are afraid of police, who may be corrupt or even violent, and the prospect of being reported to the immigration service would be further reason for distrusting the police.

In some cities, criminals have exploited the fear that immigrant communities have of all law enforcement officials. For instance 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. These immigrants are left vulnerable to 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.

I also want to point out that Immigrants have performed heroic deeds in our country. For instance, Kwame James, a Canadian immigrant, risked his life to subdue a terrorist on an airplane. This professional basketball player was one of the men who subdued shoe-bomber Richard Reid aboard a Paris-to-Miami flight in December of 2001. James had been playing for a French team and was on his way home when the attack occurred. Asleep, he awoke to a plane full of screaming people. A flight attendant approached him for help. He rushed back to where Reid was

struggling with passengers and crew. At 6 feet 8 inches and 220 pounds, James still had to struggle to hold down Reid, who was about the same size. Afterwards, he saw the flight attendants take away Reid's shoes, which were filled with plastic explosives.

Many communities find it difficult financially to support a police force with the personnel and equipment necessary to perform regular police work. Requiring state and local police forces to report to the immigration service would be a misuse of these limited resources. The immigration service also has limited resources. The immigration service does not have the resources it needs to deport dangerous criminal aliens, prevent persons from unlawfully entering or remaining in the United States, and enforce immigration laws in the interior of the country. Having to respond to every state and local police officer's report of someone who appears to be an illegal alien would prevent the immigration service from properly prioritizing its efforts.

Local police can and should report immigrants to the immigration service in some situations. The decision to contact the immigration service, however, should be a matter of police discretion, not a federal requirement.

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

Without a doubt, the victim in this brutal gang attack survived a horrendous crime. My heart goes out to her and her family as she tries to repair her life from the damage done that night. Even one such attack is more than what any person, or our society should have to bear. Unfortunately these attacks do not occur infrequently and they are often at the hands of U.S. citizens. But this attack, allegedly committed by 5 men, should not be used to paint the lives of all immigrants. Nor should we enact policies to round up any and every immigrant suspected or accused of committing a crime.

That's why I must express my true disappointment that the first topic we are addressing in this subcommittee in the 108th Congress is this unfortunate and terrible attack. We appeared to be off to a good bi-partisan start when we reached agreement in the oversight plan on critical immigration and border security issues facing this nation. I hope that this Committee will soon address issues such as how to improve our border security while respecting the civil liberties of immigrants and travelers, serious problems plaguing our refugee program, failures of our immigration laws to adequately protect victims of sexual trafficking and coercive family planning policies, examining the positive contributions immigrants make in the American economy, and the efficiency, effectiveness and consequences of the National Security Entry-Exit Registration System.

But today we are looking at New York City's so-called "sanctuary" policy. My colleagues have given this policy that term but the neither the Executive Order that put this policy in place, nor the rule that implements it, refers to or even describes a situation of giving criminals sanctuary, as they would have you believe. In fact, the Order does not protect immigrants who engage in criminal activity from immigration enforcement. Even immigrants who are have not been arrested or convicted, but are merely suspected of criminal activity, can be reported to the INS under this Order.

Instead, this policy and others like it are critical contracts between the immigrant communities and the local government authorities. Before it was signed by Mayor Ed Koch, immigrants in New York were afraid to report crimes that they witnessed in their communities or in their homes. They were afraid to seek help from the police and fire personnel when they or others were in jeopardy. They were afraid to get medical services for family members or interact with school officials for fear that they, a family member or house-mate would be jailed in INS detention and deported.

Without policies like this, the police and other officials cannot gain the trust they need to serve and protect everyone in the community. In the case of this attack in Queens, the victim was reportedly an immigrant who may or may not have legal status or citizenship. Her companion may have also been an immigrant. If not for a policy like this, he may not have gone to the police when she was abducted, and she may have died or suffered more as a result. If not for a policy like this, she may have been unwilling to be examined by doctors or to talk to the police after her attack. Either or both of them could refuse to testify at trial or sign affidavits that could be critical to the conviction of the attackers. Is that the kind of result we want? Forcing all police or local government officials in any jurisdiction to report

on the immigration status of everyone they encounter in their line of work will handicap the them and will leave immigrants vulnerable and unprotected.

In addition, requiring local police officers and government officials to report individuals to the INS creates a host of other problems. It encourages racial and ethnic profiling and could subject citizens and other law-abiding individuals to hostility and unwarranted detention or questioning. It gives local officials immense power to coerce, bribe or otherwise victimize immigrants as some renegade Los Angeles police did in the Rampart scandal several years ago. It would destroy good relationships that have been painstakingly developed with immigrant communities—relationships that could prove crucial in uncovering real terrorist or criminal threats. And it would misdirect INS resources towards checking on millions of people who would be reported at a time when they are already overwhelmed with information management problems.