

**PUBLIC SAFETY AND CIVIL RIGHTS IMPLICATIONS  
OF STATE AND LOCAL ENFORCEMENT OF FED-  
ERAL IMMIGRATION LAWS**

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**JOINT HEARING**

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,  
CITIZENSHIP, REFUGEES, BORDER SECURITY,  
AND INTERNATIONAL LAW

AND THE

SUBCOMMITTEE ON THE CONSTITUTION,  
CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

—————  
APRIL 2, 2009  
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**Serial No. 111-19**

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Printed for the use of the Committee on the Judiciary



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**PUBLIC SAFETY AND CIVIL RIGHTS IMPLICATIONS OF STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS**

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**THURSDAY, APRIL 2, 2009**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
CITIZENSHIP, REFUGEES, BORDER  
SECURITY, AND INTERNATIONAL LAW  
SUBCOMMITTEE ON THE CONSTITUTION,  
CIVIL RIGHTS, AND CIVIL LIBERTIES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittees met, pursuant to notice, at 10:15 a.m., in room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law) presiding.

Present from the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law: Representatives Lofgren, Jackson Lee, Waters, Gutierrez, King, Harper, Poe, Chaffetz, and Smith (ex officio).

Present from the Subcommittee on the Constitution, Civil Rights, and Civil Liberties: Representatives Nadler, Watt, Scott, Delahunt, Johnson, Conyers, and Franks.

Staff Present from the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law: Traci Hong, Majority Counsel; Lou DeBaca, Majority Counsel; Andrea Loving, Minority Counsel; and Andrés Jimenez, Majority Professional Staff Member.

Staff Present from the Subcommittee on the Constitution, Civil Rights, and Civil Liberties: David Lachmann, Majority Subcommittee Chief of Staff; Paul Taylor, Minority Counsel; and Matt Morgan, Majority Staff Assistant.

Ms. LOFGREN. This joint hearing of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, as well as the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, will come to order.

We welcome to this joint hearing all of you. I would like to thank our witnesses for being here to examine the public safety and civil rights implications of State and local enforcement of the Federal immigration laws.

This Congress has long recognized the particular threat that immigrant women face in domestic violence. As recognized by Legal Momentum, a respected organization that advocates for the rights of women and girls, beginning in 1994 with the Violence Against Women Act, known as VAWA, Congress created special visas for undocumented women who are being abused by their spouses so that they do not have to live in fear of deportation if they complain to the police about abusive spouses.

VAWA was reauthorized in 2000, along with the creation of two new visas for undocumented victims of violence, those that suffer from severe forms of human trafficking, and those who are helpful in prosecuting crimes. These programs have been repeatedly reauthorized and expanded by Congress over the last decade, including, in 2008, with the William Wilberforce Trafficking Victims Protection Reauthorization Act, to ensure that victims of violence have an opportunity to escape their abusers.

Unfortunately, due in part to bad implementation and poor Federal supervision, in recent months I have begun to hear story after story of the Federal program created by Congress in 1996 that appears to fly in the face of all the work Congress has done to protect victims of violence. This program, known by most as the 287(g) program, allows the Department of Homeland Security to enter into agreements with State and local law enforcement to deputize them to enforce immigration law.

While some may feel that the program is necessary to ensure enforcement of immigration law, everyone should agree that it should be implemented and supervised in an appropriate manner to ensure the public safety and protection of civil rights. Unfortunately, the stories I have been told over the last several months suggest much more needs to be done to make sure that the 287(g) agreements do not undermine the protection of our communities, victims of violence, or civil rights.

Moreover, in just the last 2 years, 60 of 67 287(g) agreements have been signed, despite the fact that this program has been around for almost 13 years. With this recent explosion in interest in 287(g) agreements, more and more jurisdictions across the Nation are enforcing Federal immigration laws even without entering into a 287(g) agreement with DHS.

Today we will hear from a witness who has stepped up to tell us disturbing stories of abusive local law enforcement of immigration law regarding people too afraid to tell their own stories for fear of retaliation. Antonio Ramirez of Frederick, Maryland will tell us of a woman who was afraid to call the police when she was beaten up by her husband because he has threatened to seek her deportation and take their child away from her. She said she is so scared that she simply tolerates the beatings instead of calling the police, who she believes will deport her because of the stories she has heard of the local police enforcing immigration law.

The media and attorneys representing Rita "Fany" Cote tell us that Ms. Cote's sister called 911 because her sister's boyfriend was choking her. When the police arrived, they had trouble communicating with the victim, so the victim's undocumented sister, Ms. Cote, who had better English skills, offered to help translate. But the police checked everyone's immigration status, and rather than

arresting the boyfriend who choked her, they instead arrested Ms. Cote. She had to leave behind her three young U.S. Citizen children and her U.S. Citizen husband and be taken to Lake County Jail, where the Tavares Police Department held her for more than a week.

The disturbing stories go beyond victims of domestic violence. One of our witnesses today, Julio Cesar Mora, a U.S. citizen, born and raised in Arizona, was on his way to work with his 66-year-old dad—a legal, permanent resident who has lived in the U.S. since the 1960's—when two black SUVs with Maricopa County police officers aggressively pulled them over. Without explaining the reason for the stop, the officers told Mr. Mora and his father to get out of their car, and they were handcuffed. They were taken to his father's workplace, where an immigration raid was underway. They were held there for several hours until they had the opportunity to explain that they were lawfully present in the U.S. As Mr. Mora explains, "To this day, I don't know why the officers stopped us. I don't think it's fair the way we were treated."

If this Congress is committed to protecting the public safety in our communities, to protecting victims of crime, and to protecting civil rights, then we are required to examine the effects of State and local law enforcement of immigration law.

I look forward to hearing from our witnesses today. And I know that they will help us conduct this very important examination.

It is important that as we seek to enforce the law, that we also live under the law. And that is what this hearing is about today.

I would now recognize our distinguished Ranking minority Member of the Subcommittee on Immigration, Citizenship, Refugee, Border Security and International Law, Steve King, for his opening statement.

Mr. KING. Thank you, Madam Chair. I appreciate this hearing. And I appreciate the witnesses coming forward to testify. It is never easy to sit down before this Congress and submit yourselves to the questions that will come from the Members on this panel. But before we begin our discussion today, I would like to set out the underlying Federal law that governs State and local law enforcement.

The use of race or national origin in law enforcement is only strictly prohibited when race or national origin is the sole criteria for the law enforcement action—in fact, I should say sole criterion—and it has to be based upon an invidious purpose.

As the Supreme Court made clear in the 1996 case of *Bush v. Vera*, mere racial disproportions in the level of law enforcement activity for a particular crime may be unobjectionable if they merely reflect a racial disproportionality in the commission of that crime.

To give an example, the Supreme Court has upheld a program in which vehicles passing through a permanent checkpoint 66 miles from the Mexican border were visually screened by Border Patrol agents for occupants who appeared to be of Mexican national origin. In that case, and in the *United States v. Martinez-Fuerte*, the Court held that it was constitutional for the Border Patrol, after routinely stopping or slowing automobiles at a permanent checkpoint, to refer motorists selectively to a secondary inspection area for questions about citizenship and immigration status. The Court

held that there were no constitutional violations as long as such referrals were made largely on the basis of apparent Mexican ancestry.

The Supreme Court made clear in the 1981 case of *Haig v. Agee* that “such holdings are appropriate given that it is obvious and unarguable that no government interest is more compelling than the security of the Nation.”

Even beyond the context of border security, law enforcement has broad discretion to reasonably rely on the factors of race and national origin as long as such criteria are not the sole criterion that invidiously motivates action by law enforcement.

Indeed, under the Department of Justice’s own official guidelines on the use of race by law enforcement, it is made clear that in conducting an ongoing investigation into a specific criminal organization whose membership has been identified as being overwhelmingly of one ethnicity—Mara Salvatrucha, for example—law enforcement should not be expected to disregard such facts in pursuing investigative leads into the organization’s activities.

The Department of Justice guidelines further state that Federal authorities may also use reliable, locally relevant information linking persons of certain race or ethnicity to a particular incident, unlawful scheme, or ongoing criminal enterprise, including a gang, even absent a description of any particular individual suspect.

Of course, law enforcement is at its discretion and can impose on itself restrictions beyond what is prohibited by constitutional law and precedents, but those decisions should be made by State and local law enforcement working to protect citizens in local jurisdictions, not by Members of Congress thousands of miles away here in Washington, D.C.

So what are the effects of these policies? I would suggest that, when used correctly by law enforcement officials, the effect is safer communities. And safer communities are also created when State and local law enforcement officials help to enforce Federal immigration law. That is made even more clear when we look at examples in which State or local law enforcement has failed to do so.

For instance, four of the 9/11 hijackers had documented contact with State or local law enforcement officers after entering the United States. All four were pulled over for traffic infractions at one point in the months before September 11, 2001. Unfortunately, none were reported to Federal immigration officials, despite their violations of Federal immigration laws. We all know the devastating results of the hijackers’ malicious activities, and can only speculate how many lives might have been saved.

Operation Community Shield is an ongoing example of benefits of coordination among Federal, State and local law enforcement entities. It is a law enforcement program in which Federal, State and local law enforcement officials work together to conduct criminal investigations and other law enforcement operations against violent criminal alien street gangs. According to ICE, since Operation Community Shield’s inception, 7,655 street-gang members and associates from over 700 different gangs have been arrested and are no longer on America’s streets; 107 of those arrested were gang leaders, and more than 2,555 of those arrested had violent criminal histories.

By virtue of their sheer numbers, 740,000 State and local law enforcement personnel come into contact with many more people on any given day than do Federal enforcement officials. This contact can result and has resulted in the arrests of illegal immigrants who would otherwise be free to commit future crimes. Remember, no crime by illegal aliens would ever occur if they were removed from the United States before they could strike. These are truly senseless crimes.

Sadly, the state of local law enforcement officers who came into contact with Alfredo Ramos prior to March 30, 2007 were prohibited by their jurisdictions from coordinating with Federal immigration officials. I say sadly, because since on that day, Ramos killed 16-year-old Tessa Tranchant and her 17-year-old friend, Allison Kunhardt. We will hear shortly about the devastating effects of lack of law enforcement coordination from Tessa's father, who is here today.

Tessa, Allison, their families, and the other victims of criminal aliens, are the ones whose country failed to protect them. They are the true victims. If we have to choose between political correctness and ensuring the safety of the American people, I will choose the American people in a heartbeat.

Thank you, Madam Chair. I yield back.

Ms. LOFGREN. I would now recognize the Chair of the Constitution Subcommittee, Mr. Nadler, the co-convenor of this hearing, for his opening statement.

Mr. NADLER. Thank you, Madam Chairwoman. I am pleased to be able to join you in holding this hearing on the civil rights implications of State and local enforcement of Federal immigration laws.

This is the second joint hearing being held by the Constitution and Immigration Subcommittees. That is significant because we have received many reports from around the country about law enforcement officials in some jurisdictions going beyond the law and engaging in abusive activities we had hoped were no longer found in this country.

It is important that the law is enforced effectively. It is also important that the rule of law is respected by everyone, especially by those charged with enforcing it. Unfortunately, it appears that in their zeal to enforce immigration laws, some local law enforcement officials have gone far afield, violating our civil rights laws, violating the Constitution, violating the rights of U.S. citizens and of noncitizens who are here legally. That is not law enforcement, that is subversion of the law.

We need to ask some very important questions today. Most importantly, is it appropriate to have local police enforcing the immigration laws, or is that Federal function better left to the Federal Government? If it is appropriate, are Federal dollars being spent correctly, with proper oversight and within the requirements of the law? If they are not, if a particular local police enforcement agency is violating the law systematically, should the Department of Justice revoke the section 287(g) contract on the grounds that that police agency is not conducting itself within the bounds of the law and cannot be trusted to enforce the law under the law?

In some instances, we have seen a pattern and practice of violating people's civil rights. Reports of widespread racial profiling,

threats against the exercise of first amendment rights, retaliation against newspaper reporters who print unflattering comments about local officials, selective prosecutions, the abuse of arrestees and prisoners, among other problems, demand a careful investigation.

We have witnesses here today who will tell of some very compelling and distinguishing stories. I hope the Members of this Committee will pay careful attention.

Whatever your views on immigration policy, I hope we can all agree that the police power does not give anyone the right to declare open season on anyone who may "look foreign" to someone else. That is not the American way. In fact, It is illegal, and the Federal Government has a duty, just as we did when local law enforcement colluded with the Ku Klux Klan many years ago, to intervene and protect individual rights against local law enforcement if they are violating such rights, without fear or favor.

I thank the distinguished Chairwoman, and I yield back the balance of my time.

Ms. LOFGREN. The gentleman yields back.

I am advised that the Ranking Member of the Constitution Subcommittee would like to waive his opening statement, so we will go to the Ranking Member of the full Committee, Mr. Smith, for his opening statement.

Mr. SMITH. Madam Chair, I hope this hearing will explore the detrimental effects of sanctuary cities that prohibit State and local law enforcement officials from helping enforce immigration laws and making our communities safer.

The 740,000 State and local law enforcement officials in the United States should do all they can to protect the American people. That includes helping enforce immigration laws. Otherwise, criminals and even terrorists are able to prey on innocent victims.

This very harm occurs on a regular basis in sanctuary cities across the United States. For instance, the director of A Christmas Story, Bob Clark, was killed by an illegal immigrant drunk driver in Los Angeles in April, 2007. An illegal immigrant gang member shot three students in Newark, NJ, execution style in August 2007. He was free on bail, and was facing charges of aggravated assault and sexual abuse of a child at the time of the murders.

An illegal immigrant from Mexico was arrested in January 2008 after DNA matched him to a series of rapes of teenage girls in Chandler, AZ. Seventeen-year-old Jamiel Shaw, Jr. was murdered by an illegal immigrant in Los Angeles in March 2008. He had been released from jail on an assault charge the day before he killed Shaw.

An illegal immigrant who had numerous past violent crime convictions savagely murdered Tony, Michael and Matthew Bologna in San Francisco in July 2008. The father and two sons were all shot while sitting in a car.

Last November, 83-year-old Lila Meizell was murdered in Wheaton, Maryland by three illegal immigrants who beat her to death and burned her alive to cover up a check-writing scheme.

An illegal immigrant gang member shot 14-year-old Tai Lam in October last year in Montgomery County, MD.

Unfortunately, there are countless more examples. The 287(g) program was created in the Illegal Immigration Control and Immigrant Responsibility Act of 1996, which I co-authored. The program allows DHS to enter into an agreement with a State or locality so their law enforcement officers can assist in the investigation, apprehension, and detention of illegal aliens. It is purely voluntary on behalf of local law enforcement officials.

In recent years, the annual number of jurisdictions participating has risen dramatically from one in 2002 to 67 currently. In fact, DHS cannot keep up with the increased demand. In fiscal year 2007, ICE received 69 new applications. According to ICE, the vast majority were rejected because of limited funding.

According to ICE, "Since January, 2006, the 287(g) program is credited with identifying more than 79,000 individuals, mostly in jails, who are suspected of being in the country illegally."

When we wrote the bill that created section 287(g), our goal was to help local law enforcement officials reduce the crimes committed by illegal immigrants. Law enforcement officials have testified that this voluntary program does work.

Also, as the co-author of the legislation enacting the 287(g) program, let me state clearly that it was not our intent that the program would only be used to address serious criminal activity. The program was created to let State and local law enforcement officials help enforce all immigration laws and to remove illegal immigrants from the streets before they go on to commit preventable crime.

Those who are serious about public safety should not only support the program but also call for its expansion. We should do more, not less, to protect the lives and well-being of all Americans. We should do more to make our communities safer.

I thank you, Madam Chairman, and I yield back.

Ms. LOFGREN. The gentleman yields back.

I would now recognize the Chairman of the House Judiciary Committee, the Honorable John Conyers, for his opening statement.

Mr. CONYERS. Thank you, Madam Chairman. And I wish to thank all my colleagues for being here. But before I do, something unusual has happened in the Judiciary Committee that I would take a moment to bring your attention to. We have had a nomination of Lou DeBaca, Esq., to be Ambassador at Large for Human Trafficking in the State Department, made recently by the President of the United States. He has to go before the Senate for confirmation. So we would like to just have recorded here a round of applause for him. It doesn't commit you to support him or testify against him, but let's—

Ms. LOFGREN. Would Lou DeBaca please stand up?

Thank you, Mr. Chairman. And I think on a bipartisan basis, we do recognize the tremendous work that Lou has done for the Committee, and especially for the human trafficking bill that was so broadly supported across the aisle and brought to the President and is a triumph. And really Lou's effort made that happen. It was a terrific service to the country.

Mr. CONYERS. I yield to Steve King.

Mr. KING. I thank the Chairman, and I appreciate the acknowledgement.

I used to think that when the lights are on at night, it was because somebody left them on. But I submit, instead, it is Lou working late at night to do his job and do his duty. So that is an example of the kind of dedication we have here across our staffs on both sides of the aisle. I think it is very appropriate for us to acknowledge and celebrate that kind of effort and the kind of career path that we see Lou on. So I congratulate you and I appreciate the work you do.

Mr. CONYERS. Thank you very much. To have both Committees here, both Subcommittees, and to have our colleagues, Ted Poe and Greg Harper, join us in the proceedings today is very significant to me.

We are here talking about a very small part of our immigration problems. Out of 17,000 law enforcement jurisdictions, we have 67 that are using 287(g) that requires our presence here today. We even have Professor Harris, formerly at Toledo Law School, now at Pittsburgh University Law School, who has written two books on the subject of profiling, who will help make it clear to me and Steve King that racial profiling, as a policy in and of itself, is not acceptable except where it is in connection or in relationship to a specific crime, where a suspect's description comes in that way. But otherwise, it is considered a pretty gross violation of the 14th amendment's equal protection clause, but we will be hearing more about that as we go on.

In a true spirit of bipartisanship, I would like to remind the Committee that President George W. Bush, in his first Inaugural Address, spoke very strongly against racial profiling as an unsatisfactory police technique. And Attorney General Ashcroft, who has sat in this room on many occasions, even recently, had joined with him in decrying the inaccurate or improper use of racial profiling.

And so we are talking about 67 jurisdictions out of 17,000 where frequently sheriffs have made a practice of racial profiling for political gain. I hate to say this in this day and age, but immigrant bashing is a pretty popular sport, unfortunately, in some areas. When we first started off on the issue of racial profiling, the phrase was "driving while Black." Driving while Black, you get pulled over, period. "What did I do wrong?" "Look, buddy, give me your license and proof of ownership and insurance and we will talk about it. We have got a right to stop anybody that we think is violating the law." That is profiling.

Now Hispanic Americans are even more frequently being targeted. And so I commend Chairman Nadler and Chairwoman Lofgren for calling us together for this hearing.

Ms. LOFGREN. Thank you, Mr. Chairman. By unanimous consent, the Chairman is granted an additional 30 seconds so he may yield to Mr. Watt.

Mr. WATT. I thank the gentlelady for bending the rules in that way.

I really wanted recognition only to express my thanks to the Chair of both Subcommittees for addressing an issue that is raging in local communities in which these programs exist and in local communities in which they do not exist because there is a signifi-



cant movement, I think, to some extent driven by money, to expand these programs.

The issues that Mr. King and Mr. Smith on one side have outlined and the ones that have been outlined on our side about profiling and other concerns about constitutional rights are all legitimate. And these issues have been addressed in local communities, rather than here where they need to be addressed. So I just wanted to express thanks and hope we can find a happy balance.

Ms. LOFGREN. And the Chairman is granted an additional 30 seconds by unanimous consent so he may yield to Mr. Poe.

Mr. POE. Thank you very much. Of course profiling a person based on race is abhorrent to our system, but we must also deal with the reality of the problems that we have with illegals that have committed crimes in this country.

The city of Houston, TX, has over 400,000 illegals, but yet they claim they are not a sanctuary city. And they have finally decided, based upon the fact that the last several peace officers who have been shot have been shot by people illegally in the country, to move forward with the 287(g) program. I think we should explore that and make sure that the 287(g) program works, and that local law enforcement that wants to use it to help prevent people from committing crimes in this country who are from foreign countries, wherever they're from, should be enhanced rather than rejected.

I yield back.

Ms. LOFGREN. The gentleman yields back.

All of those bells and whistles mean that we have been called to the floor of the House for a series of votes. What I would like to do is to introduce the witnesses, kind of as a teaser for those watching on the Web, so that they will continue to watch and we will come back.

I think we have at least an hour of votes, honestly, so we are going to set a time of 11:45 to reconvene so that people will have a chance—there is a cafeteria in the basement; you can get a cup of coffee, and you won't have to sit here in this room for an hour waiting for us to come back.

But before we go, let me introduce the panel of witnesses.

First, It is my pleasure to introduce Julio Cesar Mora. Mr. Mora is a 19-year-old native of Arizona. He was raised by his father, Julian Mora, and is the youngest of five kids. He attended Estrella High School. And on February 11, 2009, he was detained with his father by the Maricopa County Sheriff's Office for close to 3 hours at the site of Handyman Maintenance, Incorporated in Phoenix, Arizona.

Next, I would like to introduce Antonio Ramirez. Mr. Ramirez is an American citizen. He has dedicated his life to helping low-income families and immigrants here in the United States as well as in Mexico. Upon coming to the United States more than 20 years ago, Mr. Ramirez had his sights set on Manhattan, but he fell in love with Frederick, Maryland where he has created his new life.

Mr. Ramirez immediately became involved in his new community by volunteering at a hospice serving individuals with HIV, and at a nursing home teaching English, and working as a substitute teacher in public schools.

In 2003, Mr. Ramirez helped start a nonprofit organization called Nuestra Casa del Pueblo, Our House of the People, which assists local Latino and immigrant populations to integrate and to improve their lives. The organization also focuses on improving relationships between police agencies by teaching officers basic Spanish and Latino culture.

Unofficially, Mr. Ramirez acts as a liaison for many in the Latino community in organizations like the Frederick County Health Department, legal aid groups, and the Frederick County Community Action Agency, as well as the Frederick County Department of Social Services, as well as many others.

Next, I would like to introduce Deborah Weissman. Professor Weissman is the Reef Ivey II distinguished professor of law and director of clinical programs. She is a Phi Beta Kappa graduate of Syracuse University, and she graduated cum laude from Syracuse University Law School.

Prior to teaching law, she has had extensive experience in all phases of legal advocacy, including labor law, family, education-related civil rights, as well as immigration law, in Albuquerque, New Mexico, and Tampa, Florida, and as a partner in a civil rights firm in Syracuse, New York. From 1994 to 1998, she was deputy director and then executive director at Legal Services of North Carolina.

Finally, I would like to introduce Professor Ray Tranchant. Mr. Tranchant is currently director of the Advanced Technology Center in Virginia Beach. He is also an adjunct professor at Cambridge College in Cambridge, Massachusetts, Chesapeake Bay campus, and Bryant and Stratton College in Virginia Beach, teaching mathematics, IT project management, and e-commerce management courses.

Mr. Tranchant is a graduate of the United States Naval Academy, a former naval flight officer, and a former public school teacher.

Mr. Tranchant's advocacy for border security and national security resulted primarily from the tragic March 2007 murder of his 16-year-old daughter Tessa by an illegal immigrant who had several previous criminal convictions.

We look forward to hearing the testimony of all four witnesses, but we will do so in about an hour. So this hearing is recessed. We will see you back in approximately an hour.

[Recess.]

Ms. LOFGREN. I am hopeful the Minority will be here soon. Ah, Mr. King is here; that is great. But because of our recess for votes—and we will be called again to votes in about an hour—I would like to begin hearing the testimony.

Under our rules, the full written statement of each witness will be made part of our official record. And so what we would like to ask you to do, as much as possible, is to deliver your oral remarks in about 5 minutes.

There are two little odd machines there on the desk, and that is our lighting system that lets you know when your time is almost up. When the yellow light goes on, it means that you have 1 minute to go. And when the red light goes on, it means you have actually used 5 minutes. And, at that point, we won't cut you off mid-sentence, but we would ask you to please wrap up, because we

have a second panel after you. And we want to make sure that we hear from everybody who has traveled from, in some cases, great distances to be here and to say something important to the Congress.

So, Mr. Mora, we would like to begin with your testimony now, please.

**TESTIMONY OF JULIO CESAR MORA, AVONDALE, AZ**

Mr. MORA. Hello. My name is Julio Cesar Mora. I am 19 years old, and I am from Avondale, Arizona. I have three brothers, one sister, and we were all born in the United States. My mother passed away when I was still little, so I have mostly been raised by my dad. My dad is 66 years old, and he still works so that he can support all of us. He is a lawful, permanent resident.

In February, I was driving with my dad to work when we were stopped by the police. We left Avondale around 5 a.m. To go to my dad's work, HMI Contracting, a landscaping business in Phoenix. On the way, we passed two black police SUVs parked under a bulletin board. Then, about 15 seconds later, one of the SUVs caught up and stopped right in front of us. My dad had to slam on the brakes to avoid hitting the SUV that was in front of us because it was so aggressive.

I didn't understand why the SUV trapped us like that. My dad was driving just fine. One of the officers came up to the window and asked us where we were going. We told him my dad was just going to work. The police made us get out of the car. They patted us down and tied our hands together with zip ties like we were criminals. They tied my arm really tight, and it left marks on my arms. I later learned that the officers were deputies of the Maricopa County Sheriff's Office.

The deputies brought us to HMI, where there were about 80 people lined up and a lot of other police officers guarding them, telling them to turn off their cell phones. The officers were carrying guns, and some were wearing face masks.

My dad asked if he could use the bathroom; the officer said no. My father asked five times to use the bathroom. His stomach was really hurting. I was worried because he has diabetes and has a hard time holding it. My dad eventually got to go, but it wasn't until after he asked several more times and told an officer he was going to go right there in front of everyone. And even then, he had to go outside behind a car. It really hurt me that they embarrassed him like that.

Later, I also had to go, and they let me use the bathroom, but three officers guarded me and refused to untie my hands. I tried to go with my hands tied but couldn't. When I asked one of them for help, he said, "What is the matter? You can't find it?" I felt like they were making fun of me and felt very ashamed.

I went back to stand in line. When I got to the front of the line, I told officers that I am a U.S. citizen and was born here. I gave my Social Security number. He checked me in the computer, and finally they let me go, almost 3 hours after it all began. They let my dad go, too, because he is a lawfully permanent resident.

To this day, I don't know why the officers stopped us out of all the cars on the road. I don't think it is fair, the way we were treat-

ed. The police are supposed to keep us safe, but they are arresting us instead of the real criminals. I still think of that day sometimes, when I had to go to the bathroom in front of the police who mocked me, they took away our pride, my dad's and mine.

Thank you for letting me speak today.

[The prepared statement of Mr. Mora follows:]

PREPARED STATEMENT OF JULIO CESAR MORA

**Testimony of Julio Cesar Mora before the House Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law and the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties**  
*Joint Hearing on the Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws*

April 2, 2009

My name is Julio Cesar Mora. I am 19 years old and I am from Avondale, Arizona. I have three brothers and one sister, and we were all born in the United States. My mother passed away when I was still little, so I have mostly been raised by my dad. My dad is 66, and he still works so that he can support all of us. He came to this country from Mexico in the 1960s and worked for many years as a farm worker. Then he started working for a company called Handyman Maintenance, or H.M.I. contracting, doing landscaping for government buildings.

A couple months ago, in February, I was driving with my dad to work when we were stopped by the police. We left Avondale a little after five in the morning, when it was still dark. H.M.I. is at Lower Buckeye and 19th Avenue in Phoenix. When we were almost at 19th Avenue, we passed two black police SUVs parked under a bulletin board. Then, about 15 seconds after we turned onto 19th Avenue, one of the SUVs caught up and stopped right in front of us. The other one followed behind. We were still more than a hundred yards from H.M.I. I remember that my dad had to slam on the breaks to avoid hitting the one that was in front of us because it was so aggressive. I didn't understand why they trapped us like that; my dad hadn't done anything wrong. One of the officers came up to the window and asked us where we were going. We told him my dad was just going to work; my dad didn't want any trouble and he thought they would leave us alone if they knew he was on his way to work. But instead, they told us to turn off the car and step out of the vehicle. I asked them why but they didn't say. They patted us down and tied our hands together with zip ties, like we were criminals. They put mine on really tight and it left marks on my arms. I later learned that the officers were deputies from the Maricopa County Sheriff's Office.

They brought us to H.M.I., where there were a lot of people lined up and a lot of other officers guarding them, telling them to turn off their phones. There was about one officer for every three workers. I also saw some officers in black uniforms with the word SWAT written on them. They were carrying guns like they have in the army and some were wearing masks over their faces. They were searching near the soda machines, and at first I didn't understand what they were searching for, but then I realized they were looking for people. I'd never seen anything like that. These people weren't dangerous, but they were treating us like we were.

As soon as we got there, my dad asked if he could use the bathroom. He told the officer that he had to go since we left the house. They said he was going to have to wait. We went to stand on the line like they told us to, but we kept asking different officers if my dad could use the bathroom. By about the fifth time, my dad's stomach was hurting. I was worried because he has diabetes and has a hard time holding it. I even told the officers he was sick, and a guy behind me got angry and asked why they wouldn't let him go. The officers thought it was me and moved me to the back of the line away from my dad.

My dad eventually got to go, but it wasn't until he asked several more times and told an officer he was going to go right there in front of everyone, and even then, he had to go outside behind a car. It really hurt me that they embarrassed him like that. Later, I also had to go, and they let me use the bathroom, but three officers guarded me and they refused to untie my hands. I tried to go with my hands tied, but couldn't; when I asked one of them for help, he said, "What's the matter, you can't find it?" I felt like they were making fun of me just because they could.

I went back to the line and continued to wait. I still didn't know why they had arrested us and what we were waiting for. At that point, I really started to worry that they might take me to jail. I thought thank God my girlfriend Victoria, who was five months pregnant, didn't come with us that day like she usually does. But she would still wake up and see this on the news and get scared. I got up the courage to ask one of officers if I could please leave because I didn't work at H.M.I. He told me no. When I got to the front of the line, and the same officer asked me if I was a U.S. citizen. I said I was born here, and gave my name and social security number. They checked me out on their computer, and finally they let me go, almost three hours after it all began. They let my dad go too because he has had his green card since 1976.

To this day, I don't know why the officers stopped us out of all the cars on the road. Maybe it was because of the *Campesina* radio station sticker on our bumper or maybe it's because my dad was wearing his Mexican *rejana* and they thought we were illegal. But they never bothered to ask us. I don't think it's fair the way we were treated.

I have heard that the Sheriff has an agreement with ICE, and that's why he was able to ask everyone about their immigration status. I had heard that he was arresting people in Guadalupe and Mesa, but I never thought it would happen to me. Now I know it can happen to anyone, citizens too. My dad says he's always tried to protect me from these kinds of things, but that day I saw a man begging an officer not to deport him, offering him some candy as a bribe. It opened my eyes to what is happening in Arizona. Most of the people in my neighborhood, they are just trying to get by and make a better life for their kids. The police are supposed to keep us safe, but they are arresting us instead of the real criminals. I still think of that day sometimes when I have to go to the bathroom. And I still think of the guy with the candy. They took away our pride -- my dad's, this man's, and mine.

I would like say thank you to the Subcommittees for letting me speak today.

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Ms. LOFGREN. Mr. Mora, we thank you for your testimony and for coming all the way to appear before us today.

Mr. MORA. Thank you.

Ms. LOFGREN. Mr. Ramirez, we would be pleased to hear from you.

**TESTIMONY OF ANTONIO RAMIREZ, COMMUNITY ADVOCATE,  
FREDERICK, MD**

Mr. RAMIREZ. Thank you, Chairman Lofgren, Chairman Nadler, and Ranking Member King and Ranking Member Sensenbrenner and Members of the Subcommittee. And thank you for the opportunity you gave me to testify in front of you.

My name is Antonio Ramirez, and I am here today very sad. I wish people like me who wash, who build houses, who do the hard jobs in Frederick were here. But one of the reasons for me to be a citizen is that I can speak for others because they cannot speak for themselves.

And I told my friends I have a great opportunity to speak for everybody in Frederick, and they told me, "Antonio, it is not a good idea. They can do something bad to you." And I said, "Don't worry. I will bring with me the Constitution of the United States and a copy of my citizenship and the faith in God they don't treat me like criminal because of the way I look." If I put it best, that is because I give respect to everybody. But I work very hard.

And we are now the target in Frederick, not because of our background; it is because of our skin, the way we look. Even when we are residents, legal citizens, we are stopped, we are harassed. And we lost the trust—we lost our trust in the police. It is not because we come from countries where the police is corrupt. No, it is because of cultural fear, to be afraid to report any crime.

I know a woman who lives with domestic violence, and she is so afraid of losing her son and having him taken away from her. I know there are other people like me, who look like me, they have papers. The police will ask, "Where did you buy that license? Where did you get a Social Security card?" I pay my taxes.

And I am very sad here to tell you, and I feel sad because I am a human being, forget about the color of my skin, forget about my accent, look at a human being under this Constitution, when everybody has equal opportunities. And it is very sad after 400 years to keep talking about immigration. This is not a new topic for the United States. United States was created for immigrants, and now in Frederick we are treated badly.

I have lived in and around Frederick for the last 20 years, and the last 2 years they are very afraid. And you see in my testimony what I said. I can make a list. It is not enough, three pages, what has happened in Frederick. I can make you more pages.

And maybe all you see is, "Oh, there is another Latino whining." No, it is another human being who lives in the United States, under the greatest country in the world. And I can tell you, other friends are being stopped because they have something hanging from their mirror. That is the excuse. It happened to me. I was driving in the Hillcrest neighborhood, and they stopped me, and the police told me he thought I don't have my seatbelt on. When he hear I can articulate some English, he stop a little bit. He checked my license, and he let me go. And I know other people, they have been stopped because they are driving slowly. And I know other people, citizens, residents, they are asking for green cards and Social Security.

And I want to talk also about, I have offered many times to the sheriff in Frederick to help him to do the 287 the right way, if

there is a right way. And it is not the first time that I have worked with the local police. Years ago, I developed a program with the city police, the sheriff police, a sensitivity cultural program, 8-week program. When all the police come to my training, our class, to learn who we are, why we are in Frederick, to know more about us. And I really am very sad today, after I offered to work with the sheriff together, he never took me seriously. He never paid attention to me. He just listen to me and let me go.

I am very proud to be American. There is a reason I carry the Constitution. This is my Constitution I received when I was given my citizenship, and I keep it with me. This is my hope, this is my hope today, for justice for all. This is my hope today. Don't give me a title, don't target me. I am a person like you.

And I can mention all the incidents that have happened in Frederick, all the families that are destroyed for 287(g). And I offered to the sheriff to work with me. And he is working with another organization, a nativist extremist group, Help Save Maryland. What is the difference between that group and myself? I can help him to catch the real criminals. And I offer my job free.

Like I told him, just because I speak broken English does not mean that I don't love this country. I love this country. I give my life, I believe in this country, it is the reason I am here. I am here, and I am proud to be American. God bless you, America.

[The prepared statement of Mr. Ramirez follows:]

PREPARED STATEMENT OF ANTONIO RAMIREZ

Testimony of

**Antonio Ramirez**  
**Frederick, Maryland Community Advocate**

Joint Hearing on the  
Public Safety and Civil Rights Implications of State and Local Enforcement of Federal  
Immigration Laws

Before the  
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

and the  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

of the  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C.

April 2, 2009



Thank you Chairwoman Lofgren, Chairman Nadler, Ranking Member King and Ranking Member Sensenbrenner, and Members of the Subcommittees for holding this hearing and for giving me the opportunity to testify.

My name is Antonio Ramirez, and I am here today representing Latinos and immigrants in Frederick County, Maryland. When I told my friends that I had the honor of speaking to you today, many of them told me that it was not a good idea because they fear retaliation against me. Although this is a possibility, the reason I became a naturalized citizen was so that I could stand up for those who cannot stand up for themselves, and it is important that I communicate the experiences of the Latino and immigrant communities in Frederick.

I am a proud citizen of the United States. I have lived, worked, and volunteered in and around Frederick since I came to this country more than twenty years ago. Back then, I started working as a dishwasher in a Frederick restaurant. Now I am the chief safety officer for a construction company in Frederick. In between, I worked as everything from a handyman to a substitute teacher in Frederick County public schools. I have volunteered in Frederick hospitals, nursing homes and hospices, taught basic English and led bible studies in local jails. I have also helped start two non-profit organizations dedicated to helping immigrants in Frederick integrate into American society. I have also tried to help the people of Frederick get to know their immigrant neighbors a little better. For example, a few years ago, I organized an eight-week cultural sensitivity training for Frederick police officers, where they learned about Latino culture and some Spanish.

I have always shared with others my belief that this is the greatest country in the world, where everyone's rights are respected, and where no one is judged because of what they look like. And so it is with great sadness that I report to you that this is no longer true in Frederick County, Maryland. In Frederick, Latinos are not seen as people anymore; instead, we are just "illegals" – including many, like me, who are proud citizens of this great country.

Latino citizens and immigrants in Frederick feel like we are walking around with huge targets on our backs. We get stopped by the police in Frederick County for all kinds of reasons – or no reason at all – and then asked for "papers."

One Saturday about a month ago, a Latino man I know was pulled over at about 7:30 in the morning. He was told by the police officer that it was because the little tree air freshener hanging from his rearview mirror was illegally blocking his view of the road. I have heard that this has happened to several other Latino drivers in Frederick, but I have never heard of it happening to non-Latinos.

I know two Latino men who were pulled over in separate incidents – one in October, and one in November – both because the police officers told them they were driving too slowly. I have heard of at least two other people – both Latino – who have been pulled over for the same thing. Only one of the four was given a ticket for driving too slowly.

I have also heard of Latino citizens getting pulled over for things that they swear that they did not do, like not coming to a complete stop or not staying in one lane. They are convinced that the only reason that they were stopped was because the officer saw a brown face behind the wheel and assumed it was an “illegal” driving. Latinos have also told me that when the police do stop them, they ask everyone in the car for passports or other identification cards, no matter the reason why the car was stopped.

Other Latinos – both immigrants and citizens – have said that they have been stopped by police and asked for identification while they were just walking on the sidewalk or sitting on a bench. Most of them are also asked if they have drugs on them, and the police usually pat them down. This especially happens in Hillcrest, a mostly Latino neighborhood of Frederick. However, last Saturday a Latino man I know was stopped by police in downtown Frederick, who asked him if he was selling drugs. They only let him go after they searched him and he showed them his driver’s license.

Last summer, just a few months after the 287(g) program started, I was pulled over by the police in the Hillcrest neighborhood. I had no idea why I was pulled over. I asked the officer as he walked up to my window if there was a problem. He seemed surprised to hear me speak in English. He said that he had pulled me over because he thought I was not wearing my seatbelt, even though I had it on the entire time. After checking my license, he let me go. I think it was the color of my skin that made the officer “mistakenly” think that I was not wearing a seatbelt.

These actions by the police in Frederick have made even Latino *citizens* change the way we live our lives to avoid being harassed. We avoid driving on certain roads that we know the police stake out. We avoid driving at all late at night, when it is too easy for police to pick out the Latino drivers and make up a reason to pull us over. For over 20 years, I had a rosary hanging from my rearview mirror as a reminder of my faith. After my friend was pulled over for having the air freshener on his mirror last month, I took it off. I didn’t want the police to have it as an excuse to pull me over and harass me.

The Frederick County Sheriff’s Office has claimed that this program is about catching violent criminals.<sup>1</sup> Last summer I met with him and one of his officers in his office. I offered to work with him to improve relations between his office and Frederick’s Latino community and to help him catch criminals. After listening for a few minutes, he asked me why the Latinos don’t understand that “we don’t want them here.” He explained that he “want[s] Frederick County to look the way it did fifteen years ago,” and that that was a reason why he joined the 287(g) program.

Sheriff Jenkins did not take me up on my offer to work with him to catch criminals, either at this meeting or when I made the same offer in October. He has also refused to meet with other Latino citizens who are very concerned about the discrimination in Frederick. However, he has been working with a group called “Help Save Maryland,” which the Southern Poverty Law

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<sup>1</sup> *Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law, Before the H. Comm. on Homeland Security, 111th Cong. 1 (March 4, 2009)* (written statement of Charles A. Jenkins, Sheriff of Frederick County).

Center says is a “Nativist Extremist” group.<sup>2</sup> He has been the guest speaker at Help Save Maryland events in Montgomery and Prince George’s Counties, Maryland, where he advocated pressuring local officials in those counties to join the 287(g) program.

Sheriff Jenkins has also boasted about how the program has helped him bring money to the County because the federal government pays him \$83 a day to detain immigrants, but it only costs him \$7 a day to hold them.<sup>3</sup>

Another problem with the program is that even though the police of the City of Frederick is not in the 287(g) program, there is only one jail in the County. So when anyone is arrested in the County by any police agency, they go to the Sheriff’s jail. That means that Latinos and immigrants are now afraid of not just the Sheriff, but all police.

As a result, Latinos and immigrants do not report crimes anymore. I know one woman who is the victim of domestic violence who will not report it because her husband has said that if she does, he will call immigration, have her deported, and keep their child. And therefore she just tolerates being beaten.

I know a mother who is too afraid to call the police about the drug dealer who lives in her neighborhood, even though he has tried to give drugs to her children. She confronted the drug dealer, and demanded that he stop, but he just laughed at her, both because she is a little woman and he is a large man, but mainly because he knows that she will not call the police.

I also know a Latino man who was robbed last summer on Patrick Street in downtown Frederick. He was approached by a man who demanded that he give him all his money or else the thief would call the police and tell them that the Latino man was selling drugs. Instead of risking problems with immigration, he gave up his money. I have heard of several other Latinos being threatened like this, but none of them have reported it to police.

The Sheriff testified to Congress last month that immigrants don’t trust his officers because of our “cultural problems,” because we come from countries where the police are corrupt. It is true that many of us come from countries where you cannot trust the police. But he is wrong that this is a reason why we do not trust him or his officers; to the contrary, we come expecting much better from this country. We expect to be able to trust the government and law enforcement. But we have been disappointed by Frederick, where the problem of culture is not ours – it is the culture of fear that has been spread with the 287(g) program.

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<sup>2</sup> Southern Poverty Law Center, ‘Nativist Extremist’ Group List (2009), <http://www.splcenter.org/intel/intelreport/article.jsp?sid=443>.

<sup>3</sup> Nicholas Stern, *Sheriff Updates County on ICE Action*, Frederick News-Post, Oct. 17, 2008, available at [http://www.fredericknewspost.com/ssections/story/Tools/print\\_story.htm?storyID=81545&cameFromSection=news](http://www.fredericknewspost.com/ssections/story/Tools/print_story.htm?storyID=81545&cameFromSection=news).

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Ms. LOFGREN. Thank you very much, Mr. Ramirez.  
Professor Weissman?

**TESTIMONY OF DEBORAH W. WEISSMAN, REEF C. IVEY II DISTINGUISHED PROFESSOR OF LAW, DIRECTOR OF CLINICAL PROGRAMS, UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL SCHOOL OF LAW**

Ms. WEISSMAN. Good morning, Chairwoman Lofgren, Ranking Member King, Chairman Nadler, and Members of the Subcommittees. My name is Deborah Weissman, and I am a professor at the University of North Carolina School of Law. And I am a coauthor of a report entitled, "The Policies and Politics of Local Immigration Enforcement Laws." The report focused on implementation of the 287(g) program in North Carolina and the impact on our communities when local law enforcement agencies undertake immigration enforcement duties. And I thank you for the opportunity to appear before you today.

In North Carolina, several communities that are participating in the 287(g) program have histories of racial violence and traditions of White supremacy, which often contribute to an environment hostile to the local Latino community. 287(g) whether it operates in the field or in a jail, is not a program that can be simply handed off to localities without consideration of history and context. It is a program that often serves to reinforce local practices of racism and racial bigotry.

In North Carolina, some local elected officials, including those who have signed on or supported 287(g) treatments, have publicly expressed views that have denigrated immigrants regardless of their status, based on racist stereotypes and baseless assumptions. Let me provide some examples.

Shortly after signing on to 287(g) Sheriff Terry Johnson of Alamance County made brazenly racist claims about Mexicans, stating, "Their values are a lot different, their morals, than what we have here. In Mexico, there is nothing wrong with having sex with a 12- or 13-year-old girl." Before the 2004 Presidential election, the same Sheriff Johnson threatened to go door to door to investigate the immigration status of registered voters with Hispanic last names, a scare tactic not new to African-Americans in our State.

Consider the comments of Johnston County Sheriff Steve Bizzell. Bizzell was a member and then president of the North Carolina Sheriff's Association in 2007, the same year that the association issued a resolution referring to undocumented immigrants as "illegal alien invaders." Bizzell stated Latinos are "breeding like rabbits" and that they "rape, rob, and murder American citizens." He called Mexicans "trashy." He reminisced about the Johnston County of his youth, when immigrants were "all in a group, down a path somewhere, in a camp," even though he admitted that living that way was bad for them as human beings.

Through 287(g) agreements, deputies and officers across the State who may be lead by Sheriff Johnson or influenced by Sheriff Bizzell have the resources and virtually unfettered authority to act on a discriminatory sentiment that they have espoused. Such a situation cultivates the illegal activity of racial profiling. Just last month, hate groups were invited to join in the battle over whether counties should sign on to 287(g). And this was not the first time

that hate groups have been implicated in North Carolina's response to the increasing rates of Latino immigrants.

History demonstrates that there is a very thin line dividing anti-immigrant laws from those that diminish the civil rights and due process protections of citizens. And I would like to share two stories today.

The first, Paul Cuadros, a professor in the school of journalism at UNC and a U.S. Citizen. He describes being pulled over on his way to a soccer game with his friend, Francisco, in Chatham County, where there is currently contentious debate about whether to sign on to 287(g).

He says, "I knew instantly what was going to happen. We were two Hispanic men in dark sunglasses on a slow Sunday afternoon. After asking for my license and registration and keeping me and Francisco waiting for what seemed an unusually long time to check my information, the officer told me why he had stopped me. He said my license plate monthly sticker had faded. The year was fine—new, in fact—but the month was hard to see. He just wanted to let me know that. I knew exactly what he wanted me to know." Professor Cuadro says, "If you have never been racially profiled, then you don't know how much control it takes to restrain your anger over the violation of your civil liberties."

Another example is that of a woman I will call "E," a naturalized U.S. citizen who complained to her employer in Alamance County of significant mistreatment and discrimination at work. He told her she was crazy to think that she would have any recourse, and because she was an immigrant she should stop complaining. He referred to the passage of 287(g) as an indication of her lesser and vulnerable status.

And this is not the only example of immigrants whose legal rights are blunted because of this program. One major concern is the impact that this program is having on victims of domestic violence and other crime victims who are terrified to call the police for protection, seek assistance, and aid in law enforcement efforts. These are just a few of the examples that indicate the rippling effect of 287(g) in the community.

Given the local cultural practices and histories that mediate the implementation of what remains Federal law and standards, we need a moratorium on this program until there can be an assessment and until greater safeguards, oversight, and accountability can be provided.

Thank you.

[The prepared statement of Ms. Weissman follows:]

PREPARED STATEMENT OF DEBORAH M. WEISSMAN

PREPARED STATEMENT OF DEBORAH M. WEISSMAN

Testimony of Deborah M. Weissman

Reef C. Ivey II Distinguished Professor of Law  
Director of Clinical Programs  
School of Law  
University of North Carolina at Chapel Hill

Before the

Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
and the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International  
Law  
United States House of Representatives

Joint Hearing on the "Public Safety and Civil Rights Implications of State and Local  
Enforcement of Federal Immigration Laws"

Thursday, April 2, 2009, 10:00 a.m.

Room 2141, Rayburn House Office Building

**I. Introduction**

The University of North Carolina School of Law's Immigration/Human Rights Policy Clinic and the ACLU of North Carolina Legal Foundation recently released a policy review entitled *The Policies and Politics of Local Immigration Enforcement Laws, §287(g) Program in North Carolina* in order to raise public concern about a recent and growing phenomenon particularly in the State of North Carolina: local enforcement of immigration laws under the Immigration and Nationality Act § 287(g).<sup>1</sup> This report raises substantive issues about the changing demographics in North Carolina, failed immigration reform at the national level, and the way in which our state and localities have responded. More specifically, the policy brief has focused on the implementation of the § 287(g) program in accordance with the Immigration and Nationality Act, and the impact on our communities when local law enforcement agencies undertake immigration enforcement duties. Our report made a number of findings about the detrimental impact of 287(g). Such effects include:

- The marginalization of an already vulnerable population, as 287(g) encourages, or at the very least tolerates, racial profiling and baseless stereotyping, resulting in the harassment of citizens and isolation of the Hispanic community.

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<sup>1</sup> Co authors of the report are Katherine Bandy, Catherine Currie, Evelyn Griggs, Jill Hopman, Nicole Jones, Rashmi Kumar, Marty Rosenbluth, Christina Simpson (UNC law students and law graduates), and Rebecca Headen and Katherine Lewis Parker of the ACLU of North Carolina Legal Foundation, available at <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>

- A fear of law enforcement that causes immigrant communities to refrain from reporting crimes, thereby compromising public safety for immigrants and citizens alike.

- Economic devastation for already struggling municipalities, as immigrants are forced to flee communities, causing a loss of profits for local businesses and a decrease in tax revenues.

- Violations of basic American liberties and legal protections that threaten to diminish the civil rights of citizens and ease the way for future encroachments into basic fundamental freedoms.

The current implementation processes of 287(g) also present a number of legal issues which implicate many individual rights and threaten to compromise the rights of the community as a whole.

## **II. 287(g) in North Carolina in Context : Rapidly Changing Demographics**

Implementation of 287(g) in North Carolina must be considered in the context of the state's changing demographics. North Carolina has had one of the fastest growing Latino populations. Response to the changing population has varied from constructive adaptation and supportive policies to nativist and racist reactions that deny and deprive Latino residents of their human and legal rights in ways that can be measured both formally and informally. A Carolina Poll, conducted by the University of North Carolina at Chapel Hill School of Journalism, of long-time residents uncovered anxieties and distrust of Latino newcomers and public discomfort with changing demographics whether newcomers are documented or undocumented.<sup>2</sup>

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<sup>2</sup> See James H. Johnson, Jr. et al., A Profile of Hispanic Newcomers to North Carolina, Popular Gov't, Fall 1999. See Letter to the Editor, Just Too Many Folks, News & Observer (Raleigh, N.C.), Jan. 24, 2000, at 10A; Patsy McCormick, Must We Accept Excessive Immigration?, News & Observer (Raleigh, N.C.), Feb. 26, 2000, at 19A; Ron Woodard, Letter to the Editor, Uphold Immigration Law, News & Observer (Raleigh, N.C.), Apr. 23, 2000, at 10A.



In some places in North Carolina, local elected officials, including those who have signed or supported 287(g) agreements, have contributed to nativist sentiment and have publicly expressed views that have denigrated immigrants regardless of their status based on racist stereotypes and baseless assumptions. Through the 1990s, immigrant labor was welcomed in North Carolina; efforts were made to increase their numbers through the North Carolina Growers Association (farm workers) and through partnerships between textile employers and the local employment security commission.<sup>3</sup> Latinos who settled in Alamance County, NC, which has had one of the fastest growing Latino populations, for example, played a critical role in agricultural work that helped to slow the decline of small farms and to sustain the textile and furniture industry.<sup>4</sup>

However, as Alamance county's demographic landscape changed, and with the increase of Latinos in all facets of community, tensions arose. In an interview with the Raleigh News & Observer, Alamance County Sheriff Terry Johnson complained that more Latino criminals were arriving to the area.<sup>5</sup> In an example where a local official implementing federal law reveals ignorance and hostility, Johnson made brazenly racist claims about Mexicans, stating, "[t]heir values are a lot different -- their morals -- than what we have here," Johnson said. "In Mexico, there's nothing wrong with having sex with a 12-, 13-year-old girl ... They do a lot of drinking

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<sup>3</sup> Hannah Gill, *North Carolina and the Latino Experience*, (forthcoming, UNC Press).

<sup>4</sup> *Id.*

<sup>5</sup> Kristen Collins, *Sheriffs Help Feds Deport Illegal Aliens*, News & Observer, (Raleigh, NC) Apr. 22, 2007.

down in Mexico.”<sup>6</sup> He linked the Latino presence with growing crime rates.<sup>7</sup>

A study of North Carolina court statistics, however, contradicts Johnson’s claims.<sup>8</sup> Moreover, according to both national and state studies, the incidence of criminal activity by foreign-born residents is actually lower than that of natural-born citizens.<sup>9</sup> In fact, incarceration rates among young men have been lowest for immigrants over the past three decades.<sup>10</sup> As the undocumented immigrant population has doubled its size since 1994, the violent crime rate in the United States has declined 34.2 percent and property crime has fallen 26.4 percent.<sup>11</sup> Similarly, a comprehensive study of population growth and crime between 1997 and 2006 in all counties in North Carolina demonstrates that the counties with the highest Hispanic population growth rate have the lowest violent and property crime rates.<sup>12</sup> The same study showed a positive correlation between *total population* growth and increased crime rates. In other words, counties with high growth rates find increased crime rates, but counties with high growth rates of

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (noting that according to the Administrative Office of the Courts records, between 2002 and 2006, Hispanics accounted for 12 percent of Alamance County’s criminal cases. In 2005, they made up 10 percent of the county’s population).

<sup>9</sup> Rubén G. Rumbaut and Walter A. Ewing. *The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates among Native and Foreign-Born Men*, The Immigration Policy Center (Spring 2007) available at [http://www.aifl.org/ipc/special\\_report/sr\\_feb07\\_resources.shtml](http://www.aifl.org/ipc/special_report/sr_feb07_resources.shtml). Lindsay Haddix, *Immigration and Crime in North Carolina: Beyond the Rhetoric*, Dept. of City and Reg. Planning, UNC Chapel Hill, Master’s Project, Spring 2008.

<sup>10</sup> Haddix, *supra* note 9 at 19.

<sup>11</sup> Rumbaut and Ewing, *supra* note 9.

<sup>12</sup> Haddix, *supra* note 9 at 11.

*Hispanic populations*, find decreased or steady crime rates.<sup>13</sup>

Of course, not all public officials have engaged in these types of attacks on immigrants. Mike Williams, the Chief of Police for the city of Burlington in Alamance County has emphasized that the “vast majority [of immigrants] coming are looking for a better life.”<sup>14</sup> However, notwithstanding the studies that dispel myths about crime rates and immigration, responding to faulty public opinions and misperception is often politically advantageous for the agencies that take part in §287(g) programs.

### **III. 287(g) as an Instrument of Hostile Responses to Newcomers**

The purposes for which the 287(g) program was enacted have been subject to debate. According to ICE, the program was originally intended to target and remove undocumented immigrants convicted of “violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering.”<sup>15</sup> In September 2008, the report accompanying the Department of Homeland Security Appropriations Bill, 2009, while allocating funds generally to local law enforcement of immigration laws, expressed its intention that ICE prioritize the removal of criminal vs. non criminal aliens.<sup>16</sup> Also at the national level, Senator Elizabeth Dole’s campaign advertisement in the spring of 2008 promoted 287(g) as a

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<sup>13</sup> *Id.*

<sup>14</sup> Gill, *supra* note 3.

<sup>15</sup> United States Immigration and Customs Enforcement, Partners, available at [http://www.ice.gov/partners/287g/Section287\\_g.htm](http://www.ice.gov/partners/287g/Section287_g.htm)

<sup>16</sup> **Error! Main Document Only.** 110TH Congress, Report, House of Representatives, 2d Session, 110-862, Department of Homeland Security Appropriations Bill, 2009, September 18, 2008, <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr862&dbname=110&>

program designed to deport “the ones who are tough, hardened criminals.”<sup>17</sup> The recently released U.S. Government Accountability Report on 287(g) found that although local 287(g) programs

“are not prohibited from seeking the assistance of ICE for aliens arrested for minor offenses, detention space is routinely very limited and it is important for ICE to use these and other 287(g) resources in a manner that will most effectively achieve the objective of the program—to process for removal those aliens who pose the greatest threat to public safety.”<sup>18</sup>

Furthermore, neither ICE nor local law enforcement agencies have emphasized the need for assistance in enforcing civil immigration law; instead the agreements are promoted as an important way to guarantee that “criminal aliens incarcerated within federal, State and local facilities are not released into the community upon completion of their sentences.”<sup>19</sup>

The rhetoric used to convince communities of the necessity of the program often offers assurances that the program will target dangerous criminals. In entering into a Memorandum of Agreement (MOA), a contracting municipality or sheriff’s department invariably issues a statement asserting that the 287(g) program will only apply to the violent repeat offender.<sup>20</sup> Prior to finalizing an agreement with ICE, local law enforcement officials routinely assert that the MOA will not affect general relations with the Hispanic and immigrant community, assuring

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<sup>17</sup> Rob Christensen, *Elizabeth Dole’s Ad*, News & Observer, May 29, 2008, available at <http://www.newsobserver.com/politics/story/1088652.html>.

<sup>18</sup> United States Government Accountability Office, *Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, at 12, Jan. 2009.

<sup>19</sup> **Error! Main Document Only.** United States Immigration and Customs Enforcement, Partners, available at [http://www.ice.gov/partners/287g/Section287\\_g.htm](http://www.ice.gov/partners/287g/Section287_g.htm).

that nothing would happen unless these individuals were arrested for the commission of a crime.<sup>21</sup> For example, one district attorney in North Carolina stated: "It's not a broad sweeping net that's going to cast about to get everybody who may have a [sic] questionable status immigration wise. It's trying to get to the problem of illegal immigrants who commit crimes."<sup>22</sup>

Notwithstanding the stated purposes of the programs, data reveals that the majority of undocumented immigrants caught in the snare of 287(g) in North Carolina have been charged with traffic infractions and low level misdemeanors.<sup>23</sup> For example, during the month of May 2008, eighty-three percent of the immigrants arrested by Gaston County ICE authorized officers pursuant to the 287(g) program were charged with traffic violations.<sup>24</sup> In Alamance County, approximately seventy percent of immigrants detained through 287(g) were arrested on routine traffic offenses; another sixteen percent for driving while impaired charges, and only fifteen

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<sup>20</sup> Kareem Fahim, *Should Immigration Be a Police Issue?*, N.Y. Times, Apr. 29, 2007.

<sup>21</sup> *Id.*

<sup>22</sup> John Harbin, *Henderson County Gets OK for Illegal Immigration Program*, BlueRidgeNow.com Times-News Online, Feb. 21, 2008, available at <http://www.blueridgenow.com/article/20080221/NEWS/802210334>.

<sup>23</sup> Matt Tomsic, *Many Latinos Deported, Not For Felonies But for Minor Offenses*, The Independent, Dec. 24, 2008 (noting that traffic offenses, not including DWIs, make up the largest percentage of initial charges against Latinos in Mecklenburg, Gaston, and Alamance counties), available at <http://www.indyweek.com/gyrobase/Content?oid=oid%3A272683>. Mai Nguyen and Hannah Gill, *Preliminary Data Analysis: NC Court and U.S. Census Bureau Statistics for No Operators License Charges Against Latinos/Hispanics in Mecklenburg and Alamance County* (demonstrated a significantly disparate increase in the number of Hispanic drivers cited from July 2005 and December 2007) (on file with the ACLU of North Carolina).

<sup>24</sup> American Civil Liberties Union of North Carolina, Letter to the Members of the Joint Legislative Crime Control and Juvenile Justice Oversight Committee, Mar. 11, 2008.

percent for felony charges.<sup>25</sup> Furthermore, local law enforcement have set up roadblocks for the purpose of checking licenses outside of Latino markets on the weekends and on Sundays, they have stationed themselves at roads that provide access to Latino churches.<sup>26</sup> Because these roadblock checkpoints are excluded from racial profiling data collection, it is difficult to know the statistics of individuals arrested pursuant to these tactics; however, their location is indicative of an effort to target Latinos as they go about their family shopping and worship.

Independently of the purpose with which 287(g) was enacted at the federal level, programs are in fact implemented within and mediated by local cultural traditions and social practices. It could hardly be otherwise. Communities are the sum total of their histories and traditions. These form the context in which communities arrive to their collective perception of reality. Local mediation of federal programs such as 287(g) is neither inherently good nor bad, but too often in the case of North Carolina, local histories and cultural attitudes toward newcomers have resulted in discriminatory applications of the program. As it happens, some communities that are participating in or supporting the 287(g) program also have histories of

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<sup>25</sup> Barry Smith, *Most Immigrants Detainees Brought in on Minor Traffic Violations*, Burlington Times, July 5, 2008, available at [http://www.thetimesnews.com/articles/people\\_15271\\_\\_article.html/charges\\_alamance.html](http://www.thetimesnews.com/articles/people_15271__article.html/charges_alamance.html).

<sup>26</sup> Gill, *supra* note 3. Elizabeth DeOrnellas, *Immigrants Feel the 'Shadow of Fear'*, Daily Tar Heel, July 2, 2008, <http://www.dailytarheel.com/2.3568/immigrants-feel-the-shadow-of-fear-1.160005>.

racial violence and traditions of white supremacy, which often contribute to an environment hostile to the local Latino community. In the context of local traditions, 287(g) thus often serves to enforce local practices of racism and racial bigotry.

It is, unfortunately, not difficult to identify such practices and histories in certain localities in North Carolina. In her forthcoming book, *North Carolina and the Latino Immigrant Experience*, Hannah Gill, a social anthropologist and resident of Alamance County, has closely examined the reactions to immigrant newcomers in North Carolina. In a chapter on Alamance County, she notes that in 1997, in reaction to the changing demographics, Alamance County Commissioners approved a resolution calling for a moratorium on immigration to the county.<sup>27</sup> She describes the anti-immigrant rhetoric used in electoral politics and describes one politician's campaign ads that refers to immigrants as aliens and invaders who have taken over state agencies.<sup>28</sup> One Alamance county court interpreter had to resign after allegations that he posted racist and anti-immigrant statements on the website of a white supremacists magazine.<sup>29</sup>

African-American voter suppression efforts in North Carolina have both a long history that survives in current practices.<sup>30</sup> As one study of voting rights in North Carolina during the period of 1982 through 2006 reported, "African American voters are no longer the only minority group to be targeted for intimidation campaigns" as new scare tactics have been directed at

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<sup>27</sup> Gill, *supra* note 3.

<sup>28</sup> *Id.* (describing a campaign ad used by Vernon Robinson from Winston-Salem running for North Carolina's 5<sup>th</sup> Congressional district in 2004).

<sup>29</sup> *Id.* (noting the posting on the *American Renaissance*).

<sup>30</sup> Anita S. Earls, Emily Wynes, Leeanne Quatrucci, 17 S. Cal. Rev. L. & Soc. Just. 577, 579, 589 (2008).

Latinos.<sup>31</sup> Before the 2004 presidential election, Sheriff Johnson threatened to go door-to-door to investigate registered voters with Hispanic last names.<sup>32</sup> Andrea Bazan-Mason, then the executive director of a North Carolina Latino Advocacy group, El Pueblo noted that efforts to scare Latinos from casting their votes was not new and added, “[i]t’s a message that some people have told me to my face. It’s OK if you’re here and work in our restaurants, but just don’t get involved in politics.”<sup>33</sup>

Recently, hate groups were invited to join in the battles over whether counties should sign on to 287(g). On January 29, 2009, after commissioners of Chatham County, NC unanimously approved a resolution stating their opposition to participation in 287(g), a group that calls itself NC FIRE that, according to its website, seeks to “‘educate American citizens who turn a blind eye to the many costly and destructive aspects of illegal immigration,’ including the ‘8 Ways Illegals Make You Sick,’” distributed a flyer urging recipients to “‘Fight Back Against Chatham County’ and urged members of such groups as the N.C. Minuteman Patriots and the Minuteman Civil Defense Corps to attend.”<sup>34</sup> This was not the first time hate groups have been implicated in North Carolina’s response to increasing rates of Latino immigrants. In 2000, white supremacist

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<sup>31</sup> *Id.* at 590.

<sup>32</sup> Collins, *supra* note 5.

<sup>33</sup> Jon Elliston, *El Pueblo Votes!* The Independent Weekly, Nov. 24, 2004, available at <http://www.indyweek.com/gvrobase/Content?oid=oid%3A23148>.

<sup>34</sup> Taylor Sisk, *Conservative Group, ICE Supporters Clash in Chatham*, The Carrboro Citizen, Mar. 5, 2009, available at <http://www.carrborocitizen.com/main/2009/03/05/conservative-group-ice-supporters-clash-in-chatham/#more-5083>.



David Duke spoke at a Ku Klux Klan rally in Siler City advertised as a protest against Hispanics.<sup>35</sup> News reports have documented an alarming rise in the Ku Klux Klan's once-diminishing numbers as fears over illegal immigration are exploited. The report noted that North Carolina has grown from twenty-seven to thirty-five extremist groups, including eight Klan chapters, in the past five years, with illegal immigration at the top of the list of concerns.<sup>36</sup>

The North Carolina Sheriffs Association (NCSA) has been designated as the agency responsible for administering an allocation of state funds to support the 287(g) programs throughout the state. A resolution adopted by the NCSA Executive Committee and sent to the North Carolina House of Representatives demonstrates cause for concern. It perpetuates many myths and misinformation about immigrant populations; indeed it is a document which a proper immigration enforcement training program should discourage.<sup>37</sup> The resolution claims that there is "reliable documented evidence" that terrorist groups are entering the US through the southern border, that the influx of "illegal aliens" drains the resources of the State, and that "illegal aliens" do not pay taxes. All these claims are disputable at best and have largely been proven to be inaccurate. The resolution also refers to undocumented immigrants as "illegal alien invaders."<sup>38</sup> And perhaps most notably, the resolution advocates not only for the reduction of illegal

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<sup>35</sup> Siler City Residents Pray For Peace In Anti-Immigration Rally, Feb. 17, 2000. [www.wral.com/news/local/story/139624/](http://www.wral.com/news/local/story/139624/)

<sup>36</sup> Franco Ordoquez, *More Joining Hate Groups*, News and Observer, Feb. 12, 2007 at 4B. (quoting the imperial wizard of the Mount Holly-based chapter of the Klan in Gaston County who says he has not seen membership grow so fast since the 1960s, when he joined).

<sup>37</sup> January 2007 Resolution by the North Carolina Sheriffs' Association regarding Immigration.

immigration but also for the reduction of legal immigration as well.<sup>39</sup> Since the NCSA functions as an advisor to sheriffs in counties considering implementation of § 287(g) MOAs, the content of the resolution indicates the need for additional or other oversight as to the use of funds and implementation of the program.

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<sup>38</sup> *Id.* at #8.

<sup>39</sup> *Id.* at #7.

This is not to suggest that North Carolina's response to immigrants is monolithically racist. In 1998, Governor James B. Hunt, Jr. created the Office of Hispanic/Latino Affairs and the North Carolina Governor's Advisory Council on Hispanic/Latino Affairs to "coordinate and develop state and local programs" and to "bring attention to issues affecting the Hispanic population in North Carolina."<sup>40</sup> The North Carolina Hispanic Chamber of Commerce was formed in 1996 and has been supporting dues-paying members throughout the state. As part of the Latino Initiative for Public Policy, in 2000, twenty-four state officials and community leaders took a "fact-finding" trip to Mexico to educate themselves on the culture and experiences of Latino newcomers.<sup>41</sup> School districts are experimenting with strategies aimed at teaching Spanish-speaking students. State health care delivery systems have formally recognized the challenges in serving Latino newcomers. The Administrative Office of the Courts has established a program for certification for court interpreters.<sup>42</sup> Moreover, North Carolina's reaction to increased immigration must be considered through the lens of "institutional strain and fiscal pressures" that result from the particularities and intersectionalities of state, local, and federal laws and policies.<sup>43</sup>

However, the nativist and racist commentary by law enforcement officials suggests that federal programs cannot simply be passed on to localities without concern for troubling attitudes

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<sup>40</sup> North Carolina Governor's Advisory Council on Hispanic/Latino Affairs, 1st Year Report (1999).

<sup>41</sup> Ned Glascock, *Delegates Get Preview for Mexico Trip*, News & Observer (Raleigh, N.C.), Jan. 11, 2000, at 1B.

<sup>42</sup> <http://www.nccourts.org/Citizens/CPrograms/Foreign/Default.asp>.

<sup>43</sup> See Rick Su, *a Localist Reading of Local Immigration Regulations*, 86 N.C. L. Rev.

that may control the way the program is implemented at the local level. Consider again the comments of Johnson County Sheriff Steve Bizzell, who was president of the NCSA from July 2007 until he was named the association's chairman in July 2008 and described an incident of drunk driving that resulted in the death of a young boy by saying that the child paid the "ultimate price for *another drunk Mexican* [emphasis added]."<sup>44</sup> Bizzell further vocalized his hostility toward immigrants. He stated that they are "breeding like rabbits," and that they "rape, rob and murder American citizens."<sup>45</sup> He classified "Mexicans" as "trashy" and said that he thinks "all they do is work and make love." Additionally, Bizzell announced his resentment toward civil rights advances that have helped the immigrant population in Johnston County. In the article, he reminisced about the "Johnston County of his youth" when immigrants "were all in a

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1619 (2008).

<sup>44</sup> Sarah Ovaska, *Deportation Fear Fuels Flight*, News & Observer, Jun. 12, 2008, available at [http://www.newsobserver.com/news/immigration/story/1105229.html#MI\\_Comments\\_Link](http://www.newsobserver.com/news/immigration/story/1105229.html#MI_Comments_Link).

<sup>45</sup> Kristin Collins, *Tolerance Wears Thin*, News & Observer, Sept. 4, 2008, available at <http://www.newsobserver.com/news/immigration/story/1209646.html>.

group, down a path somewhere in a camp," even though living that way "was bad for them as human beings."<sup>46</sup> Sheriff Bizzell claimed to be fulfilling the requests of Johnston County residents. He maintained that everywhere he goes, "people say, 'Sheriff, what are we going to do about all these Mexicans?'" He acknowledged that his goal is to reduce if not eliminate the immigrant population of Johnston County. Through 287(g) agreements, deputies and officers across the state, who may be led by men like Sheriff Johnson, or influenced by Sheriff Bizzell who have held a leadership position with the NCSA that has championed the § 287(g) program, have the resources and virtually unfettered authority to act on the discriminatory sentiment that they have espoused. Such a situation cultivates the illegal activity of racial profiling.

#### **IV. Impact of 287(g) on North Carolina Communities**

The method of implementation of 287(g) has serious implications for the larger community. Indeed, the 287(g) program must be understood to have a universal impact on the community. It encourages, or at the very least tolerates, racial profiling and baseless stereotyping, resulting in the harassment of local residents and the isolation of an increasingly marginalized community. Racial profiling is not only legally impermissible, but because it is based on stereotypes and wrongful assumptions about the propensity of certain groups to commit crimes, it is also immoral and ineffective.<sup>47</sup> As our courts and the federal government have noted, assumptions based on race "perpetuate negative racial stereotypes that are harmful to our

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<sup>46</sup> *Id.*

<sup>47</sup> See Reginald T. Shuford, *Any Way You Slice It: Why Racial Profiling is Wrong*, 18 St. Louis Univ. Public Law Rev. 371, 372 (1999); Guidance Regarding the Use of Race by Law Enforcement Agencies, U.S. Dep't of Just. Civil Rights Division, June 2003, available at [http://www.usdoj.gov/crt/split/documents/guidance\\_on\\_race.htm](http://www.usdoj.gov/crt/split/documents/guidance_on_race.htm).

rich and diverse democracy, and materially impair our efforts to maintain a fair and just society."<sup>48</sup> The societal and human costs as a result of such profiling are enormous.

Hannah Gill's interviews with Latino residents in Alamance County provide a clear picture of the fear they have experienced. She describes one business owner as explaining, "It doesn't matter what you are doing in the car, you could be pulled just because you are *hispano*."<sup>49</sup> Immigrant crime victims are fearful of contacting the police, and are thus more vulnerable to criminals who target them. There are few places perceived to be safe; Latino immigrants have been arrested for fishing without a license and while working in a public library after local law enforcement reportedly probed health department records in an effort to find undocumented immigrants.<sup>50</sup> Little regard has been shown for the protection of children of immigrants; in one now notorious arrest in June, 2008 an Alamance County sheriff stopped a Latina motorist a deputy along I-85 at 2 a.m. for an improper license tag. The driver, who spoke no English and had her three children with her, was taken to jail while the children were left with a male passenger, who was not a relative and later fled. The children were left alone all night alongside I-85.<sup>51</sup> Many families are "mixed status:" some are documented and others are U.S. citizens or permanent residents. All are afraid to drive, afraid to go to church, and fearful of

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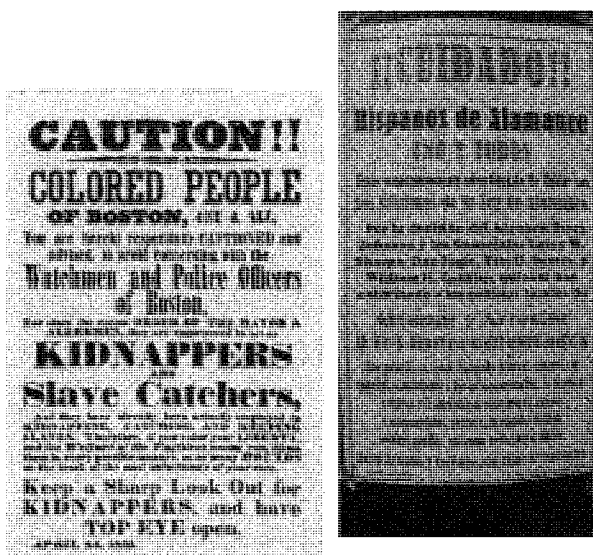
<sup>48</sup> Guidance Regarding the Use of Race by Law Enforcement Agencies, U.S. Dep't of Just. Civil Rights Division, June 2003, available at [http://www.usdoj.gov/crt/split/documents/guidance\\_on\\_race.htm](http://www.usdoj.gov/crt/split/documents/guidance_on_race.htm), [*hereinafter DOJ Guidelines*]. 66 *Id.* See also *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000).

<sup>49</sup> Gill, *supra* note 3.

<sup>50</sup> Lorraine Ahearn, *Hispanics Fear Profiling as ICE Plans Roadblocks*, News-Record.com, Aug. 8, 2008, available at [http://www.news-record.com/content/2008/08/07/article/hispanics\\_fear\\_profiling\\_as\\_ice\\_plans\\_roadblocks](http://www.news-record.com/content/2008/08/07/article/hispanics_fear_profiling_as_ice_plans_roadblocks)

taking their children to school, to the doctor, or to grocery shop.<sup>52</sup> Indeed, health care providers report that Latinos were missing appointments; businesses including the local Wal-Mart in Alamance County that catered to Latinos are on the decline, and community centers where individuals might otherwise receive counseling, advice, and other assistance are quiet.<sup>53</sup>

Fear can best be demonstrated by a poster that was put up throughout Alamance County:



(English translation: Caution!! Hispanics of Alamance, one and all. You are respectfully advised not to talk to police because of the decision of Sheriff Terry Johnson and Commissioners Larry W. Sharpe, Dan Ingle, Tim D. Sutton, and William Lashley, who have authorized the local police to catch and arrest

<sup>51</sup> *Id.*

<sup>52</sup> Gill, *supra* note 3.

<sup>53</sup> *Id.*

undocumented immigrants. Police are doing raids, traffic checks and are deporting undocumented people. If you value your liberty and well-being of your families, friends, and compatriots, avoid the police in all ways possible as you would avoid the devil. Be watchful and look out for these catchers. Agosto 1, 2008).

The poster was translated from an advertisement in a Boston newspaper in 1851 created by abolitionist Theodore Parker, warning escaped slaves of bounty hunters from the South looking to capture and take them back.

From the book, Hannah Gill, *North Carolina and the Latino Experience*, UNC Press (forthcoming).

Regardless of one's personal stance on this issue, history demonstrates that there is a very thin line dividing anti-immigrant laws from those that diminish the civil rights and due process protections of citizens. Today's anti-immigrant law facilitates tomorrow's encroachments on American liberties. Examples of racial profiling against U.S. citizens and lawful permanent residents who are foreign-appearing or Latino are not hard to come by, although individuals who have experienced such discrimination are nonetheless fearful and reluctant to tell their stories publicly, often for fear of retribution or because they do live in "mixed status" families. The following are examples of 287(g)'s slippery slope and documents the ways in which U.S. citizens have been affected.

1. The Case of a U.S. citizen with a wrongful immigration detainer.<sup>54</sup>

In June, 2008, R.I.K. a U.S. citizen who was born outside of the United States, was transferred to correctional facility for youth in North Carolina after pleading guilty to larceny and fraud. His charges and his initial confinement occurred in a 287(g) county. After arriving at

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<sup>54</sup> These facts were provided in a statement by Marty Rosenbluth, attorney with the Southern Coalition for Social Justice, who represents R.I.K.



the institution, his custody review officers began telling him that he had an immigration detainer on him and that he would be deported immediately at the conclusion of his sentence. His family checked the North Carolina Department of Correction Public Access Information System's website and saw that indeed he had a detainer on him, and further that the "U.S. Immigration" had unspecified federal charges pending against him.

After trying to resolve this issue on their own, in his family contacted the Southern Coalition for Social Justice, (SCSJ) a Durham based non-profit organization. A lawyer working with the group immediately contacted ICE agents to inform them that R.I.K. was a US citizen, and thus the detainer was illegal and invalid. At first, ICE claimed that R.I.K. was not a citizen and that their records showed he was only a lawful permanent resident (LPR) and was therefore deportable. The SCSJ attorney informed ICE that he had a copy of R.I.K.'s passport which was conclusive evidence of his client's U.S. citizenship, and that further, ICE's record were out of date.

ICE then insisted on more proof, suggesting that perhaps the passport was a forgery. Eventually, however, after several phone calls, ICE confirmed that indeed R.I.K. was a U.S. citizen and agreed to have the detainer lifted. However, after further investigation, ICE determined that their agency had not lodged the detainer, but that instead it had been put into the system by local law enforcement. Despite this information, and after numerous phone calls to the institution where his client was held, the SCSJ has been unsuccessful in getting the detainer removed.

In February, 2009 R.I.K. was transferred to another correctional institution, several hours drive from his home. The improperly lodged detainer still appeared on his record, and he was

still being told by his custody review officers at the facility that he would be likely be deported upon finishing his sentence. Further, he was told that because he had a detainer, he could not be transferred to a facility closer to his home because he was a security risk. Although the SCSJ attorney has recently taken to calling three times a week, every Monday, Wednesday and Friday to date the wrongful detainer remains lodged against him. His release date is Apr. 6, 2009.

2. Paul Cuadros, Assistant Professor in the School of Journalism and Mass Communication at UNC, U.S. Citizen.

The following is a column from the Chapel Hill News, dated Feb. 15, 2009 by Paul Cuadros, entitled *Profiling Just Got Easier*.<sup>55</sup> Cuadros describes his experience with profiling in a county where the issue of whether to sign onto 287(g) is currently the subject of a contentious community dispute.

*Two months ago I was on my way to the Sunday soccer pickup game in Pittsboro with my friend Francisco. It was a beautiful, cool, sunny afternoon, and so we wore our sunglasses as I drove to the elementary school where people gather from all over Chatham County to play. As I passed the courthouse circle, I spotted one of Pittsboro's finest in my rear view mirror. Francisco and I both knew instantly what was going to happen. We were two Hispanic men in dark sunglasses on a slow Sunday afternoon. A wave of emotions flowed over me: from anger to frustration to resignation.*

*The police car followed me for at least a mile and through four turns and finally hit his lights when I pulled into the school for our game. Francisco, who sports a military-style haircut, flashed a smile and shook his head and said, "Driving while brown."*

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<sup>55</sup> Paul Cuadros, *Profiling Just Got Easier*, Chapel Hill News, Feb. 15, 2009, <http://www.chapelhillnews.com/front/story/41670.html>

*The federal immigration program 287 (g) has been in the news lately in both Orange and Chatham counties. This is the program that trains county sheriff's deputies to check the immigration status of every person taken into custody. Its use has become controversial because some immigrant rights and Latino groups say it leads to racial profiling by those deputies. If you have never been racially profiled, then you don't know how much control it takes to restrain your anger over the violation of your civil liberties.*

*The program now adds an extra level of suspicion in the already suspicious minds of some law enforcement officers when it comes to Latinos. Now instead of just asking for my license and registration I might have to answer questions about my legal status. If I forget to bring my driver's license, I might be on a bus to a detention center.*

*How do you prove you are a U.S. citizen in your car? What documents do you bring in your Ford to prove you were born here? Officers see all kinds of fake IDs. How do you convince someone who has just stopped you and questioned you and is suspicious of you?*

*With the power of 287 (g), deputies may take Latino U.S. citizens into custody under the guise of checking their immigrant status back at the jail. A small infraction that would never result in an arrest, like forgetting your driver's license, can have immense consequences. This is the pernicious thing behind 287 (g) and its little brother, the "Secure Communities" program. Citizenship questions are only asked because of the way you look or the way you sound. My father was a naturalized U.S. citizen but never lost his Spanish accent. It's a free country, but freer for some more than others.*

*There are many in Orange and Chatham who think that profiling doesn't happen now. They are wrong. I cannot tell how many times over the past several years I have gone through*

*license checkpoints in Siler City driving a soccer kid home from a game. The checkpoints would be set up right in front of his neighborhood, which is predominantly Latino.*

*When you're stopped by the police, you go through a mental checklist to find what it is you did wrong to get pulled over. I wasn't driving fast; the courthouse circle prevents that. And I didn't miss any stop signs or lights, again the circle. I hadn't had a ticket in three years, my license was just renewed and my registration, plates and vehicle test were up to date.*

*After asking for my license and registration and keeping me and Francisco waiting for what seemed an unusually long time to check my information, the young cop walked up and leaned down to tell me why he had stopped me. He said my license plate monthly sticker had faded. The year was fine, new in fact, but the month was hard to see. He just wanted to let me know that. I knew exactly what he wanted me to know.*

3. E\_\_, U.S. citizen.<sup>56</sup>

E, trembling and then openly weeping, told of her trauma and fright at her place of employment in Alamance County. She explained that she was a naturalized citizen and had been working for some time in an office near Elon. She described her employer's actions over a course of time that began after 287(g) was entered into and told of how she was being significantly mistreated and discriminated against at work. She explained that when she brought her complaints and concerns to her employer, he told her that she was crazy to think that she would have any recourse and because she was an immigrant, she should stop complaining. He

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<sup>56</sup> The story was told to the author at the conclusion of a presentation at the Conference, "Why We Can't Wait: Reversing the Retreat on Civil Rights" of the National Campaign to Restore Human Rights in Durham, NC on Oct. 19, 2007.

referred to the passage of 287(g) as an indication of her lesser status.<sup>57</sup>

4. S\_\_\_, U.S. citizen.<sup>58</sup>

S., a Puerto Rican and U.S. citizen, worked for social services in Durham County. She explained that as a result of her work, she knew many of the law enforcement officers and had no difficulty in respect to racial profiling in her county. However, she recounted that on more than a few occasions, she was pulled over while driving to Wake County (a 287(g) county) for no apparent reason. She noted that her car was not a new one, and that although she was pulled over, she never was given a reason why she was pulled over. She expressed great distress and stated that she sure that her being pulled over as a result of her Latina appearance.

5. A\_\_\_, U.S. citizen.<sup>59</sup>

A, a Puerto Rican U.S. citizen was driving to the flea market in Johnston County (Sheriff Bizzell's county). There were four passengers in the car: her boyfriend, her mother, her sister, her brother-in-law. Local law enforcement pulled her over and told her that he was "just doing a check because there were too many people in the car." He asked for A's license, which she provided, and then asked all of the passengers in the car for their licenses. All obliged. The officer then asked all of the passengers, including A, whether they had any warrants for their arrests. They did not. A's father is a minister. The family was distressed by this incident of

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<sup>57</sup> Hannah Gill tells a similar story of a woman who was an immigrant from El Salvador and who describes how after the implementation of 287(g), working conditions at a textile factory in Burlington worsened. Gill, *supra* note 3.

<sup>58</sup> The story was told to the author at the conclusion of a presentation at the Conference, "Why We Can't Wait: Reversing the Retreat on Civil Rights" of the National Campaign to Restore Human Rights in Durham, NC on Oct. 19, 2007.

<sup>59</sup> Facts based on a phone intake by the ACLU-NC.

racial profiling and called the ACLU for that reason.

6. Ricardo Velasquez, U.S. citizen

Ricardo Velasquez is a lawyer in Durham, NC (a 287(g) city) who was stopped by the Durham police on his way home. After handing over his license and registration, he was told to roll down his window further upon which he asked whether he was under arrest or free to go. As an attorney who knew his rights, he opened his window wider at the demand of the officer, and was then put under arrest, accused of being under the influence of alcohol or some other substance. After taking the alcohol breath test, he blew a point zero-zero, indicating that he had nothing in his system. Nonetheless, he was arrested and charged with driving while impaired and resisting an officer. Although the charges were dismissed, Velasquez questions the incident as another incident of racial profiling of Latinos.<sup>60</sup>

V. **The Need for Oversight, Accountability, and Compliance with Equal Protection and Civil Rights**

Section 287(g) of the Immigration and Nationality Act requires that any officers certified under the program “shall have knowledge of and adhere to Federal law relating to the function.” As such, deputized § 287(g) officers must comply with federal laws, standards, and guidelines when employing their immigration-enforcement functions. At this point, the public has no way of knowing whether the program as implemented and supervised ensures such compliance.<sup>61</sup> Given that local cultural practices and histories mediate the implementation of what remains federal law and standards, greater oversight and accountability is needed.

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<sup>60</sup> Anne Blythe, *Durham Lawyer Fights Charge*, News & Observer, Jun. 19, 2008, <http://www.newsobserver.com/news/story/1113156.html>

<sup>61</sup> See GAO report, *supra* note .

The North Carolina Report on 287(g) made a number of findings with regard to local law enforcement compliance with the MOA.<sup>62</sup> While the MOA exists as a contract between the federal agency and the local law enforcement agency, the terms and conditions of the contract are often vague and confusing, with both parties often in noncompliance with the contract. Such concerns with regard to the MOA include:

- **Complaint mechanisms.** The 287(g) programs are required to offer a complaint mechanism for individuals who believe they have been aggrieved in the implementation of the program. However, because of (1) confusion caused by the complaint mechanism as described in the MOA, (2) the lack of notice and information about the right to file a complaint, (3) insufficient guidelines regarding the complaint forwarding process, (4) conflicts of interest in reviewing a complaint, and (5) unclear complaint resolution procedures, this aspect of the MOA is elusive and ineffective.
- **Designation of functions.** Nowhere does the Alamance County MOA publicize the policies and procedures that must be followed in immigration enforcement.
- **Nomination of personnel.** While the MOA requires a background check and evaluation of Alamance County Sheriff's Office law enforcement personnel who may be authorized to participate in the program, there is no indication as to how suitability is to be determined. Lack of transparency in the implementation of the program prevents assessment of suitability determinations.

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<sup>62</sup> *The Policies and Politics of Local Immigration Enforcement in North Carolina*, <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>

- Training of personnel. Although it appears that there is a curriculum in place for the training of personnel, the length of the training appears to be too short given the complexities of the subject matter, and content of the curriculum is unclear. Lack of transparency in the implementation of the program prevents assessment of the training.
- Certification and authorization. While authorization of the MOA by ICE may be revoked at any time, the language indicating what merits such a revocation is unclear making oversight of and remedy for the program uncertain.
- ICE supervision. Although the MOA requires that there be ICE supervision before any local officer can perform an immigration function, there is no indication as to the nature or degree of the necessary supervision, nor is there any mechanism for review to ensure that the officers comply with immigration law and procedure.
- Civil Rights standards and interpretation services. In addition to the obligations set forth in federal civil right statutes and regulations, including the U.S. Department of Justice "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies," the language in the MOA requires an interpreter for those who do not speak English. Yet how law enforcement should comply with this requirement is unclear. The MOA fails to establish the process by which an interpreter is obtained, the procedure through which law enforcement officers confirm that an interpreter is necessary, whether an interpreter must be requested before one must be provided, and how the affected individual will be informed of the right to an interpreter.
- Required steering committee. The MOA requires that ICE and the local Sheriff establish a steering committee. However, the existence, purpose, function, and the selection process of the steering committee are not sufficiently clear.



- **Community Outreach.** Although the MOA provides that the local agency will engage in community outreach programs with organizations interested in the MOA, there is a great deal of discretion left with the agency in determining with which organizations to work, thereby creating the opportunity to limit or deny participation from critics of the program.
- **Relations with the news media.** This provision of the MOA also allows too much discretion with the local agency creating the possibility that important information about the MOA will not be communicated to the public in order to enhance the program's accountability and transparency.
- **Modification of the MOA.** While the MOA can be modified, there is no mention as to how these amendments will be communicated to the public or whether the amended document will be made publicly available.
- **Duration and termination of the MOA and liability disclaimers.** Although the MOA states that authorization of immigration enforcement can be revoked at any time, there is no requirement that the termination of the program be made public. Additionally, language in the agreement attempts to insulate ICE and the local agency from liability if they fail to comply with the requirements agreed upon in the MOA.

#### **VI. Proposals for Improvement**

In addition to bringing to light the many issues presented by the 287(g) program and the way that the program is currently implemented, a number of proposals would, if implemented, help to resolve many of the current implementation problems. The recommendations include:

- Transparency in the implementation of the program.
- Full conformity with the letter and the spirit of the law.

- Increased community participation in the program's implementation and/or oversight.
- Revision of all current 287(g) programs and implementation in all new 287(g) programs, to permit 287(g) processing only for those convicted of felonies.
- Amendments to the complaint mechanism in the MOA, including clarification of the process, providing notice of the right to file a complaint, enacting amendments to the guidelines regarding the complaint forwarding process, and changes to the method of complaint review.
- Ensuring the availability of the MOA and detailing the MOA purpose and policy.
- Improving personnel performance by outlining personnel designation and functions, providing guidelines for nomination of personnel, detailing and updating the training of personnel, continued certification and authorization of personnel through consistent complaint reports, and monitoring ICE supervision of personnel.
- Clarification of notice of the Civil Rights standards and provision of interpretation services.
- Detailing the steering committee's selection process that includes a broad range of community interests and setting forth the committee's required review of activities.
- Opening executive steering committee meeting to the public.
- Increasing information and participation for effective community outreach and input.
- Improving relations with the news media and other organizations.
- Updated officer training and MOA availability after modification as well as providing duration and termination of the MOA and avoiding impunity.

These proposals for improvement also include suggestions and examples of other complaint mechanisms that could be implemented in order to achieve greater effectiveness in ensuring compliance on the part of local law enforcement agencies with applicable law and MOAs.

**Conclusion**

Ultimately, the complexities of the 287(g) program and the difficulties in its implementation, suggests that the program is actually an ineffective means of immigration enforcement. It is too problematical, too costly, and too difficult to implement. The reliance on local law enforcement by the federal government for the enforcement of immigration laws is a strong indication of a systemic problem in the federal program, which points to the need for comprehensive immigration reform at the federal level that would allow local police and county sheriffs to return to their primary function of protecting their local communities from crime. Until this reform occurs, the deficiencies and illegalities of 287(g) agreements must be remedied and communities and lawmakers must be encouraged to implement change under the current system.

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Ms. LOFGREN. Thank you very much, Professor Weissman.  
Finally, Professor Tranchant?

**TESTIMONY OF RAY TRANCHANT, OPERATIONS DIRECTOR,  
ADVANCED TECHNOLOGY CENTER, VIRGINIA BEACH, VA,  
ADJUNCT PROFESSOR AT CAMBRIDGE COLLEGE, CAM-  
BRIDGE, MA, CHESAPEAKE CAMPUS, AND BRYANT AND  
STRATTON COLLEGE, VIRGINIA BEACH, VA**

Mr. TRANCHANT. First, I want to thank you distinguished ladies and gentlemen for allowing me to share my testimony with you. I am not here personally for your sympathy but may offer maybe a couple of solutions to you elected officials from my perspective, a man for 2 years that has intensely studied the problems and consequences of lax and opposing immigration laws.

Two years ago this week, my 16-year-old daughter, Tessa, and her best friend, Ali Kunhardt, were killed as they were sitting at an intersection waiting for a red light to change in Virginia Beach. They both had their seatbelts on and were doing nothing wrong. They were really wonderful kids with really bright futures. But their lives ended suddenly and unnecessarily when a drunken, illegal immigrant hit them at more than 70 miles an hour. Ramos, whose blood alcohol level was almost three times the legal limit, didn't see the girls, the car, or the red light because of his intoxication, period. The crash killed Tess and Ali instantly; Ramos walked away unhurt.

At first, my focus was on mourning my daughter and her friend. Our community, friends, and family stood with us, honoring their memories. But anger and feeling of betrayal took over when I discovered at the trial that Alfredo Ramos could have been and should have been deported long before he ran that red light.

In fact, this accident wasn't the first time that Ramos walked away from a drunken incident. It wasn't even the second time. Ramos had been arrested twice before for driving under the influence and public intoxication. He had a fake driver's license from Florida and could not speak English at all. But because of sanctuary policies in Virginia Beach and Chesapeake, Virginia, nobody—not the judge in the prior DUI case or the police who arrested him in the prior incidents—questioned him about his immigration status. Instead of being deported to his home country, he stayed on the streets of Virginia Beach, to drink, drive, and subsequently kill these two beautiful girls in a way that displayed a wanton disrespect for the laws of our land.

He seemed invisible to the system. I am not sure if your American kids or relatives would have had the same opportunity to fail in such a way. They probably would have been incarcerated, legitimate licenses suspended. Insurance payments, they would go through the roof. And they would have had to pay very large attorneys' fees. Ramos pays nothing, has no driver's training, no insurance, no lawyer, no license.

And now the American people have to spend about \$30,000 a year incarcerating him for 40 years, at a cost of about \$1.2 million. And that is not including the uninsured motorist claims that probably equal a half a million. We are talking \$2 million here. Ladies and gentlemen, this happens twice a month in this country.

The deaths garnered local and national media attention: *The Virginia Pilot*, *The Washington Post*, *The American Chronicle*, MSNBC, CNN, FOX News. Mr. O'Reilly and Geraldo argued over

it on Fox and talked about Tess and Ali, and their story shed light on the tragic consequences of lax immigration policies.

Gladly, some important things have changed in Virginia Beach and Chesapeake in the last 2 years. Virginia Beach now requires that police check the immigration status of all arrested. Virginia Beach and Chesapeake passed measures requiring that companies doing business with the cities pledge not to hire illegal immigrants. Last July, a statewide law took effect which requires local jails to contact Federal authorities to check the immigration status of all foreign-born inmates, irrespective of whether they are in the country legally or illegally. And local police officers are working more closely with Federal authorities than ever before.

But the threat still continues. Despite recommendations from the State's Attorney General and the Virginia State Crime Commission, Virginia's Governor has yet to ask Federal authorities for a 287(g) agreement. And ICE may not have the resources to support that agreement anyway. The 287(g) program would allow the State to enter into an agreement with the Federal Government so that the State law enforcement officers can assist in the investigation, apprehension, and detention of illegal immigrants.

Opponents of this cite a supposed chilling effect on cooperation between immigration communities and police, the cost of the program, or the potential for racial profiling as reasons to reject this. Well, as I testify before you today, I expect to hear many of these arguments. While I sympathize with those arguments, I am not compelled. I know what chilling is: They happen on the average of twice a month with illegal immigrants in America, transparent criminals in a broken system that lets them kill or injure honest citizens.

A family should not have to mourn the death of a loved one just because of an unrelated policy or the political correctness of not offending someone or inconveniencing a few people here or there. This prevents us from making our community safer, a constitutional right to all citizens, safety.

Newsweek columnist Robert Samuelson recently wrote, "We face a choice between a society where people accept modest sacrifices for a common good or a more contentious society where a group selfishly protects their own benefit." I would have to tell you now that the causality of Tess's death was the failure to enforce this law.

Thank you.

[The prepared statement of Mr. Tranchant follows:]

#### PREPARED STATEMENT OF RAY TRANCHANT

First I want to thank you distinguished Ladies and Gentlemen for allowing me to share my testimony with you. I am not here personally for sympathy, but may offer a couple of solutions to the Elected Officials from my perspective, a man that for 2 years has intensely studied the problems and consequences of lax and opposing Immigration Laws.

Two years ago this week, my 16-year-old daughter, Tessa, and her best friend, Ali, were killed as they were sitting at an intersection waiting for a red light to change. They both had their seatbelts on and were doing nothing wrong.

They were wonderful girls with bright futures.

But their lives ended suddenly and unnecessarily when a drunken illegal immigrant hit them at more than 70 miles an hour. Alfredo Ramos, whose blood alcohol level was almost three times the legal limit, didn't see the girls' car or the red light and couldn't because of his intoxication. The crash killed Tessa and Ali instantly. Alfredo Ramos walked away unhurt.

At first, my focus was on mourning my daughter and her friend. Our community, friends and family stood with us, honoring their memories.

But anger and a feeling of betrayal took over when I discovered at the trial that Alfredo Ramos could have been—should have been—deported long before he ran that light. In fact, this accident wasn't the first time that Alfredo Ramos walked away from a drunken incident. It wasn't even the second time.

Alfredo Ramos had been arrested twice before—for driving under the influence (DUI) and public intoxication. He had a fake driver's license from Florida and could not speak English.

But because of Sanctuary policies in Virginia Beach and Chesapeake, Virginia, nobody—not the judge in a prior DUI case or the police who arrested him in the prior incidents—questioned him about his immigration status. Instead of being deported to his home country, he stayed on the streets of Virginia Beach to drink, drive, and take two innocent lives in a way that displayed a wonton disrespect for the laws of our land.

He seemed invisible to the system. I'm not sure if your American kids or relatives would have had the same opportunity to fail. They probably would have been incarcerated, legitimate license suspended, insurance payments would go through the roof, and they would have had to pay large attorney's fees. Ramos pays nothing, has no driver's training, no insurance, no lawyer, no license, and now the American People have to spend approximately \$30,000/ year for 40 years (\$1,200,000) to rehabilitate—then deport him. The Taxpayers have to pay for it!

The deaths garnered local and national media attention: *The Virginia Pilot*, *The Washington Post*, *The American Chronicle*, MSNBC, CNN, Fox News, and many others wrote and talked about Tessa and Ali. Their stories shed light on the tragic consequences of lax immigration policies.

Gladly, some important things have changed in Virginia Beach and Chesapeake in the last two years. Virginia Beach now requires that police check the immigration status of all arrested. Virginia Beach and Chesapeake passed measures requiring that companies doing business with the cities pledge not to hire illegal immigrants. Last July, a statewide law took effect which requires local jails to contact federal authorities to check the immigration status of all foreign-born inmates, irrespective of whether they are in the country legally. And, local police officers are working more closely with federal authorities than ever before.

But a threat remains!

Despite recommendations from the state's Attorney General and the Virginia State Crime Commission, Virginia's Governor has yet to ask federal authorities for a 287 (g) agreement; and ICE may not have the resources to support such a request. The 287(g) program would allow the state to enter into an agreement with the federal government so that state law enforcement officers can assist in the investigation, apprehension and detention of illegal immigrants. Opponents of 287(g) cite a supposed "chilling effect" on cooperation between immigrant communities and police, the cost of the program, or the potential for racial profiling as reasons to reject it.

As I testify here today, I expect to hear many of these arguments.

While I sympathize with those arguments, I am not compelled. I know about chilling experiences. They happen on the average of twice a month with Illegal Immigrants in America, transparent criminals in a broken system that lets them kill or injure honest citizens.

A family should not have to mourn the death of a loved one just because of an unrelated policy or the political correctness of not offending or inconveniencing a few people. This prevents us from making our communities safer, a Constitutional right to all citizens of the United States.

Newsweek columnist Robert J. Samuelson recently wrote:

"We face a choice between a society where people accept modest sacrifices for a common good or a more contentious society where a group selfishly protect their own benefit."

I believe this to be true.

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Ms. LOFGREN. Thank you for your testimony.

The audience is reminded not to engage in displays of enthusiasm for any of the witnesses, either in this panel or the next.

Now is the time for Members of the Committee to have an opportunity to question the witnesses. And I will turn first to the Chairman of the Constitution Subcommittee, Congressman Nadler.

Mr. NADLER. I thank the Chairwoman.

Let me ask Mr. Mora, you said that one of the two black SUVs that stopped you and your dad pulled in front of your truck and the other followed behind. Did you know who was in those SUVs? Did you know they were police cars? Did you know who was in the cars?

Mr. MORA. Did I know who was in those vehicles?

Mr. NADLER. Yes.

Mr. MORA. I know they were sheriffs because on the side of the vehicle it said "Sheriff."

Mr. NADLER. Oh, it said "Sheriff."

Mr. MORA. Yes.

Mr. NADLER. And when your dad told the deputies he was going to work at HMI, did the deputies tell him or you what they were doing there?

Mr. MORA. What was that?

Mr. NADLER. When your father told the deputies that he was going to work at HMI, the company, did the deputies tell him or you why they were going to be at HMI?

Mr. MORA. No.

Mr. NADLER. And when they told you and your dad to get out of the car and they patted you down and handcuffed you, did they explain why they were doing that?

Mr. MORA. No, they did not.

Mr. NADLER. When you saw the deputy with big guns and ski masks over their faces at HMI, what did you think was going on?

Mr. MORA. I did not know.

Mr. NADLER. And how long were you and your father held there?

Mr. MORA. How long? Three, 3 hours.

Mr. NADLER. Three hours. And what is your impression of the police after what happened to you and your dad that day?

Mr. MORA. What was that again?

Mr. NADLER. What is your impression of the police after what happened to you and your dad that day? Do you think more of them, less of them? Do you fear them? Do you respect them? How has this affected your thoughts about the police in general?

Mr. MORA. The police in general? Well, look, one thing I just want them to know is to treat us equally, you know. Because we are here to work, we are here to work, and we are not here to do anybody wrong, you know. We are just here working for our families.

Mr. NADLER. Okay. Thank you.

Mr. Ramirez, in testimony before a different Committee of this House last month, Frederick County Sheriff Charles Jenkins claimed that, and I quote from his testimony, "There has been absolutely no complaints of profiling or discrimination based on ethnicity," close quote, since Frederick County began participating in the 287(g) program. Yet your testimony describes a number of instances where Frederick County Sheriff's office appears to have stopped, integrated, ticketed, or arrested Latinos, U.S. citizens, as well as legal and undocumented immigrants, seemingly based solely on their appearance.

Why do you think that no formal complaints have been filed against the Sheriff's office?

Mr. RAMIREZ. They think we don't report any crime because we are afraid. We are a target, like I said. And sometimes people, they report a crime and they are taken away, even the brother and father—

Mr. NADLER. What do you mean they are taken away?

Mr. RAMIREZ. They are taken to jail.

Mr. NADLER. For the crime of reporting a crime?

Mr. RAMIREZ. Yeah, for reporting a crime. They don't go and target the crime; they come in asking for IDs, green cards, and humiliating us like we are criminals, like we are the only bad people in town.

Mr. NADLER. So you are saying that there were no formal complaints filed against the sheriff's office because of fear?

Mr. RAMIREZ. Yeah. There is a big fear.

Mr. NADLER. The sheriff also asserts that the program has not harmed police-immigrant community relations and has not created fear or distrust of law enforcement. Would you comment on that statement by the sheriff?

Mr. RAMIREZ. Excuse me?

Mr. NADLER. The sheriff testified that the 287(g) program, quote, "has not harmed police-immigrant community relations and has not created fear or distrust of law enforcement," unquote.

Could you comment on his statement? Is it true? Is it untrue?

Mr. RAMIREZ. Of course it has had no affect because there is no relation to begin with.

Mr. NADLER. It is not true, then.

Mr. RAMIREZ. It is not true. There is no relation. I offered my hand many times to work with him. And that is not the first time I do that with the police. I have worked with them before.

Mr. NADLER. Now, he also said that any existing fear or distrust of law enforcement is generally cultural-based, as most countries where immigrants originate from do have corrupt governments, corrupt and abusive law enforcement, which is all they have been exposed to in their lives.

In other words, he is saying that if there is distrust or fear of law enforcement in Frederick County on the part of immigrants, it is because the countries they come from have corrupt police departments; it is not because of the wonderful sheriff's office in Frederick County.

Would you comment on that?

Mr. RAMIREZ. You know, when we come to this country, we are stereotyped. They think we come not from another country, we come from trash cans. We don't believe in anything. People like me, we live in the laws from the day we are born. I am not afraid of laws. I am not afraid of rules. I believe in laws.

And to be afraid of the sheriff, of the police, since 2 years ago has been increasing very badly, because when we call the police, the problem is not solved.

Ms. LOFGREN. I am going to interrupt. The gentleman has asked unanimous consent for an additional minute and is granted an additional minute.

Mr. NADLER. Thank you.

So, in other words, your testimony is that it is not culturally based?



Mr. RAMIREZ. It is a culture that is creating right now. We are afraid to call—I changed, even as a citizen, and friends, residents, people I have known for a long time. We have changed everything. Our life is different now.

Mr. NADLER. I hear that. But, in other words, you are saying that when the sheriff says that if there is fear of his department it is because of what happened abroad or in other countries, not because of the action of his department, that is not correct.

Mr. RAMIREZ. That is not correct.

Mr. NADLER. Okay.

Mr. RAMIREZ. And I will give you one example, quickly, an example. I know of friends, they were walking in the street, and some guy approached them and asked for money. And he said, “If you don’t give me the money, I will call the police and tell them you are selling drugs.” And it is not just once, many times.

Mr. NADLER. Thank you.

I have one more question for you before the time expires. You testified that, when the police stopped Latinos, they often ask everyone in the car for passports or other identification cards, no matter the reason why the car was stopped.

Mr. RAMIREZ. Yes.

Mr. NADLER. What do they do—now, let me just say, if a car is stopped for a traffic violation, there is absolutely no legal justification for asking for any kind of ID or anything else from anyone other than the driver. The driver you can ask for license and registration, but have you absolutely no legal right to ask anybody else for anything.

What happens if the other passengers in the car, not the driver, do not have, in the judgment of the officer, adequate ID or whatever?

Mr. RAMIREZ. They are taken to jail, and they are processed. And I had a friend who is a citizen, and he was driving on Waverly Drive around Frederick, of course, and they stopped him because he was driving very slow. And he was taken to jail, and he said, I am a citizen. And after almost an hour, he proved he was citizen. He never got a ticket, he never got a warning.

Ms. LOFGREN. The gentleman’s time has expired.

Mr. NADLER. Thank you very much.

Ms. LOFGREN. And we do want to recognize the Ranking Member, Mr. King, for his opportunity to question the witnesses.

Mr. KING. Thank you, Madam Chair.

And I thank all the witnesses for your testimony.

I sit in this Committee now, it is my seventh year, and I am trying to remember when I felt so uneasy, sitting up here listening to testimony. And I think I am seeing the embodiment of a great big problem we have in this country. And the result of it is the loss of lives, the loss of innocent human lives.

And I have listened to Professor Tranchant’s testimony. You have to know that he is here to tell you today that if we had enforced local immigration law his daughter would still be alive. Tessa and Ali would still be alive. And that is true for hundreds and perhaps thousands of Americans that go about their lives every day seeking just to make this world a better place.

And you are pressing this Committee, and the message that I get from you is that we shouldn't enforce immigration law at a local level because there are some examples of discrimination that are there, at least that you testify to. And I don't argue that it never happens.

But I would ask you, can you look at this on balance? Can you see the difference between the plea that you have to this Committee and the plea that Mr. Tranchant has to this Committee? Can you look him in the eye and say, we should have passed everybody over and your daughter would still be alive anyway? I don't think you can do that.

And I don't know how to express to you that the comparison of what looks like an inconvenience to either one of you is compared to the very sacred life of this man's daughter. And you are on the same panel.

What do you have to say to Mr. Tranchant, not to me, Mr. Ramirez?

Mr. RAMIREZ. You know, I am an immigrant for 21 years here, I am a citizen, and I never killed nobody. Alcohol is sold to everybody—legals, non-legals, Irish, Italian, German, everybody. And I feel bad because I know what it is like to lose somebody. And I feel bad, too, when a father or a mother is taken away.

And I understand, and that is the reason I am here, to be part of the solution. I am not a problem. I am not a problem. I am here for the solution.

I can see here in his face, in the same way he feels sorrow, I feel sorrow too. Because we are in the middle of the things that are going on. We need your help. We need the Federal—we need the Constitution to lead us.

Immigrants are not new in the United States. This is a topic for hundreds of years. And what I learned from the United States, they need the solutions.

Mr. KING. Mr. Ramirez—

Mr. RAMIREZ [continuing]. For one drunk person. I am inviting you to downtown Frederick—

Mr. KING. I appreciate your point, and my clock is ticking, and so pardon me if I have to interrupt, but there is another point that needs to come.

Mr. RAMIREZ. I am not a criminal. Please. I am not a criminal.

Mr. KING. And I think, in your head and in your heart, you came here to contribute. And I don't disagree with that sentiment that you have expressed, Mr. Ramirez. Please, believe me, I do not. I compare the difference between the plea that I am hearing from you and Mr. Mora and the plea that I am hearing from Professor Tranchant. And one screams out to me and says that the foundation of this country is the rule of law. The very central pillar of American exceptionalism is the rule of law. And the argument here is that there are some exceptions to at least allegations that there has been discrimination.

We reject discrimination, all of us on this panel. But yet, the law enforcement people need to do their job. Especially, local law enforcement need to cooperate with Federal immigration law enforcement. And so the message that I am hearing out of here isn't that we should continue with that and try to improve it. I am hearing

a message that we should perhaps end this 287(g) program, and I reject that. I am a solid supporter of the 287(g) program.

And I would like to turn to Professor Tranchant and ask you, is there a statement that you didn't have an opportunity to make to this Committee?

Mr. TRANCHANT. Yes, sir. Thank you.

I am a son of an immigrant. She came from northern Ireland, and I helped her study for her immigration exam. And my grandpère is a Frenchman, and people used to discriminate against me because of my big nose, because he is French.

But I have to tell you that I don't want undesirable people in America, personally. I don't want drunks in America. I am not going to say that, "Well, everybody gets drunk and people kill people because they are drunk." I will tell you what, if we have an opportunity not to have them here in this country and deport them, we should do that. We want desirable people here. This is America. We didn't want them killing you.

So what this law does, it takes undesirable people and puts them at the back of the immigration line, which is where they should be. And I think most people feel that way. We don't like drunks. And if you are a drunk here in the country, go home. If you are a murderer, go home.

Mr. KING. Thank you, Mr. Tranchant and all of the witnesses.

And I yield back.

Ms. LOFGREN. The gentleman yields back.

I would turn now to the gentlelady from Texas, Ms. Sheila Jackson Lee, for her opportunity to question the witnesses.

Ms. JACKSON LEE. Thank you very much, Madam Chair.

And I am so glad that as I was coming in—and I beg the indulgence of the witnesses. I just came from a Homeland Security Committee hearing.

And so I want to say to Professor Tranchant that you are looking at the person who, in totality, agrees with you, that we have to do our job.

Mr. TRANCHANT. Right.

Ms. JACKSON LEE. And I want to say to you that I, frankly, believe that homeland security, immigration issues is a Federal issue. We have to do a number of things: one, put in place Federal laws that lay the parameters out. We have to comprehensively fix the confusion in immigration laws. We have to let a citizen like yourself know what they are. And then, of course—let me apologize for not appropriately starting with the most important remark, which is my sympathy and concern. No parent could ever fathom what you have gone through.

And you said something very important: We don't need drunks on the street. I am appalled that this was an offender, whether it be an undocumented citizen or someone else, that was on the street more than once after having incurred the ridiculous action of driving while drunk. I am, just for your own information, rabidly supportive of cutting Federal funds for States that don't have stronger drunk-driving laws. That doesn't bring back the life.

What I would have wanted to have seen is the fact that, once picked up in the normal process of an offense, that the Federal officials needed to come and do their job. I want to put on the record,

they needed to do their job. They needed to be aware of individuals in jail. And you would have had, if we could just turn the clock back, at least had relief that the Federal Government was doing its job.

So, please, as I pose questions to Mr. Ramirez, I don't want you to doubt in any way both the sympathy and the frustration that I face. I Chair a Subcommittee on Homeland Security; the Chairwoman is on that Committee. And we need to ramp it up so that there are offices that can function in conjunction with jails and incarcerated persons across America. I think when I go to Mr. Ramirez, if you can listen to my line of questioning. And I, Mr.—

Mr. TRANCHANT. Tranchant.

Ms. JACKSON LEE. I want to make sure, because it is French to me. I want to say "Tranchant." Let me just pose a quick question to you.

287(g) represents sort of a law that throws the burden—and it came out of frustration—on local government. I don't think it is perfect, because what it does is it says that individuals that are not operating under it are sanctuary cities. I come from the city of Houston. Let me go on record and say, Houston is not a sanctuary city. We have too much diverse political perspectives to be a sanctuary city. But we are a big city, so obviously we cannot rally up every one. We need Federal support.

Would enhanced resources give you comfort, as well, in the immigration process through the Federal Government—we call these folk ICE officers—where they are surveying and working with the jail, would that give you comfort?

And would it also give you comfort—because you come from North Carolina. My daughter went to UNC, so I know the influx of diversity and immigrants in your community. Would it also help—and I know that you have seen some of them there; they are there working in various capacities—that we have some laws that you could understand, that people who need to be deported were deported and those who were here to work could stay under some laws that were appropriate? Would that be helpful to you, in reflection even in this tragedy that you are facing?

Mr. TRANCHANT. Well, ma'am, I can't—I don't have as broad a solution base that you have. And the thing about allowing them to stay and work, I can't make statements to that because I don't know—you know, I want to split the hairs on that one. I want to—

Ms. JACKSON LEE. You need more facts?

Mr. TRANCHANT. Yeah. But I tell you that what Homeland Security is doing with allowing local law enforcement to have integrated databases from some of the banditos they have on their lists, so that these law enforcement officers can run an ID check, a fingerprint, and the guy or woman who has been going from State to State—and, by the way, we don't border Mexico in Virginia.

Ms. JACKSON LEE. Was it Virginia? I am sorry. I thought it was North Carolina.

Mr. TRANCHANT. But they guy who is going from State to State committing crimes—

Ms. JACKSON LEE. And I want to get another question in. I think your answer is you have one perspective, and—

Mr. TRANCHANT. Right.

Ms. JACKSON LEE [continuing]. Let me try to get this question in, Madam Chair, if I might, to Mr. Ramirez.

Mr. Ramirez—

Ms. LOFGREN. The gentlelady is granted 1 additional minute.

Ms. JACKSON LEE. I thank the Chairwoman.

Mr. Ramirez, I got the gist of Mr. Tranchant's point of view, but my point is, if I can ask this question, you have suffered civil rights abuse because you are a citizen, and the confusion of utilizing laws in the hands of local officers, who don't have a component of sensitivity, means that the confrontations that you have had have been unnecessary. So it, again, comes back to the Federal Government; we are not doing our job.

Give me your suggestion—I recognize the tragedy of your fellow witness here—on how we solve this. I want what has happened to you to you to stop.

Mr. Ramirez?

And my apologies to you for those actions against you inasmuch as you have been innocent.

Mr. RAMIREZ. The thing I feel when I am stopped by the police is the stereotypes they have of Latinos, people looking like me. You know, they see the bad part of us—drinkers, robbers, rapists, killers. But they don't see the good things. We work very hard. We have made more rich this country.

I can give you an example in Frederick. For our work, a lot of people are richer because we work for them. We make their companies better and faster. I work in safety in construction, and I can give you many examples. But the point is, we are human beings. There is no difference from my skin and your skin, my origin or your origin. We are in pain here together. And there is humiliation after we offer, after we work, after we are hard to—

Ms. LOFGREN. The gentlelady's time has expired.

Ms. JACKSON LEE. I thank you.

We need a fix on this system, and it is broken.

I thank you, and I yield back.

Ms. LOFGREN. I recognize the gentleman from Mississippi, Mr. Harper, for his opportunity to ask questions.

Mr. HARPER. Thank you, Madam Chair.

This is, to me, a very—in one regard, you know, we hear about needing to pass new immigration laws, to maybe consider repealing certain laws and changing those immigration laws, but we have not really enforced our existing laws. We should take steps to enforce the existing laws on the books fully and then see where we are after that.

I have to say that, while you may have complaints about the sheriff in Arizona or other locations, you know, as a former prosecutor, I can tell you that I am encouraged when I see folks uphold the law.

And, you know, America is a Nation of immigrants. You know, we have people who come from all over the world here. And those folks that have come in that want to be in this country and have an opportunity to live and reach the American dream, more power to them. And I commend them. And those that come into this law

the proper way and the legal way, that is how it is supposed to be done.

We cannot, as a Nation, say those who have come into this country and from the very beginning broken our laws—how do we say to those who wait years sometimes to come into the country the legal and proper way that, “You keep waiting. Those of you who came in breaking our laws, it is okay to stay.” So, you know, amnesty that we discuss or those things that we talk about is just something that is not going to be acceptable.

This is a matter of national security. We cannot have people coming into this country that we don’t know who they are. And that is a thing that we have to continue to look at.

Professor Tranchant, our heart goes out to you.

Mr. TRANCHANT. Thank you.

Mr. HARPER. Do you believe that if the laws had been enforced that your daughter would still be alive?

Mr. TRANCHANT. Undoubtedly. He wouldn’t be there at that moment. The causality would be unnecessary.

Mr. HARPER. Okay.

With that, Madam Chair, I yield back the balance of my time to Steve.

Ms. LOFGREN. The gentleman yields the remainder of his time to Mr. King.

Mr. KING. Thank you, Madam Chair.

To the witnesses, I look at some of the data that comes out of these counties we are talking about, and a curious thing comes to mind.

Mr. Mora, as I read your testimony this morning, your father has been in this country since the 1960’s and has had a green card, I think, since 1976 in your testimony. Has your father become a citizen yet?

Mr. MORA. Yes.

Mr. KING. When was that?

Mr. MORA. I am not sure.

Mr. KING. Some time ago, though? That is an omission in your written testimony. I think it is important that the panel understand that your father has taken that step to citizenship. And I congratulate and applaud him for that.

And I would ask, as part of that citizenship that he studied in order to pass the citizenship test, and this thing we have talked about, at least Mr. Harper and I, about the rule of law, I am looking at the data that shows that the Maricopa County Sheriff’s Department had nearly 80 warrants for individuals at the workplace that day, and, of that, 39 were arrested. So it would be, I think, evident that your father was working with illegal immigrants on a daily basis.

Did he ever talk to you about the rule of law and about immigration law? Can you tell me that—I mean, would you agree or disagree with me that a citizen has a responsibility to see that the law is enforced as well as local law enforcement?

Mr. MORA. Yes.

Mr. KING. Did he ever say to you that he would be willing to participate and help out and support local law enforcement in enforcing immigration law?

Mr. MORA. Can you repeat that for me, please?

Mr. KING. Yes. Did you father ever advise you, as a matter of being a good citizen, that one needed to, as a matter of citizenship, help cooperate in enforcing immigration law in the United States?

Mr. MORA. For me, he wanted me to be respectfully to everybody, or be respectful.

Mr. KING. Whether or not they were here legally or illegally?

Mr. MORA. Yes.

Mr. KING. And so I am going to take that that you aren't saying "yes" to that question. So I will ask this another way then. And you have talked about what I think you have emphasized as an embarrassment that day in Maricopa County, and you have named a couple of incidents of embarrassment there.

Could you, for me and for this panel and for especially Professor Tranchant, can you express to me the difference between the embarrassment that you endured and the loss of his daughter? And might, if it had been, say, your sister or girlfriend or maybe your new child that was a victim of a crime like this, might you be speaking on the same side of the argument as Professor Tranchant instead of the side you are on today?

Mr. MORA. Okay, can you simplify that for me, please?

Mr. KING. Yes. If it had been a family member who had been killed by an illegal who would have otherwise not been in this country if the law had been enforced, if that had been your close family member, your sister for example, would you perhaps change your mind on the reason for your testimony here today and support the rule of law?

Mr. MORA. No, I would actually want the local police to actually—

Mr. KING. Let them go.

Mr. MORA [continuing]. Enforce. No, enforce it. Be smart about it and enforce it. And, obviously, they weren't enforcing it.

And I apologize, you know, I am sorry, sorry for your loss.

But for them to enforce their law, the ones they are supposed to be following.

Mr. KING. You are not telling me that your embarrassment trumps the daughter's life?

Mr. MORA. No.

Mr. KING. Then you understand the priority, and I think you would agree with Mr. Tranchant.

I thank you, and I yield back.

Ms. LOFGREN. The gentleman's time expired.

I would turn now to the gentleman from Illinois, Mr. Gutierrez, for his opportunity to question the witnesses.

Mr. GUTIERREZ. Well, first of all, thank you, Madam Chairwoman and Mr. Nadler.

And I thank the witness for their testimony here today.

I think we are missing the point of the testimony here this morning. And just so that we have it very clear, no one has ever stipulated, promoted laws that do not deport drunk people, that do not deport rapists and murderers.

Now, part of the problem is that, it has been said here by some of my colleagues on the other side, enforce the law. Let me just suggest to everybody, this Congress and the Government of the

United States has not shown the political will nor committed the requisite resources to enforce our immigration laws. And I hear no one here—no one here—who has come with a solution of enforcing and putting the requisite resources in order to enforce the immigration laws of our Nation.

And the only way that you really do that is by having comprehensive immigration reform. You either sweep millions and millions of people off the streets of the United States of America—which no one has ever proposed. So it is always a little disingenuous to me when people say, “If we would only enforce the laws.” Well, we are here every day, and I haven’t heard the proposal, and I haven’t see the political will to do it.

What I have seen, unfortunately, is the will to target and to victimize and to scapegoat a community of people. I have seen that readily here in the Congress of the United States. And it makes for great political points, but it doesn’t resolve the problem and would not have saved your daughter’s life.

Now, under comprehensive immigration reform, we would have an opportunity to tell people—because here is what happens, fundamentally: Those drunkards and those rapists and those murderers do most of their drunkenness, their murdering and their raping in the very immigrant community in which they reside. And you want to know who wants to get rid of them? The very immigrant community that lives there. But they cannot call the police.

And we are going to be entering in a minute—we have cases of women who are abused by some of these undocumented drunkards who abuse these women, and when the police are called, they deport the victim of the crime and not the perpetrator of the crime.

So if they live—and they live among us, especially in the immigrant community—we need to have that relationship with the police that allows the community to defend itself and to rid our society of them.

No one here, and I agree with Mr. Tranchant, they should go home. Better than go home, we should drive them home, we should ship them home, we should use any resources to make sure that they are not here.

There are a community of people in this country, foreigners; not all foreigners come here really as immigrants. Most people, as probably Mr. Tranchant has already expressed to us, come here as immigrants to work, to sweat and to toil, to make their own future better, and by doing so, enriching us all. And then we have foreigners who come here as terrorists to bomb our buildings, to come here to do harm. They are foreigners. I don’t think we quite make them immigrants, because I think that that would be kind of looking pretty badly on our tradition of immigrants that come here.

So crime and immigration is an old story. The Irish were the dirty filthy criminal element that was coming to undermine America. Well, they gave us a President Kennedy.

Mr. TRANCHANT. They gave me me.

Mr. GUTIERREZ. Thank you. You know, if it was the turn of the century, we could read in The New York Times “only by the rule of law could we help to control these people”—referring to the Italians. You know, they were wrong about the Irish, they were wrong about the Italians, to tarnish them all because of a few. And



they are wrong today to tarnish a whole immigrant community because of the actions of a few—a few that I wish to get rid of.

And let me just end, because I don't want to take an extra minute which has been given to everybody. I mean, the gentleman from Iowa suggests to us and suggests to Mr. Mora that he should be checking the immigration status of people.

Let me just tell you, that really is shocking to me. Am I supposed to check, when I go to church, those who sit in the pews with me in church and check their immigration status? Am I supposed to go and shop and check their immigration status? Every day we walk into hotel rooms across this country, we eat grapes, we eat fruit, we eat meats that are cut in meatpacking plants. And we all know who has done that work: undocumented workers here in this country.

I would ask for 15 additional seconds.

Ms. LOFGREN. The gentleman is granted, by unanimous consent, an additional 15 seconds.

Mr. GUTIERREZ. We all benefit. And we show a blind eye—a blind eye, Mr. Tranchant, that I share with you, as a father of two daughters. Your testimony is to me—I thank you for bringing your testimony here. But I suggest to you that if we refer to them simply as “banditos,” as you have referred in your testimony, it does not help to solve the problem. I want no more daughters like yours killed in our country. I want to work toward a solution. And I thank you for your testimony.

Ms. LOFGREN. The gentleman's time has expired.

I would recognize the gentlelady from California, Ms. Waters, for her opportunity to question.

Ms. WATERS. Thank you very much, Madam Chairwoman. And I am sorry that I have not been able to be here for the entire hearing. But I want to come, first of all, to honor the work that you have done, the hearings you have held, your committed work to deal with one of the biggest issues in our country, and your attempt to forge the public policy that is going to be necessary to recognize that we have to have immigration reform in a comprehensive way.

Ms. LOFGREN. Thank you, madam.

Ms. WATERS. And also I want to thank Mr. Gutierrez for the leadership that he has provided on this issue all over the country; his courage, his willingness to get on the point on this issue; to tell the truth, to recognize where the problems are, and to call upon immigrants to share in the solving of this problem and exercising certain responsibilities; and to educate all of us about the part of an immigrant population, their contributions to our society, and how we cannot solve this simply by talking about deportation of everybody. That is not going to happen. We all know that.

And so I want to say to the panel, thank you for being here today. Thank you for coming here to share your experiences. I cannot imagine what it is like to come here and talk about the loss of a child in the way that you are doing today, and describing what happened to these young girls who were innocent and simply sitting at a stop light and to have been killed in that way.

You have my greatest sympathy. And I certainly share in your sorrow. And I am hopeful that the law works in ways that no mat-

ter whether you are an immigrant or not, that if you have broken the law, if you have been arrested for drunk driving, that we do a better job of tracking, punishing, and keeping up with people who put us all at risk. So thank you.

For others who are here today with professional testimony based on your knowledge, your experience, your intellect, to the victims who are here today to talk with us, Mr. Julio Cesar Mora, about what happened, let me just say this: that many of us are committed to comprehensive reform. We recognize that there are a lot of things to be resolved. We have to resolve the fact that there are many people who have been in this country, contributed for many years, and that we have to come up with a way of reconciling the length of time that they have been here and their being able to get citizenship.

We have to deal with the employers, we have to deal with the criminals, we have to deal with every aspect of this. And it is not going to go away as a huge problem until we recognize that we have to come up with the kind the public policy that deals with the reality of the presence of immigrants who make up a significant part of this country, providing services, providing jobs, and all of that.

So I am just here to say I am committed—understanding all of the problems, understanding the violation of civil rights, understanding the criminal elements, understanding the role that employers play, who are the beneficiaries of the work without, wanting to engage in a real way in the problem, pay the real wages and all of that.

And I am going to work, under the leadership of our Chair and Mr. Gutierrez and others who are sincerely dedicated to this proposition, that we can work it out to do that. I simply wanted to come and say that, despite the fact that I have to run back and forth with some other meetings. Thank you very much.

Mr. GUTIERREZ. Will the gentlelady yield?

Ms. WATERS. Yes, I will yield.

Mr. GUTIERREZ. Number one, thank you. And I also want to thank the Chairwoman for her work on this issue. And just to add, people die; a lot of people are dying because of our immigration system, exploited at work, children left behind. Hate crimes in the United States, just check the FBI's statistics, hate crimes are rising in the United States against people of Hispanic origin. And people are being murdered on our streets simply because of the color of their skin. We want to end the unfortunate death of your daughter and the unfortunate deaths of many others.

Ms. LOFGREN. We have been joined by the Chair of the Judiciary Committee. Mr. Conyers, do you wish to question the panel?

Mr. CONYERS. I am not sure which questions I would like to ask now because, unfortunately, I was pulled out of the hearing. But I know that I am working with my two friends on the other side, the gentleman from Mississippi and Steve King, to try to put not just a human face on this but also we are in the process of sorting out the law. The truth of the matter is, we don't have an anti—the second panel is coming up, so we will have Professor Harris here. We don't have an anti-profile national statute. We have a lot

of indication that everybody is in agreement that racial profiling per se is an abomination.

I was just talking with Ted Poe earlier, and my ongoing discussions with the Ranking Member—and I haven't talked with the gentleman from Mississippi yet, but the relationship between the government, the Federal Government and local law enforcement is not as clearly cut as reading the Constitution or the Federal Criminal Code or the State statutes.

I referenced President Bush's first Inaugural Address, Attorney General Ashcroft, all have made statements about this. And so what we are trying to do is make it real and make it understanding.

I think this is a matter that this hearing, with two Subcommittees of Judiciary, are putting a face on this. We are pulling together a record. Of course, there are thousands of other instances that will not likely go into the Judiciary Committee's recording of how we handle this, but we do have an obligation to move this as far forward and to try to commit to understanding how we separate out the legal questions and just the plain, ordinary, common decency questions.

And I think I have been told that we have accomplished this with the first panel. The people looking at this, the people reading our transcript, all of this is going to be important in terms of how we finally address this question.

But there is a peripheral problem that occurs, which is that the FBI, when they pick up somebody, they put them into this huge database—I don't know if it is the terrorist watchlist or if it is just the bank of information that everybody goes in that gets picked up—NCIC. NCIC gets their hands on a person that sometimes—has this come up with any of the witnesses?

Ms. LOFGREN. I think it is going to be addressed on the second panel.

Mr. CONYERS. But you call the police as a citizen, you end up getting put in the database, and then your family gets busted, and then people start getting shipped out as a result of people working with the police. And this creates a very serious problem, and we will be looking toward expanding that.

Ms. LOFGREN. Thank you, Mr. Chairman.

I would like to take just a minute to ask you, Professor Weissman, some questions.

Clearly—well, I won't say clearly, but I think there is pretty unanimous agreement that individuals who have been convicted of a serious crime and who are not U.S. citizens should be deported, apprehended and deported, as provided for in law. Unfortunately, even though we have directed ICE to do that repeatedly, given them a huge increase in funding to do that—there is no way the local police can do that, that is a Federal Government function. And no matter how many times we tell them to go to States and localities to pick up individuals who have been convicted of serious offenses after their sentences have been served, they don't actually perform that function in a reliable way. So that is something I think that needs to be stated.

But I think what there is disagreement about is having noted that we all agree—or I think all of us do agree on that—whether

it is appropriate to round up everybody in sight because of their race, which it sounds like is happening in North Carolina.

I was struck by your testimony on page 7 that the majority of the undocumented immigrants in the 287(g) program were caught up—I think you said 83 percent of the immigrants arrested by Gaston County were charged with traffic violations; and also, talking about checkpoints in front of churches that were frequented by Latinos because a Mass was in Spanish.

Do you think that is a lawful use or a proper use of 287(g)?

Ms. WEISSMAN. I don't think it is a lawful use. I think that when we when we talk about 287(g) and upholding the law, there are some standards. The statute requires that local law enforcement officers know Federal law. And so some of these blatant aspects of racial profiling are contrary to Federal law, our Constitution, case law, State law as well.

So I think not only is it a contravention of the law, but it actually undermines what the ultimate purpose might have been about 287(g). And that is to say that we are pulling local law enforcement resources into a program and really away from their primary function.

I am concerned that—for example, DUI is something that the local law enforcement must first and foremost handle. And if they are now swept into checkpoints in front of churches and the flea market where families shop on Saturday and traffic offenses and filling out Federal forms and requesting detainers, they will not do their job. Their job is local law enforcement.

I am concerned that the failure to uphold the way this program should be operated in terms of the four corners of the contracts—we haven't talked about this today—this program is supposed to be operated according to a contract with local law enforcement and Federal agencies, and there has been very little compliance with that contract. We know that because of the GAO study that was submitted last month.

So we have a program that has been somewhat derailed, and it doesn't allow local law enforcement to do their task.

Ms. LOFGREN. Let me ask you, for example—not that this has always happened, but it is by directive supposed to happen. When ICE, the Federal agency, enters into an enforcement area and they find parents—they are supposed to determine that there is somebody to look after minor children before they remove the parents. And I was struck by your testimony about an incident in June in Alamance County. Can you describe that?

Ms. WEISSMAN. Yes. There was a vehicle that was pulled over, a woman and a man and children in the back of the car, and it was late at night. It was a mother and her children, and a male passenger who was helping her drive up to Maryland, and they were going to see the children's father. She was pulled over. It was determined that she was not documented. Although she told the law enforcement officer that the male passenger was not a relative and not suitable to be the caretaker for the children, the police left the children with this person, who ultimately left the car, and the children were left on the side of the road for a number of hours.

Ms. LOFGREN. Well, that is something that—I mean, certainly no one would be for that. But that directly contradicts what ICE is

supposed to do. And it sounds like the local police either haven't been trained or didn't get the memo about the protocols. I see—and I don't want to take advantage, since I am Chairing—that my time has expired. So I am going to stop these questions. And we do have a second panel. So I will thank every one of you for being here today, for your testimony.

I will note that the Committee record is open for 5 days. We may have additional questions for you, and if we do, we will send them to you. And if that should occur, we will request that you respond to the written questions.

And again, thank you, each one of you, very much for your presence here today.

As you are leaving, I will begin the introduction of our second panel as they move forward.

First, I am pleased to welcome Professor David Harris. Professor Harris studies, writes and teaches at the University of Pittsburgh about police behavior and regulations, law enforcement, and national security issues in the law. He has testified before the United States Senate and many State legislative bodies on profiling and related issues.

In 1996, Professor Harris served as a member of the Civil Liberties Advisory Board to the White House Commission on Aviation Safety and Security. Before he began teaching in 1990, Professor Harris was a public defender in the Washington, DC area, a litigator at a law firm in Philadelphia, and a law clerk to Federal Judge Walter K. Stapleton in Wilmington, DE.

Next, I am pleased to introduce Hubert Williams. Mr. Williams is President of the Police Foundation, a research-oriented think-tank that provides technical assistance to local police departments to enhance the quality of public safety within the context of America's constitutional standards and democratic values.

Mr. Williams began his law enforcement career as a police officer in Newark, New Jersey, rising through the ranks to serve as Director of Police for 11 years. Mr. Williams received his B.S. from the John Jay College of Criminal Justice, the City University of New York, and was a Harvard Law School fellow. He received his juris doctorate from the Rutgers Law School. Mr. Williams is a member of the New Jersey Bar Association, and has been admitted to practice before the Supreme Court of the United States. He is founding president of the National Organization of Black Law Enforcement Executives, otherwise known as NOBLE, and serves on the advisory board of the National Committee on the Right to Counsel and the Constitution Project.

He previously served on the Congressional Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, and was a member of the Council on Foreign Relations Independent Task Force on Civil Liberties and National Security.

Next, I would like to introduce Police Chief George Gascón. Police Chief Gascón took lead of the Mesa Police Department in August of 2006. During Chief Gascón's tenure, Mesa has experienced substantial crime reductions, increased officer productivity and greater community participation in policing matters.

Chief Gascón is a U.S. Army veteran and an experienced police executive. He retired from the Los Angeles Police Department as the Assistant Chief Director of Operations. Chief George Gascón received his bachelor of arts degree in history from California State University at Long Beach, and his juris doctorate degree from Western State University College of Law.

Finally, I would like to introduce Professor Kris Kobach. Professor Kobach served as Attorney General Ashcroft's chief advisor on immigration law and border security until July of 2003 and has litigated a number of lawsuits in the field of immigration. He is a senior counsel at the Immigration Reform Law Institute, a Washington, D.C.-based legal advocacy organization that represents U.S. citizens in immigration-related cases across the country. He also served as the Chair of the Kansas Republican Party from 2007 to 2009.

Professor Kobach teaches constitutional law, immigration law, American legal history, and legislation at the University of Missouri-Kansas City School of Law. Professor Kobach received his bachelor of arts degree with the highest distinction from Harvard University in 1988 and was awarded the Marshall Scholarship.

Mr. Kobach, I think it is only fair to inform you that last night the Committee received a letter from the Southern Poverty Law Center, as you know, one of the Nation's preeminent civil rights organizations. Without objection, I ask that the letter be made a part of the record.\*

[The information referred to follows:]

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\*Note: See also letter from Southern Poverty Law Center to the Honorable John Conyers, dated April 8, 2009 on page 305 of this hearing.



**SPLC**  
**Southern Poverty**  
**Law Center**



April 1, 2009

The Honorable John Conyers  
 Chairman, House Committee on the Judiciary  
 2138 Rayburn House Office Building  
 Washington, DC 20515

Dear Chairman Conyers:

It has come to our attention that Kris Kobach has been invited to participate as a panel witness for the Joint Hearing on the Local Enforcement of Immigration Laws scheduled for 10 a.m. Thursday, April 2, in the Rayburn Building, Room 2141, in Washington D.C. We respectfully request that the committee reconsider the invitation.

While Mr. Kobach is listed as a law professor at the University of Missouri, Kansas City, School of Law, we believe members also should be aware that he is the senior counsel for the Immigration Reform Law Institute (IRLI), the legal arm of the Federation for American Immigration Reform (FAIR). To date, FAIR and IRLI have paid Mr. Kobach \$125,000 to serve as IRLI legal counsel.

FAIR is listed as a hate group by the Southern Poverty Law Center, which publishes annual listings of such organizations. Among the reasons are its acceptance of \$1.2 million from the Pioneer Fund, a group founded to promote the genes of white colonials that funds studies of race, intelligence and genetics. FAIR has hired as key officials men who also joined white supremacist groups. It has board members who write regularly for hate publications. It promotes racist conspiracy theories about Latino immigrants. It has produced television programming featuring white nationalists. And John Tanton, the man who founded the group in 1979, has a long personal history of associating with white nationalists. In a 1993 letter to Garret Hardin, a committed eugenicist who promoted pseudo-scientific ideas of racial purity, Tanton wrote candidly: "I've come to the point of view that for European-American society and culture to persist requires a European-American majority, and a clear one at that."

In 2004, FAIR donated \$10,000 to Kris Kobach's congressional campaign in Kansas. When Mr. Kobach lost the race due in large part to his widely publicized ties to white nationalists, a supporter told a reporter, "It doesn't help matters that Kobach was hired by FAIR, widely perceived as a racist anti-immigrant group during the campaign." (Kansas City Star, June 8, 2004).

For all of these reasons, the Center for New Community and the Southern Poverty Law Center are deeply disappointed that the committee is seeking the testimony of Mr. Kobach, and urge that the invitation be rescinded.

Sincerely,

Mark Potok  
Southern Poverty Law Center

The Reverend David L. Ostendorf  
Executive Director  
Center for New Community

cc: The Honorable Zoe Lofgren  
The Honorable Jerrold Nadler  
The Honorable Lamar Smith  
The Honorable Steve King  
The Honorable James Sensenbrenner, Jr.

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Ms. LOFGREN. They have expressed concern that you are testifying in your capacity as a law professor rather than your role as legal counsel for the legal arm of the Federation for American Im-



migration Reform, and advise us that this is a job for which you have received at least \$125,000 in payment.

They also draw the Committee's attention to a donation from FAIR to your congressional campaign when you ran, and condemn FAIR for its ties to the White Nationalist Movement. And they have asked us not to take your testimony.

We take their concerns seriously, and certainly we do respect the work that the SPLC has done against racial violence and police brutality as an inspiration, really, throughout the years.

Ultimately, however—and I want to note this because it was an official request—we respect the right of the Minority to call their own witnesses. And so it is our opinion that the best response to this request is not to dis-invite you, but to hear what you have to say. And I just wanted to make clear that that was the determination that I have made as Chair, that you have a right to be heard.

Mr. KOBACH. May I just respond to that?

Ms. LOFGREN. You will have an opportunity to speak. We are going to have votes in about 40 minutes. All of you will have your full written statements made a part of our record. And as with the first panel, we will invite you to testify for 5 minutes. We don't have a heavy hand on the gavel, but when the red light goes on, we would ask you to please wrap up.

And we will begin first with Professor Harris.

Mr. KING. Madam Chair, just a colloquy inquiry, if you might.

Ms. LOFGREN. Certainly.

Mr. KING. I am a little off pace here, but I think I know what I heard. And I would inquire if that same approach would be used by the Chair if it happened to be a witness that had any association with MALDEF or LaRaza or any organization that might be viewed by people on the other side of the political aisle to be racist organizations.

Ms. LOFGREN. The gentleman is asking for an answer to a speculation which I am not prepared to answer. I would suggest that we go to the witnesses.

I recognize Professor Harris for his 5 minutes of testimony.

Mr. KING. Thank you, Madam Chair.

**TESTIMONY OF DAVID A. HARRIS, PROFESSOR OF LAW,  
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW**

Mr. HARRIS. Chairwoman Lofgren, Chairman Nadler, Ranking Member King, a great pleasure to be here with you today, and thank you for inviting me to testify.

The use of local police agencies in immigration enforcement, whether under 287(g) or otherwise, is a profound mistake. Local police agencies are not adequately trained for it, shouldn't do it, it is not their job, and it hurts them.

Two things happen when we get local police agencies involved in immigration enforcement. Number one, crime goes up because it does damage to the ability of the police department to work with the communities they need to work with to make the streets safe.

Number two, some are inevitably, inexorably, pushed into racial profiling not because they are biased, not because they are bad people, but because they are untrained, unsupervised, unprepared, and they simply rely on what is easy to see.

Let me explain the first point. Fifteen years ago, 20 years ago, we had the first United States police departments using community policing, and now it is ubiquitous. It has been a big part of why crime has fallen so dramatically over the last 15 to 20 years. Community policing is, at bottom, about trust. It is about the sharing of responsibilities between police agencies and their communities, between the police and the people they serve, and it is all based on partnership, and partnership is based on trust.

Now, I am not talking about personal relationships, though those are important. I am not talking about people's feelings, though those are important, too. I am talking about the kind of relationship that allows you, as a member of the community, to come into the police department and talk to them, to file complaints when necessary, to pass information to the police department when there are bad people in the neighborhood, people up to no good.

To get the police and the community working together is the goal of community policing, and trust is the foundation of how that works. When you have trust, when you have a relationship, information passes back and forth, intelligence passes back and forth, and you get good, effective policing.

When you have people who are on the local police department involved in immigration enforcement, that trust is broken. I think you heard that from the witnesses from the earlier panel. And that is where the trouble starts. When that trust is broken, when that trust is destroyed, the ability of the local police department is greatly affected to produce public safety because, as police chief after police chief that I have interviewed and talked to will tell you all over the country, "we cannot do it ourselves. We know we need the community, we need their support and help." And if people feel afraid to come forward and talk to the police about who is in their community, that is a breach of trust and that cuts off their information. If they feel afraid to come forward and report crimes they have witnessed, that deprives the police of the important information that they need in order to assure public safety. If they feel afraid to report crimes against themselves, as the domestic violence examples have so sharply suggested, what happens is the predators remain free on the street. And the predators prey on that community, but they don't stay in that community. They victimize everyone, all Americans. And because of that, crime goes up. And people who should be in jail, who should be locked up, are on the street all because people are afraid to come forward.

So that is why the police should not get into this business if they are on the local level. This is a Federal job.

When we talk about profiling—there has been a lot of discussion about that today—when you have local police enforcing immigration laws, immigration law is one of the most complex areas of the law that there are. It is so complex, it requires a great deal of expertise and study and years and years of experience to do it correctly.

When we put our local men and women and our police forces into the position of enforcing immigration law, we are putting them into an untenable situation because they don't have the training, experience, or knowledge necessary to enforce that law. That isn't fair of us to ask them to do that. And what happens is that, as human

beings, they inevitably fall back on what they can easily recognize—appearance. And it isn't because they are biased, it isn't because they are bad people, it is just because there is no other way to do what they are being asked to do. And because of that, profiling follows.

And those police officers who we are putting in that position are going to get sued, they are going to have community problems. Their ability to enforce the law overall and to fulfill their core mission, which is to ensure public safety, is going to be damaged perhaps beyond repair.

Thank you.

Ms. LOFGREN. Thank you very much, Professor.

[The information referred to follows:]

PREPARED STATEMENT OF DAVID A. HARRIS

I thank Subcommittee Chairs Lofgren and Nadler and Ranking Members King and Sensenbrenner for convening this important hearing today. The American people need to know that using state and local police forces for immigration enforcement raises significant public safety and civil rights issues that pose a danger to everyone.

We now have a severely dysfunctional immigration system, in which problems have built up and compounded for years. But putting state and local police into the position of enforcing immigration law will create new problems that will endanger the safety of all Americans, and subject state and local law enforcement agencies and their officers to possible liability for racial and ethnic profiling. In short, moving our state and local police into the business of immigration enforcement risks the gains we have made against crime over the last fifteen years, and creates significant new perils for the men and women who dedicate themselves to public safety. This explains why the overwhelming number of state and local police departments and law enforcement professional organizations want no part of immigration enforcement.

SECTION 287(G) AND EFFORTS TO PUSH STATE AND LOCAL POLICE TO ENFORCE IMMIGRATION LAW

In the 1990s, Congress created Section 287(g) of the immigration law. Section 287(g) authorized the federal government to enter into voluntary agreements called Memoranda of Agreement (MOAs) with state and local law enforcement agencies, under which the state and local police departments (usually small numbers of designated officers from within the departments) would become partners with federal immigration enforcement agencies. They would work together on immigration enforcement; would receive some training; and would participate in joint operations under federal supervision.

But no police departments decided to participate in the 287(g) program until early in this decade; even then, only two agencies—state police in Florida and Alabama—chose to involve small numbers of their officers in the program. (The number has since grown, but remains miniscule compared to the 17,000 police departments nationwide, and includes no police departments from major cities.)

This has frustrated some who advocated for stronger immigration enforcement. In particular, many Americans have questioned the federal government's inability to assure the integrity of our borders against unauthorized crossings. By 2006, an estimated twelve million people had entered the country illegally, and the federal agencies empowered to deal with the problem seemed unable or unwilling to do so in any satisfactory way, and resulted in the introduction of federal legislation such as the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, H.R. 2671 (108th Cong.), and the Homeland Security Enhancement Act, S. 1906 (108th Cong.). Both bills aimed to force non-federal police into the enforcement of immigration law by depriving those agencies that refused to do so of federal funds designed to reimburse them for the costs of detaining and housing illegal immigrants for the federal government. These costs to states, counties, and municipal governments ran into the millions of dollars, often because the federal government could not or would not do its duty and take custody of the individuals apprehended. The threat to these local governments was real: either step up and begin enforcing immigration law, or lose the money you need to pay for carrying this federal burden. Virtually all major po-

lice organizations, including the International Association of Chiefs of Police, the Major Cities Chiefs Association, opposed this legislation.

These were not the only efforts made to push state and local police into immigration enforcement. During the Bush Administration, the Department of Justice began to use the National Crime Information Center (NCIC) database for this purpose. NCIC constitutes the single most important information source for police departments and cops on the street in the U.S. Police in every corner of the country query NCIC thousands of times a day to determine whether drivers stopped for traffic enforcement, suspicious persons encountered by officers, or persons arrested for crimes are wanted in any jurisdiction. The FBI maintains the NCIC under a strict federal law governing how police agencies can use it and what kind of information may be put into it. Only certain data can be entered, in order to keep NCIC free of inaccurate, untimely, and unnecessary information; all other types of data are strictly prohibited. In direct violation of these rules, the Department of Justice put tens of thousands of immigration warrants—most of which are civil in nature and do not even pertain to crimes—into NCIC, with the goal of forcing local police to make arrests based on these warrants.

All of these efforts took place against the backdrop of increased pressure from advocates of stronger immigration enforcement, who clothed their efforts in the rhetoric of the war on terror. If millions of poor people from Mexico and Central America could make it into the U.S. by simply walking across the border, surely potential terrorists could do this, too. Never mind the lack of evidence that this had occurred or might occur at some time in the future; it could happen, they argued, so policing the border had to become a national security matter. And state and local police needed to take on the job of immigration enforcement to keep our country safe from terrorists.

#### THE RESPONSE OF POLICE DEPARTMENTS: “NO, THANK YOU”

American police departments and their officers have a long history of rising to challenges for the country, of responding in times of emergencies large and small, short and long term, with a willingness to tackle whatever problems have emerged. Thus it surprises long-time observers of the criminal justice system to see that (with only a few exceptions) state and local law enforcement has answered the call to enforce immigration law with a straightforward refusal: “no, thank you.”

For some, it is a matter of the correct use of governmental powers. Immigration is a federal matter, both under the Constitution and in every practical sense. Therefore, the federal government has always had the job of enforcing our numbingly complex immigration laws, and that must continue. For others, the question comes down to resources. Police departments have never found themselves more strapped; some governments have had to lay off officers. They also face a daunting new array of homeland security-related tasks, at the same time that they find their ranks depleted by military deployments of officers who are members of the National Guard. They simply do not have the wherewithal to take on the huge and complex problem of immigration enforcement.

But by far the most common response to the push to get state and local police involved in immigration enforcement centers on the core public safety responsibilities of our police departments. Simply put, police officers know that getting involved in immigration enforcement would constitute a huge mistake from the perspective of crime fighting. It will degrade their ability to prevent crime and catch criminals; they will find their ability to keep people safe crippled. And for that reason above all others, they want no part of the effort.

#### DESTROYS THE ABILITY OF LOCAL POLICE TO ASSURE PUBLIC SAFETY

For the past two decades, American police departments have virtually all moved toward community policing. While this philosophy of police work has many facets, among the most important is that police and the communities they serve must work together to make the streets safe in our cities and towns. Partnerships, based on trust, put police and citizens on the same side of the struggle against crime, instead of solidifying old “us versus them” differences. This results in police receiving valuable information from citizens about who is up to what in their neighborhoods. And it is this information that is the lifeblood of successful policing; without it, police do nothing but respond to crime after it happens, and can do nothing to prevent damage before it occurs. Thus the relationships between police and the people who live in our communities are at the heart and of any anti-crime effort. Without it, police move about only blindly, without guidance from the people who know what is happening on the ground.

Creating and nurturing these relationships is not easy, and always takes sustained effort over time, especially in communities in which there exists a history of mistrust and abuse. But police departments that have successfully devoted themselves to community policing have undertaken the task and devoted resources to it because it pays real dividends in terms of crime reduction.

The task is only more difficult in immigrant communities. In these areas, police confront cultural differences invisible to the uninitiated outsider. Along with culture, language barriers can make even basic communication difficult. What is more, people in immigrant communities may carry a distrust of police from experiences in their home countries. Despite all of this, American law enforcement has built a record of attempting to work through these differences to build relationships. The police realize that, as in any other community, they need public support to succeed—whether the public consists of native born Americans, naturalized immigrants, even illegal immigrants, or a mix of all three. And, generally speaking, they have worked hard to create these relationships.

Involvement of state and local police in immigration enforcement potentially jeopardizes all of this progress, and threatens to cut off the all-important avenues of communication and information that community policing uses to create public safety. Put simply, if state and local police become participants in immigration enforcement, people in immigrant communities will not trust them. Instead, they will begin to fear them, and to fear contact with them. They will fear that any encounter with the police—reporting a crime, telling a police officer about dangerous persons or events in the community, or even telling an officer that they themselves have become crime victims—will result in investigation *of them*, and will focus on their immigration status. Thus every police contact becomes a possible occasion for deportation. Naturally, immigrants whose legal status is questionable will fear this, and avoid the police.

This fear will spread beyond illegal immigrants. According to the Pew Hispanic Center, 3.2 million American citizens live in mixed status households, in which some people have legal status, but others do not. Even those with legal status will hesitate to become involved with police if they think it might bring immigration consequences on someone living in the home—usually, of course, a family member.

The consequences of this are both obvious and disastrous. First, police will not have all of the information that they need to make the neighborhood safe, because some number of residents will not communicate with them out of fear. Second, and perhaps more appalling, immigrants victimized by predators—robbers, rapists, even potential killers—will not report crimes against them. This leaves the predators free to victimize others.

This is why police departments have not, as a rule, embraced the call to involve themselves in immigration enforcement: it will corrode their hard-won gains with immigrant communities, and as a consequence it will damage crime control efforts. According to Gene Voegtlin of the International Association of Chiefs of Police, “a key concern is that state and local enforcement involvement in immigration can have a chilling effect on the relationship” police have “with the immigrant community in their jurisdiction.” *Cities and States Take On Difficult Duty of Handling Undocumented Workers*, Wall Street Journal, Feb. 2, 2006. This translates directly into less information for the police, and a lessening of their ability to catch criminals. “It’s a matter of practical policing,” says George Gascon, former Assistant Chief of the Los Angeles Police Department and now Chief of Police in Mesa, Arizona. “If an undocumented woman is raped and doesn’t report it, the suspect who raped that woman, remember, could be the suspect who rapes someone else’s sister, mother or wife later.” (Jack Dunphy, *Arresting A Crime Wave*, National Review Online, Jan. 30, 2006 <http://article.nationalreview.com/?q=MDUZZGUyNTgwNTEzYzliNDVkbGVjMjk3NjA0NzM4NzU=>).

#### RACIAL AND ETHNIC PROFILING ALMOST CERTAINLY FOLLOWS

Inserting local police into immigration enforcement represents a serious mistake for another reason: it will force our police officers into an untenable position by giving them an assignment which most cannot carry out without relying on racial or ethnic appearance. This will lead them into profiling, and will subject them and their departments to legal liability.

Immigration law ranks among the most complex bodies of rules, statutes, regulations and court cases that this country has. One court memorably noted the “striking resemblance between (immigration law) and King Minos’s labyrinth in ancient Crete, and said that immigration law is among “examples we have cited of Congress’s ingenuity in passing statutes certain to accelerate the aging process of judges.” *Lok v. INS*, 548 F.2d 37, 38 (2d Cir. 1977). One might liken the extreme

complexity of U.S. immigration law to the tax code—except that the tax code is easy to understand and changes less often by comparison. For this reason if no other, the task of immigration enforcement demands high specialized knowledge, training, and experience. Thus the importance of having expert immigration officers in agencies like Immigration and Customs Enforcement makes sense.

In contrast, state and local police get no training in the intricacies of immigration law during their training. (Even those officers who are among the few in the U.S. who get training in immigration law under Section 287(g) MOAs receive only five weeks of training—not long enough to thoroughly grasp the rules.) And no officer can pick up crucial subtleties—of what makes specialized immigration documents genuine or fraudulent, of understanding when an individual allowed into this country legally may or may not have fallen out of status, or of knowing whether a work permit has or has not expired—simply from spending time on the street.

Thus when state and local officers become involved in immigration enforcement, they operate without vital knowledge that usually enables police to make intelligent distinctions on the street between law abiding persons and possible criminals. This inevitably results in the use of substitute clues: racial or ethnic appearance, inability to speak English, or the presence of an accent. All of these, of course, constitute racial and ethnic markers. Relying on race or ethnicity this way may not be the intent of the officer in any way, but because they do not have access to other clues or intelligence, since they do not have the requisite training and direct immigration experience, they inevitably fall back on what is easily perceivable: ethnic appearance or accent.

Note that the impact of this activity falls not just on persons present illegally in this country, but on anyone who looks or sounds as if they might belong to the same ethnic group. And the more people in any particular area who share that ethnic heritage, the more American citizens or legally present nationals will receive this treatment: they will be treated like people who have to prove they have a right to be present, perhaps in the country of their birth. Unfortunately, this will happen most frequently in the American southwest, where the population of American citizens with Mexican or Central American appearance will be highest.

Enforcing the law based on race, ethnic appearance, or national origin violates the Equal Protection Clause of the Constitution, and can create legal liability for the departments and the officers involved. Legal action might come from the individuals affected by these practices, either singly or as part of a class of persons, or even from the Department of Justice, which has authority to bring suit against law enforcement agencies that engage in “patterns or practices” of violations of the constitutional rights of persons, under 42 U.S.C. Section 14141. Thus our police are put in an untenable position. If we push them into enforcing a complex body of law with little or no training, we put them into a position in which grave mistakes are nearly inevitable—mistakes which may cost them and their departments dearly.

#### A CASE STUDY: MARICOPA COUNTY, ARIZONA

Many Americans have become familiar with “Sheriff Joe” Arpaio of Maricopa County, Arizona. He has long embraced his reputation as “America’s toughest sheriff,” and during the past year Arpaio has used his authority to undertake crackdowns on suspected illegal immigrants. This has included raids of various kinds, as well as the use of traffic enforcement as a pretext to investigate immigration status. Arpaio has frequently clashed with other local officials, including the heads of other law enforcement agencies in Maricopa County; he has staged his immigration enforcement actions in their jurisdictions unilaterally, with neither their permission nor participation, because his own jurisdiction is county wide. This has caused considerable frustration and consternation, but Arpaio has continued these actions anyway.

Late in 2008, the conservative Goldwater Institute, located in Arizona, released an independent study of Sheriff Arpaio’s immigration enforcement actions and the impact these actions have had on not just immigration but public safety in general. The report, entitled “Mission Unaccomplished,” (which can be found at in its entirety at <http://www.goldwaterinstitute.org/Common/Img/Mission%20Unaccomplished.pdf>) contained several key findings.

- Rates of violent crime in Maricopa County and the City of Phoenix increased during Arpaio’s immigration enforcement initiative.
- Response times to 911 calls to the Sheriff’s Department increased.
- The immigration crackdown had resulted in the diversion of significant resources away from the mission of fighting crime and acting as primary first responders in various emergency situations.

- There had been little or no coordination with other police agencies during the Sheriff's enforcement actions, resulting confusion among departments as well as anger and resentment.
- The Sheriff's efforts had been utterly ineffective as immigration enforcement mechanisms.
- These efforts had led directly to law suits against the Sheriff's department, specifically for allegedly illegal and unconstitutional conduct during the actions, including profiling.

And less than a month ago, Sheriff Arpaio's actions earned his department a dubious distinction. In the first action of its kind for the new Administration, the Department of Justice announced a formal investigation of the Maricopa County Sheriff's Department under 42 U.S.C. Section 14141, for a "pattern or practice" of constitutional violations.

#### CONCLUSION

For public safety and civil rights, the implications of immigration enforcement by state and local police departments could not be clearer, or more negative. Immigration enforcement by these non-federal law enforcement agencies will lead to a decrease in public safety and an increase in crime, because vital relationships between police and the communities they serve will break down, corroding under the fear generated by immigration enforcement. And going in this direction almost guarantees that police, no matter how well intentioned, will fall back into identifying suspects by racial or ethnic appearance—racial profiling by any other name. By and large, our state and local police do not want to do this; they want no part of this doomed effort, and rightfully so. We must do everything in our power to support them and their desire to do what it takes to make us safe and to avoid the barriers immigration duties would put in their way.

Ms. LOFGREN. Mr. Williams.

#### **TESTIMONY OF HUBERT WILLIAMS, PRESIDENT, POLICE FOUNDATION**

Mr. WILLIAMS. Chairwoman Lofgren, Mr. King, distinguished Members of the Committee, thank you very much for providing me with an opportunity to speak here today on behalf of the Police Foundation on the issue of immigration enforcement and State and local police roles with respect to that.

Interestingly enough, the Police Foundation over the past year has been actively involved with local law enforcement officials. We have held focus groups in cities with high immigration population, amongst police chiefs, immigrants themselves, scholars, and elected political officials. The objective of the Police Foundation in doing this was to gain insight and perspective at the ground level on this problem.

As a result of that work, the Police Foundation held a national conference here in Washington, D.C. Last year. Approximately 100 police chiefs were in attendance at that conference, and many representatives of the immigrant community came to that conference. We will be issuing a report within the next 2 to 3 weeks on the work that we have done in the conference.

I want to say to you today that we need to be assured that the police leaders in America have some voice in the establishment of national policy with respect to immigration enforcement.

The title of our conference was "The Role of Local Police: Striking a Balance Between Civil Liberties and Immigration Enforcement." We have seen through the years that people have argued their point of view by taking a particular piece of evidence and bringing it to the floor, but excluding and eliminating perhaps the greater

evidence that would provide some insight and perspective as to the nature of this problem.

If you look back to 1980, and you go from a period of 1980 to 2006, you will find out that we had one of the largest increases in incarceration in our prison system ever. In 1980 we had 500,000 people in the prison system. By the year 2006, we had 2.2 million people in the prison system. You will find, when you start to look at the statistics, that the immigrant population, when compared to the population of Americans born here, the crime rate was five times lower.

I don't believe that we can characterize the entire immigrant community by looking at particular incidents in which immigrants have abused their place here, in which they have committed heinous crimes.

I remember the Mafia and Cosa Nostra, which plagued the Italian community for decades. The criminal activity of this gang element caused some people to characterize all Italians as criminals. The Irish and other ethnic groups had similar problems in decades gone by. And people who characterize an entire community by the activities of a few do a disservice to all of us. We ought not in this United States Congress allow ourselves to be pulled into that direction, but rather we should look at the immigration enforcement issue more comprehensively by carefully examining the roles and responsibilities of the parties of interest.

Let me finally say this: The big challenge for local police is to balance the interests involved with respect to their responsibilities under the police powers of the State, and their responsibilities to ensure civil liberties established under the Constitution, with this business of enforcement of immigration laws. It is very complicated, very difficult, and police chiefs have made that clear in our conference.

I would like to read to you, if I may, some of the highlights of their recommendations.

Number one, the cost of participating in the U.S. Immigration and Customs Enforcement's 287(g) program outweighs its benefits.

Police officers should be prohibited from arresting and detaining persons to solely investigate immigration status in the absence of probable cause of an independent State law criminal violation.

If a local agency, nevertheless, enters into the 287(g) program, its participation should be focused on serious criminal offenders and should be limited to verifying the immigration status of criminal detainees as part of the 287(g) jail enforcement program.

Local and State authorities participating in immigration enforcement activities should develop policies and procedures for monitoring racial profiling and abuse of authority.

Ms. LOFGREN. Mr. Williams, could you wrap up? The only reason why I am interrupting is that we do have this as part of our written record.

Mr. WILLIAMS. Precisely. Let me just complete this last point and then I will close up.

Ms. LOFGREN. Thank you so much.

Mr. WILLIAMS. In order to preserve the trust that police agencies have built over the years by aggressively engaging in community-oriented policing activities, local law enforcement agencies should



involve representatives of affected communities in the development of local immigration policies.

The Police Foundation has worked for approximately 40 years to improve the capacity of police to ensure public safety and to perform their duties effectively. And we believe that this issue of immigration enforcement is something that really needs to be looked at more carefully and in a more balanced way.

Ms. LOFGREN. Thank you very much for your testimony and for your service to our country.

[The prepared statement of Mr. Williams follows:]

PREPARED STATEMENT OF HUBERT WILLIAMS

Mr. Chairman, Madam Chairman and distinguished committee members. Thank you for this opportunity to present my testimony on state and local law enforcement of federal immigration laws.

My name is Hubert Williams. My law enforcement career began in the Newark, New Jersey Police Department more than three decades ago and I served as its Director of Police for eleven years. I was founding president of the National Organization of Black Law Enforcement Executives and am a lifetime member of the International Association of Chiefs of Police.

I am currently president of the Police Foundation, a national, nonpartisan, non-profit organization established in 1970 to improve American policing. Motivating all of the foundation's efforts is the goal of efficient, effective, humane policing that operates within the framework of America's constitutional standards and democratic values.

Over the past year, the Police Foundation conducted a national project entitled, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, that examined the implications of state and local law enforcement of federal immigration laws. A main goal of the project was to provide local law enforcement with a venue to debate and disseminate their perspectives about their role in immigration enforcement so that they may have an influence in the national policy debate. The project brought together police executives, policy makers, elected officials, scholars, and community representatives in a series of focus groups across the country and at a national conference here in Washington. The project included reports on the rights of undocumented immigrants and the legal framework for the enforcement of immigration laws, demographic research, immigration and criminality, evaluation of federal efforts to collaborate with local police on immigration enforcement (specifically, the 287(g) program), a national survey of local police immigration policies, the experience of undocumented youth, and a survey of law enforcement executives attending the conference about their views on local immigration enforcement issues. The final report of this project will be published in the next few weeks.

My testimony here today will focus on our findings and recommendations regarding the role of local law enforcement in enforcing federal immigration laws.

Traditionally, the prevailing view was that the responsibility for enforcing federal immigration laws was solely in the purview of the federal government. In 1996, however, Congress passed legislation expanding the role of local law enforcement in federal immigration enforcement. The most well-known program is the U.S. Immigration and Customs Enforcement's (ICE) 287(g) program, which authorizes federal officials to enter into written agreements with state and local law enforcement agencies to carry out the functions of immigration officers, including investigation, apprehension, and detention.

The trend toward greater involvement of state and local law enforcement in federal immigration enforcement gained significant momentum after the terrorist attacks of 9/11, through pressure placed on them by their elected leaders, their communities, and the media.

To-date, only a fraction of a percentage of police and sheriffs' departments has opted to participate in the 287(g) program. There are good reasons for this. Police executives have felt torn between a desire to be helpful and cooperative with federal immigration authorities and a concern that their participation in immigration enforcement efforts will undo the gains they have achieved through community oriented policing practices, which are directed at gaining the trust and cooperation of their communities, including immigrant communities.

The reluctance of local police to enforce federal immigration law grows out of the difficulty of balancing federal and local interests in ways that do not diminish the

ability of the police to maintain their core mission of maintaining public safety, which depends heavily on public trust. In communities where people fear the police, very little information is shared with officers, undermining the police capacity for crime control and quality service delivery. As a result, these areas become breeding grounds for drug trafficking, human smuggling, terrorist activity, and other serious crimes. As a police chief in one of our focus groups asked, “How do you police a community that will not talk to you?”

Law enforcement leaders are also concerned about the impact of local law enforcement of immigration laws on already strained state and local resources, the high possibility of error given the complexity of immigration law, a possible increase in police misconduct, the possibility of racial profiling and other civil lawsuits, and increased victimization and exploitation of immigrants.

The following recommendations and policy positions were widely held among law enforcement executives participating in our project.

- The costs of participating in the U.S. Immigration and Customs Enforcement’s (ICE) 287(g) program outweigh the benefits.
- Police officers should be prohibited from arresting and detaining persons to solely investigate immigration status in the absence of probable cause of an independent state law criminal violation.
- If a local agency nevertheless enters the 287(g) program, its participation should be focused on serious criminal offenders and should be limited to verifying the immigration status of criminal detainees as part of the 287(g) Jail Enforcement Officer program.
- Local and state authorities participating in federal immigration enforcement activities should develop policies and procedures for monitoring racial profiling and abuse of authority.
- In order to preserve the trust that police agencies have built over the years by aggressively engaging in community oriented policing activities, local law enforcement agencies should involve representatives of affected communities in the development of local immigration policies.
- There is a need for empirical research on ICE’s 287(g) program and other methods of police collaboration with federal immigration authorities so that we have more objective data by which to better understand the way in which these programs are carried out in the field and their impact on public safety and civil liberties.
- Local law enforcement agencies should employ community-policing and problem-solving tactics to improve relations with immigrant communities and resolve tension caused by expanding immigration.
- The federal government must enact comprehensive border security and immigration reforms, because the federal government’s failure on both issues has had serious consequences in cities and towns throughout the country.

Local police chiefs recognize that mutually cooperative and supportive relationships among law enforcement authorities strengthen the capacity of government at all levels to ensure that our communities and our nation remain safe and secure. But when local police execute the powers of immigration enforcement officers—as is the case when they check for green cards at roadblocks, or stop people for motor vehicle violations and request documentation or information associated with immigration status—they execute an immigration enforcement function in contacts with the general public. As a result, they assume all of the attendant risks and consequences associated with such activities. These risks are diminished considerably when the exercise of police authority does not involve contacts with the general public, such as would be the case when officers are processing prisoners in connection with DHS to determine whether there are any outstanding warrants or holds against those individuals, or when transferring prisoners with warrants or holds into the custody of DHS.

The effectiveness of local police is heavily dependent upon the nature of the relationship they have with the general public and the degree to which the police and community are able to work collaboratively to resolve crime problems. Local police must serve and protect *all* residents regardless of their immigration status, enforce the criminal laws of their state, and serve and defend the Constitution of the United States. Local law enforcement agencies that opt to enforce federal immigration law should do so in a manner that does not erode their relationship with immigrant communities or subordinate municipal interests to those of the federal government. Local law enforcement must be careful to strike a balance between immigration concerns, civil liberties, and maintaining public safety.

Thank you and I will be pleased to answer any questions.

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Ms. LOFGREN. Police Chief Gascón.

**TESTIMONY OF GEORGE GASCÓN, CHIEF,  
MESA POLICE DEPARTMENT, MESA, AZ**

Chief GASCÓN. Madam Chairman, Subcommittee Members, I am pleased to be here today to discuss the impact that the 287(g) program is having on local law enforcement.

The application of the 287(g) by local police has created a variety of challenges for public safety. Increased political pressure on local law enforcement to reduce undocumented immigration, coupled with Federal deputation of local police to enforce Federal immigration statutes is jeopardizing sound and well-established policing practices. It is imperative that the Federal Government act to remedy the situation.

First, we need clear guidelines that provide police with the tools necessary to deal effectively with serious criminal activity committed by removable undocumented immigrants.

Second, we need to ensure that any federally sponsored program for this purpose contains clearly stated constitutional protections to ensure communities and individuals they are not being racially profiled.

Finally, it needs to ensure that some community policing practices are encouraged. To do so, positive and respectful public engagement and partnerships must be embedded into any federally supported process aimed at addressing serious criminality by undocumented immigrants through the use of local police.

To be sure, providing local and State police with the tools necessary to address serious criminal behavior by noncitizens here, without authority, is a priority. Our police officers need the tools and support necessary to do their jobs safely. To that end, fast access to relevant information concerning wanted criminal aliens must be made available to police field personnel so they can protect themselves and our communities. Currently, that level of information is not readily available in the field for police personnel regardless of their 287(g) status.

At the same time, the constitutional concerns created by the current state of affairs should be troubling to all of us. The impact on local law enforcement in this politically charged environment can be devastating. In some cases, it is setting the police profession back to the 1950's and 1960's, when police officers were sometimes viewed in minority communities as the enemy.

According to Mr. Stana, Director of Homeland Security and Justice at the Government Accountability Office, the main objective of the 287(g) program is to enhance the safety and security of communities by addressing serious criminal activity committed by removable aliens.

Unfortunately, in some cases enforcement decisions are being based on politics instead of professional public safety concerns, and the goal of dealing with serious criminal activity has been replaced by a numbers game. Often these poorly conceived and politically

motivated enforcement efforts are placing officers in harm's way, leading to accusations of police misconduct.

The impact of the 287(g) program in some predominantly Hispanic communities has been equally problematic. Often, allegations of race-based enforcement practices are driving a wedge between the police and the impacted communities.

Community policing efforts are being derailed when immigrants who fear that the police will help to deport them rely less on the local authorities and, instead, give thugs control over their neighborhoods.

Community policing requires effective partnership between the police and the various community services. At the local level, sustainable public safety strategies require active community participation and problem solving efforts. For this level of community engagement to flourish, the public must trust the police. It is nearly impossible to gain the required trust to make community policing a reality in places where the community fears the police will help deport them, or deport a neighbor, a friend, or a relative.

In conclusion, American police officers deserve thoughtful Federal leadership so that we can continue doing our best to provide our country with the security that defines a civilized society.

In the case of the 287(g) program, any future participation should be predicated on clearly stated guidelines that, number one, ensure that all field officers of the concerned agency have immediate access to information regarding noncitizens who are charged with or convicted of serious criminal conduct.

Number two, strict constitutional requirements are placed on any participating agency.

And thirdly, engagement strategies by the impacted community in the form of participation and problem-solving partnerships must be required to partake in the program.

With that, Madam Chairman, I am open for any questions.

Ms. LOFGREN. Thank you very much, Chief.

[The prepared statement of Chief Gascón follows:]

PREPARED STATEMENT OF GEORGE GASCÓN

The application of 8 USC 1357(g) (hereinafter 287(g)), by local police has created a variety of challenges for public safety. Increased political pressure on local law enforcement to reduce undocumented immigration coupled with the Federal deputization of local police to enforce federal immigration statutes is jeopardizing sound and well established policing practices.

It is imperative that federal government act to remedy this situation. First, we need clear guidelines that provide police with the tools necessary to deal effectively with serious criminal activity committed by removable undocumented immigrants. Second, we need to ensure that any federally sponsored program for this purpose contains clearly stated constitutional protections to ensure communities and individuals are not being racially profiled. Finally, it needs to ensure that sound community policing practices are encouraged. To do so, positive and respectful public engagement and partnerships must be embedded into any federally supported process aimed at addressing serious criminality by undocumented immigrants through the use of local police.

To be sure, providing local and state police with the tools necessary to address serious criminal behavior by non-citizens here without authority is a priority. Our police officers need the tools and support necessary to do their job safely. To that end, fast access to relevant information concerning wanted criminal aliens must be made available to police field personnel so that they can protect themselves and our communities. Currently, that level of information is not readily available in the field for police personnel regardless of their 287(g) status.

At the same time, the constitutional concerns created by the current state of affairs should be troubling to all of us. The impact on local law enforcement in this politically charged environment can be devastating. In some cases it is setting the police profession back to the 1950s and 60s, when police officers were some times viewed in minority communities as the enemy.

According to Richard Stana, Director of Homeland Security and Justice at the Governmental Accountability Office,<sup>1</sup> the main objective of “the 287(g) program is to enhance the safety and security of communities by addressing serious criminal activity committed by removable aliens”. Unfortunately, in some cases enforcement decisions are being based on politics instead of professional public safety concerns, and the goal of dealing with serious criminal activities has been replaced by a numbers game. Often these poorly conceived and politically motivated enforcement efforts are placing officers in harms way leading to accusations of police misconduct.

The impact of the 287(g) program in some predominantly Hispanic communities has been equally problematic. Often allegations of race-based enforcement practices are driving a wedge between the police and the impacted communities. Community policing efforts are being derailed where immigrants who fear that the police will help to deport them rely less on the local authorities and instead give thugs control of their neighborhoods.

Community policing requires effective partnerships between the police and the various communities served. At the local level, sustainable public safety strategies require active community participation in problem solving efforts. For this level of community engagement to flourish the public must trust the police. It is nearly impossible to gain the required trust to make community policing a reality in places where the community fears the police will help deport them, or deport a neighbor, friend or relative.

In conclusion, America’s police officers deserve thoughtful federal leadership so that we can continue doing our best to provide our country with the security that defines a civilized society. In the case of the 287(g) program, any future participation should be predicated on clearly stated guidelines that ensure (1) all field officers of the concerned agency have immediate access to information regarding non citizens who are charged with or convicted of serious criminal conduct; (2) strict constitutional requirements are placed on any participating agency; and (3) engagement strategies by the impacted community in the form of participation and problem solving partnerships must be required to part take in the program.

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Ms. LOFGREN. And finally, we turn to you, Professor Kobach.

**TESTIMONY OF KRIS KOBACH, PROFESSOR OF LAW,  
UNIVERSITY OF MISSOURI-KANSAS CITY SCHOOL OF LAW**

Mr. KOBACH. Thank you, Madam Chairman, and Members of the Committee, for discussing this important topic today.

I was involved as counsel to the U.S. Attorney General in the first two implementations of section 287(g) in 2002 and 2003, respectively, in the jurisdictions of Florida and Alabama. Both of those implementations were at the State level, and I would be happy to speak about them in response to your questions.

The Florida Memorandum of Agreement under 287(g) became effective in July 2002; the Alabama was in September of 2003. The Florida one was the first, of course. It was an immense success. Within the first year of its operation in Florida, specially trained officers had arrested 165 individuals under 287(g) authority. They since broadened their authority. And they also made a huge arrest in a fraudulent document production ring in Naples, Florida.

At the time of this hearing, there are now 67 jurisdictions—State, county and local—across the United States that have 287(g) authority. They compromise a group of 951 State and local law en-

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<sup>1</sup>Testimony Before the Committee on Homeland Security, House of Representatives, “Immigration Enforcement: Controls over Program Authorizing State and Local Enforcement of Federal Immigration Laws Should Be Strengthened” (March 9, 2009).

forcement officers who, in their part-time capacity, in the course of their normal duties, will assist the Federal Government in some enforcement arrests. There are another 42 State and local agencies across the country that are waiting to get involved in the 287(g) program.

So it is interesting; I hear the allegations that the program is so costly, but how is it, then, that 42 agencies are lining up outside the door waiting to get on board, but the agency simply isn't able to turn out the agreements fast enough?

Now, in just 25 of the 42 jurisdictions that do have 287(g) authority, there have been, in 1 year alone, fiscal year 2008, 43,000 immigration arrests. And virtually all of those led to either a notice to appear, which triggers an immigration court proceeding, or the individual is granted voluntary departure. So it has been a very effective program. It is unlikely that in the absence of the 287(g) program, any of those 43,000 arrests would have occurred.

Now, by the way, let's put these numbers in perspective. ICE has a total of 5,600 special agents attempting to cover the entire country in attempting to find some 12 million illegal aliens that is estimated. The New York Police Department has approximately 37,000 police officers, seven times as many, or six times as many police officers. It is simply ludicrous to argue that ICE has all of the staffing and that we can simply push the responsibility entirely upon a small agency of 5,600 and not allow the help voluntarily provided by the real eyes and ears of American law enforcement, and that is our State and local police.

It would radically reduce and weaken the enforcement of immigration law for this Committee or any Committee to attempt to scale back the 287(g) program precisely at the time when over 12.5 million Americans are out of work and are competing for jobs with people who are unlawfully present in the United States and attempting to work in those same jobs.

Now, I want to also address a myth that has arisen concerning section 287(g)—it has already been mentioned by other members of this panel. The myth is perpetuated by observers unfamiliar with the history of the program who say that the program's only purpose is to allow for the arrests of so-called serious criminals, those who have committed higher level felonies in addition to their immigration violations.

That has never been part of the program. And when the Department of Justice first implemented the program in 2002, we looked at the words of Congress. The exact text of section 287(g) of the Immigration Nationality Act contains no definition, no limitation as to what the purposes of the program are.

Indeed, we looked at the statutory language—or I have looked at the statutory language and the Committee language. The Senate Judiciary Committee said simply this, "The program authorizes the Attorney General to enter into written agreements with a State or any political subdivision of a State to permit specially trained officers to arrest and detain aliens." Nothing more is said.

Now, the Department of Justice, as I say, began implementing this program, recognizing that it is not a one-size-fits-all program, but that it meets the individual law enforcement needs of each ju-

risdiction. And there are at least six distinct purposes of section 287(g) which are detailed in my written testimony.

The first is addressing terrorism-related concerns, which is Florida's primary concern.

The second is dealing with compensating for a lack of Federal enforcement agency resources. At the time, Alabama had only three INS agents attempting to cover the entire State.

The third purpose is removing convicted aliens who are in institutions right now.

The fourth purpose is looking at high-risk criminal populations of aliens, such as gang members.

The fifth purpose is generally restoring the rule of law in a State or jurisdiction that has seen rampant illegal immigration, such as Arizona.

And the sixth purpose is protecting unemployed U.S. citizens from competition with illegal labor. All of those purposes are satisfied by the 287(g) program.

I want to just briefly mention a few of those in the context of the programs that I was personally involved in implementing. In Florida, there was a particular concern that several of the 9/11 attackers had entered through Florida airports. Indeed, you may be familiar with Mohamed Al Khatani, the 20th hijacker. He was stopped at the Orlando International Airport and detained by a vigilant INS officer and stopped before entering.

But the point is that many of the illegal aliens had operated, lived in, or entered through Florida. Florida was, therefore, particularly concerned about it. And their 287(g) agreement was designed to address that need.

Alabama's need was not limited to individuals who were convicted of serious crimes, but rather the fact that you had an entire State covered by only three INS agents. They simply wanted to put forward their own resources and say we would like to help, we would like to be your eyes and ears.

If you look at other States, such as, for example, Arizona, I think you see a real problem there. Because of the rampant illegal immigration in that State, you saw a massive fiscal burden on the State. And they decided that they would put forth some of their own resources to deal with the problem. It is estimated that the cost of illegal immigration, in terms of State public benefits and local public benefits in Arizona is \$1.3 billion a year. And that is why you saw things like counties, such as Maricopa County, and five other jurisdictions saying, well, we would like to help. And at the State level, they are the first State, they are one of two States that now require E-Verify within that State. So they have done things at the State level to help the Federal Government, and it is producing results.

There are massive numbers of self-deportations, people leaving the country voluntarily on their own without any expenditure of Federal dollars out of Arizona. That has been documented, and I would be happy to talk about it. But the point is that 287(g) is working, working exceedingly well, and it would be ill-conceived for this Committee to scale it back.

Ms. LOFGREN. Thank you very much.

[The prepared statement of Mr. Kobach follows:]

PREPARED STATEMENT OF KRIS W. KOBACH

**Kris W. Kobach**

**Professor of Law**

**University of Missouri (Kansas City) School of Law**

April 2, 2009

Testimony on

“Public Safety and Civil Rights Implications of State and Local Enforcement  
of Federal Immigration Laws”

Before the

House Committee on Judiciary

Subcommittee on Constitution, Civil Rights, and Civil Liberties

And

Subcommittee on Immigration, Citizenship, Refugee, Border Security, and International Law



Chair and Members of the Subcommittees, it is an honor and privilege to appear before you today to discuss a proven mechanism for securing our homeland and restoring the rule of law in immigration: Section 287(g) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1357(g). I was involved in overseeing the first two implementations of Section 287(g) by the U.S. Department of Justice during my service as Counsel to the U.S. Attorney General during 2001-2003. Those were Florida's Section 287(g) agreement, of 2002 and Alabama's Section 287(g) agreement in 2003, which was subsequently carried out by the Department of Homeland Security after the new Department took over immigration enforcement. I am also a Professor of Constitutional Law and Immigration Law at the University of Missouri (Kansas City). And finally, I should also note that I am Senior Counsel at the Immigration Reform Law Institute; and in that capacity I have litigated numerous immigration preemption cases in the various Circuits of the U.S. Courts of Appeals. As my university does not take official positions on legislation, I offer my testimony solely in my personal capacity.

**Section 287(g) Authority Versus Inherent Arrest Authority**

At the outset, it is important to define precisely the scope of the authority we are considering. Many observers have confused Section 287(g) authority, which represents a delegation of enforcement power from Congress to the states, with the narrower inherent arrest authority that the states have always possessed. A few brief comments clarifying this distinction may be useful.

The inherent authority of local police to make immigration arrests was recognized by the Justice Department's Office of Legal Counsel (OLC) and was announced by

Attorney General Ashcroft on June 6, 2002. OLC's unequivocal conclusion was that arresting aliens who have violated either criminal provisions of the Immigration and Nationality Act (INA) or civil provisions of the INA that render an alien deportable "is within the inherent authority of the states."<sup>1</sup> Such inherent arrest authority has never been preempted by Congress. This inherent authority is simply the power to arrest an illegal alien who is removable, detain the alien temporarily, and then transfer the alien to the custody of the Bureau of Immigration and Customs Enforcement (ICE).

In contrast, Section 287(g) delegates authority that is broader than the power to merely arrest an alien and transfer him to ICE custody. Section 287(g) encompasses the spectrum of basic enforcement powers. Such 287(g) authority includes not only the power to arrest and transfer, but also the power to investigate immigration violations, the power to collect evidence and assemble an immigration case for prosecution or removal, the power to take custody of aliens on behalf of the federal government, and other general powers involved the routine enforcement of immigration laws. This broader enforcement authority can only be delegated to state and local law enforcement agencies through a formal Memorandum of Agreement (MOA), which effectively deputizes members of state or local law enforcement agencies to perform the "function[s] of an immigration officer." 8 U.S.C. § 1357(g). The state and local officers that exercise this authority do so only after receiving extensive immigration enforcement training at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. The officers receive training in many areas, including the procedures of immigration investigations, the identification of fraudulent immigration documents, the use of national immigration databases, the

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<sup>1</sup> ATTORNEY GENERAL'S REMARKS ON THE NATIONAL SECURITY ENTRY-EXIT REGISTRATION SYSTEM, June 6, 2002.

details of immigration law, identifying illegal aliens, and the avoidance of racial profiling. Once trained, the officers only exercise their Section 287(g) authority in a part-time capacity and only do so under the coordination of the Bureau of Immigration and Customs Enforcement (ICE).

Appropriately, Congress expressly recognized in 1996 that the creation of Section 287(g) would not displace the inherent arrest authority that local police might choose to exercise from time to time and without express delegation from the federal government:

Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State –  
 (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or  
 (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

8 U.S.C. § 1357(g)(10). I have published a law review article that extensively describes the legal distinctions between inherent arrest authority and Section 287(g) authority, and the legal bases for the former.<sup>2</sup> A copy of that article accompanies my testimony.

**The Success of Section 287(g)**

Section 287(g) was passed in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act, and is codified at 8 U.S.C. § 1357(g). The first jurisdiction to participate in the program was the state of Florida. The Florida MOA became effective on July 7, 2002. The success of the program was immediately apparent.

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<sup>2</sup> Kris W. Kobach, *The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests*, 69 ALBANY L. REV. 179 (2006).

In the first year under the Florida MOA, after receiving training in federal immigration enforcement the trained Florida officers made 165 immigration arrests, including the bust of a phony document production ring in the Naples area. The second jurisdiction to utilize Section 287(g) was the state of Alabama. The Alabama MOA was signed on September 10, 2003.

At the time of this hearing, there are now 67 state, county, and local law enforcement agencies that have Section 287(g) MOAs in place. Those 67 jurisdictions have provided 951 law enforcement officers who have received Section 287(g) training. Another 42 agencies have requested Section 287(g) authority and are waiting to enter into an MOA. In just 25 of those 42 jurisdictions, there were approximately 43,000 immigration arrests of aliens in fiscal year 2008. Of those, ICE detained approximately 34,000. Most of those who were not detained were either issued notices to appear in immigration removal proceedings or were retained in state custody to be prosecuted for criminal offenses. Of those who were detained by ICE, approximately 14,000 (41 percent) were placed in removal proceedings and approximately 15,000 (44 percent) were given voluntary departure from the United States. The remaining 5,000 (15 percent) were either subsequently released during their removal proceedings for either humanitarian reasons or due to the lack of available ICE detention space, or were sent back to state custody to serve a sentence for a felony offense.<sup>3</sup>

In the absence of Section 287(g), it is likely that few, if any of those 43,000 immigration arrests would have occurred. Section 287(g) is a valuable force multiplier for an agency that is chronically overburdened. Currently there are an estimated 12

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<sup>3</sup> Statistics provided by ICE and reported by Richard Stana, U.S. Government Accountability Office. Testimony before the Committee on Homeland Security, House of Representatives, March 4, 2009, GAO-09-381T.

million illegal aliens in the United States, but 5,600 special agents in ICE. Most major cities have more police officers than that. New York City alone has approximately 37,000 police officers. The 951 state, county, and local officers that assist ICE through Section 287(g)—even if only part-time in that capacity—provide a massive amount of assistance to ICE. To curtail or eliminate the Section 287(g) program would radically weaken immigration law enforcement in the United States at time when 12.5 million Americans are unemployed and competing with illegal foreign labor to find a job.

**The Many Purposes of Section 287(g): Targeting Different Problems in Different Jurisdictions**

A myth has arisen recently concerning Section 287(g). That myth holds that the program has only one purpose, and that purpose is to arrest illegal aliens who have committed serious felonies in addition to their violations of federal immigration law. The myth has been perpetuated by observers who are evidently unaware of the history of the program's implementation by the executive branch. The myth was also inadvertently perpetuated in March 2009, when a U.S. Government Accountability Office (GAO) witness repeated the statements of others that the program was intended to address "serious criminal activity committed by removable aliens," but then reported his personal disappointment that "program objectives have not been documented in any program-related materials" and "ICE has not consistently articulated in program-related documents how participating agencies are to use their 287(g) authority."<sup>4</sup>

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<sup>4</sup> *Id.* at p. 3. The GAO witness stated that unnamed ICE officials had stated the objective of addressing serious criminal activity. That is to be expected from ICE officials supervising a Section 287(g) agreement with a jurisdiction that has that particular objective. But other objectives exist in other jurisdictions. ICE officials in those jurisdictions would likely iterate different objectives.

The reason that ICE has not consistently articulated one and only one program objective is that *there are multiple objectives to the program*, and in each jurisdiction the program serves different needs. It never has been a one-size-fits-all program. Nor should it be. Section 287(g) is a program that respects federalism in that it treats the state jurisdiction as a fellow sovereign entering into an agreement that serves the mutual interests of both sovereign entities entering into the MOA.

It must be made clear that neither the statutory language of Section 287(g), nor the language of any of the committee reports on this legislation in 1996 contains any such limitation on its scope. As the Senate Judiciary Committee Report stated in full, the section “[a]uthorizes the Attorney General to enter into written agreements with a State, or any political subdivision of a State, to permit specially trained State officers to arrest and detain aliens.”<sup>5</sup> The Conference Committee Report contained similarly broad language, with absolutely no limitation whatsoever on the purposes for which such authority could be exercised. State or local officers would be designated “to perform immigration enforcement functions pertaining to the investigation, apprehension, or detention of aliens unlawfully in the United States, including the transportation of aliens across State lines to detention centers.”<sup>6</sup> As noted above, the Department of Justice implemented this program for the first time in 2002, and then again in 2003. For the Department of Justice to have imposed limitations on the scope of this program, other than those limitations found in the law itself or in the committee reports, would have been inappropriate and potentially inconsistent with congressional intent.

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<sup>5</sup> Committee Report 104-249, p. 20 (April 10, 1996).

<sup>6</sup> Conference Report 104-828, p. 203 (Sept. 24, 1996).

Accordingly, the Department of Justice implemented Section 287(g) consistently with the broad terms of the statute, recognizing that law enforcement environments differ from state to state and county to county. We also recognized that different jurisdictions would have different needs. The first two jurisdictions are instructive, because in neither case the arrest of illegal aliens engaged in serious criminal activity the driving motivation behind the MOA. There are at least six distinct purposes that Section 287(g) MOAs have accomplished: (1) addressing terrorism-related concerns, (2) compensating for a lack of federal immigration enforcement personnel within a jurisdiction, (3) removing convicted alien criminals after completion of their prison sentences, (4) dealing with dangerous illegal alien criminals, such as gang members, (5) restoring the rule of law generally in an area with unusually high levels of illegal immigration, and (6) protecting unemployed U.S. citizens from competition with illegal alien labor. I will describe each of these in turn.

#### **(1) Addressing Terrorism-Related Concerns**

Take the case of Florida first. Florida's initial interest in seeking a Section 287(g) agreement was driven chiefly by the exigencies of 9/11 and the recognition that state and local law enforcement can increase their effectiveness in the war against terrorism with the addition of Section 287(g) enforcement authority. State and local police officers are often in the best position to come into contact with alien terrorists operating in the United States. Four members of the 9/11 terrorist cohort were stopped by state and local law enforcement in the United States for routine traffic violations. In all four of those instances, the aliens were illegally present in the United States.<sup>7</sup> Several of the 9/11

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<sup>7</sup> The four hijackers who were stopped by local police were Nawaf al Hazmi, Mohammed Atta, Hani Hanjour, and Ziad Jarrah. See attached article, Kris W. Kobach, *The Quintessential Force Multiplier: The*

hijackers had either entered the United States through Florida or had operated in Florida while preparing for the attack. The suspected twentieth hijacker, Mohamed Al Khatani, also flew to Orlando International Airport; but he was denied entry by a vigilant immigration inspector. Accordingly, the desire to counter alien terrorists was central to the Florida MOA at the time of its inception. Florida would later broaden its focus to illegal document production and alien smuggling enterprises.

**(2) Compensating for a Lack of Federal Immigration Enforcement Personnel**

In contrast, Alabama faced a different challenge. Alabama's Section 287(g) agreement was intended to address the fact that Alabama had been underserved by federal immigration authorities. At times, as few as three INS interior enforcement agents had been attempting to cover the entire state. At the same time, Alabama had experienced widespread and increasing violations of federal immigration law by aliens in its jurisdiction. This lack of federal manpower left Alabama underserved, in the judgment of Alabama's law enforcement leadership and members of its congressional delegation. Alabama addressed the manpower shortage by committing its own officers to the task and seeking a Section 287(g) agreement.

**(3) Removing Alien Criminals After Completion of Prison Sentences**

Another need that Section 287(g) agreements have been utilized to address numerous jurisdictions the fact that many removable felons incarcerated in state prison systems across the country are not removed from the country once their sentences are served. ICE's institutional removal program is intended to identify and take custody of such felons before they are released. Unfortunately, the program does not cover every

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*Inherent Authority of Local Police to Make Immigration Arrests*, 69 ALBANY L. REV. 179 (2006), at pp. 183-88 for detailed descriptions of these incidents.



institution, and many felons slip through the cracks. Training state law enforcement officers to screen incarcerated felons and determine which ones are removable serves to fill in the gaps and ensure that criminals who are not entitled to remain in the United States are, in fact, removed.

**(4) Dealing with Dangerous Illegal Alien Criminals, such as Gang Members**

Perhaps the greatest law enforcement threat of recent years is the rise of violent alien street gangs. A few statistics illustrate the scope of the problem. Mara Salvatrucha-13 (MS-13), the most notorious and fastest-growing alien gang, started as a Salvadoran gang in Los Angeles in the late 1980s. MS-13's more than 10,000 members now operate in at least 33 states. The gang also has various affiliated gangs that operate under different names. In virtually all of the MS-13 and affiliated gangs, the majority of gang members are *illegal* aliens. This due to two factors: many gang members enter the United States without inspection after joining the gang outside of the United States; and MS-13 actively recruits new members within the United States by targeting young men and boys who are unlawfully present in the United States and lack a social support network. These gangs generate cash in different ways in different parts of the country. But by far, the most common forms of activity are drug trafficking, theft, gun trafficking and immigrant smuggling. Wherever MS-13 establishes a presence, the number of murders and the level of gang violence inevitably rises dramatically.

Because so many of these gang members are aliens without lawful presence in the United States, sustained enforcement of immigration laws can have a massive impact in fighting this national scourge. Section 287(g) authority can be particularly useful in dealing with alien street gangs. Every day, police officers in gang-ridden jurisdictions

encounter alien gang members who are known to have been previously deported or who are suspected of being unlawfully present in the United States. Section 287(g) authority enables those jurisdictions to continuously and routinely remove those illegally-present gang members from the streets of our communities. With police officers trained in immigration enforcement, the checking of gang members' names against national databases and the enquiring into immigration violations is done locally, quickly, and regularly.

**(5) Restoring the Rule of Law Generally in Areas of High Illegal Immigration**

As the members of this Committee are well aware, there are certain states and communities that have endured an extraordinary amount of illegal immigration, along with the fiscal burdens, criminal activity, and social dislocation that accompany such high levels of illegal immigration. Arizona is one of those states. Maricopa County, Arizona, in particular is one of those communities. In 2008, 368 abductions were reported in Phoenix; and the majority of those cases were associated with illegal alien smuggling operations or other criminal enterprises involving illegal aliens. The fiscal burden on the state has been debilitating. In 2007, it was estimated that the total cost of providing public services to the state's estimated 475,000 illegal aliens was approximately \$1.3 billion a year.<sup>8</sup> In many respects, this burden is akin to an unfunded federal mandate.

In response, state and local jurisdictions in Arizona have employed a variety of measures to reduce illegal immigration into the state. At the state level, the state implemented a law requiring employers to use E-Verify—a law that was recently sustained by the Ninth Circuit U.S. Court of Appeals. And at the county level, Maricopa

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<sup>8</sup> Arizona: Illegal Aliens, Federation of American Immigration Report (2007), available at [http://www.fairus.org/site/PageServer?pagename=research\\_research82b2](http://www.fairus.org/site/PageServer?pagename=research_research82b2).

County has had 160 officers receive immigration enforcement training under its Section 287(g) agreement. In the last year, these efforts have begun to make an impact. Thousands of illegal aliens have self-deported out of Arizona.<sup>9</sup> That progress would not have been as great without Maricopa County's Section 287(g) program. It clearly demonstrated that when federal, state, and county units of government cooperate, illegal immigration can be dramatically reduced.

**(6) Protecting Unemployed U.S. Citizens**

The final purpose that Section 287(g) achieves in many jurisdictions is the removal of unauthorized aliens who are occupying jobs that would otherwise go to U.S. citizens or to aliens authorized for employment in the United States. This objective is served in Maricopa County as well. With the unemployment rate of U.S. citizens in February 2009 at 8.1 percent and climbing, this is a purpose that is becoming more crucial with each passing day. This Congress has done much in an attempt to create jobs one or two years in the future. Removing unauthorized alien employees from the United States creates jobs for U.S. citizens the very next day.

**Conclusion**

Section 287(g) is a program that has dramatically improved the rule of law in the immigration arena. It has provided vital support to an agency that has been chronically undermanned for decades. The Department of Justice originally, and the Department of Homeland Security now, have recognized the extraordinary value of this program. The Departments have also recognized that one-size-fits-all is the wrong approach. Each

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<sup>9</sup> Kris W. Kobach, *Attrition Through Enforcement: A Rational Approach to Illegal Immigration*, 15 *Tulsa J. of Comp. & Int'l Law* 155 (2008).

287(g) MOA is different, so that it meets the particular law enforcement needs of the jurisdiction in question. For Congress to attempt to put this program in a straightjacket would undercut the very flexibility that makes it so useful. For Congress to scale the program back or limit its scope would send a clear message that rigorous enforcement of our nation's immigration laws is not a congressional priority. Even worse, to do so at this time of economic crisis would be grave disservice to the millions of unemployed U.S. citizens who are struggling to put food on the table, but finding that competition with unauthorized alien labor prevents them from doing so.

Ms. LOFGREN. And we will go now to questions from the Committee. I would like to offer an opportunity to the Ranking Member to begin.

Mr. KING. Thank you, Madam Chairman. I would temporarily defer that to my deputy Ranking Member, Mr. Harper.

Mr. HARPER. Professor Kobach, before we get going on some questions, I know there were certain allegations made against you before you had an opportunity to give your intro. Would you care to address those for a moment?

Mr. KOBACH. Yes, I would. Thank you. I am not receiving any money for this testimony. This is in my personal capacity, although my primary qualification is as a professor of constitutional law and immigration law and as a former Department of Justice employee.

When the slanderous letter from the SPLC was read into the record mentioning these slanders instead of the rest of my C.V., what was left out by what was put in the record is the fact that my law degree is from Yale, my doctorate is from Oxford. And the cases that have been brought that I have litigated on behalf of U.S. Citizens have been victorious in Federal courts across the country, including in the California Court of Appeals.

And I guess the point is that when false accusations from a spurious organization are read into the record of an institution as hallowed as this one, I think it does a disservice to the institution. And I am not saying that the Chairwoman made a decision of her own to do this, but I just think that it is horrible because it hurts me to be associated with any beliefs that are racist in nature, and it hurts my family to see me associated with such beliefs.

I think that such activities of organizations like that are reprehensible and should be prosecuted to the fullest extent of the law, if there are such race-based activities occurring. But I would never associate with them, and I just think it is horrible that a smear like that can be read into the Congressional Record.

Mr. HARPER. Professor Kobach, I would also like to ask you another question. I know you have been very successful on litigation across the country dealing with these particular types of issues. Obviously we detest the concept of racial profiling. But how do you balance the issues of trying to provide for border security, items of national security that we have? Obviously you are saying that with ICE, there are not enough agents that can handle this problem on their own. Am I correct on that?

Mr. KOBACH. I think that is a fair statement. We always need more ICE officers.

Mr. HARPER. So in order to deal with this issue of concern of some reported incidents of racial profiling, doing away with 287(g), would that be the solution to that?

Mr. KOBACH. Not at all. And I am glad you asked that question, because one of the witnesses on the previous panel mentioned some jurisdictions that there were reports of incidents, not formal findings, but just reports of racial profiling, and the jurisdictions weren't even section 287(g) jurisdictions. So to assume causality, to assume that a 287(g) agreement somehow causes or facilitates racial profiling is simply illogical.

And I would note, furthermore, that the officers who have received 287(g) training have received twice as much training against racial profiling as any other officer in Federal and State law enforcement. They receive their own State-level training against racial profiling—whichever State gives—and they have received ICE

training against racial profiling. Most Federal officers have only received one set of classes. So they are actually very well trained.

And I would finally note that throughout the entire testimony of every other witness that we have heard today, there have been reports, anecdotes, but there has not been one internal affairs investigation that has ever found any racial profiling by a 287(g) officer. There has not been one count that has ever found any truth in any report of any racial profiling incident.

We are a country of the rule of law. And we do not punish people based on mere allegation or mere anonymous report. We are a country where we have inquiries done under rules of law, and under such inquiries there has never been any finding of any racial profiling associated with 287(g).

Mr. HARPER. Professor Kobach, it appears that one of the big concerns of the first panel was that people within an illegal immigrant community in this country were afraid to report crimes.

As a former city prosecutor in two cities, that certainly wasn't the case where I prosecuted. We would have people that were there that were undocumented, that were here illegally who were witnesses in a crime. And the only way that anybody would ever come in was if that individual had been convicted of a crime and was held for jail time.

Has that been a problem that you have seen across the country?

Mr. KOBACH. Not at all. And, indeed, this is one of the great red herrings of State and local law enforcement assisting the Federal Government in this regard. The argument is always made, well, you will see fewer witnesses come forward. There has not been one study, one piece of empirical evidence offered that that is actually happening. And frankly, I think a lot of people would be surprised to know that there are visas available for people who come forward and report crimes. Those visas are for people who lack status currently.

And so not only is there no disincentive, because you are certainly not going to see the police departments turning away willing witnesses, they actually have something to give them, a benefit that can be received under immigration laws. The S-Visa is one of them.

So I think this whole argument about the loss of witnesses, number one, there is no proof that it ever occurs; but number two, if it were happening in any of the 67 jurisdictions, don't you think one of those jurisdictions would say, all right, we're done? Anyone is free to leave the program, none of them have.

Ms. LOFGREN. The gentleman's time has expired.

I would like to ask the chief some questions because we have reviewed a report by the Goldwater Institute—which I think is a pretty conservative institute by the name—and this is a quote from their review of the Maricopa County Sheriff's Office. "The sweeps are often conducted in jurisdictions that have their own police departments; yet without coordination with those departments, creates extremely dangerous conditions for law enforcement personnel and bystanders." That is what the Goldwater Institute indicates.

As I understand it—you will correct me if I am wrong—your police jurisdiction is within Maricopa County. And I haven't had a chance to talk to you or ask you, but last year, in October, *The New*

*York Times* reported a very disturbing story where the sheriff, according to the paper, apparently conducted a raid on Mesa's City Hall to apprehend a janitor who they believed didn't have proper papers. And according to the report, it was a group of vigilantes who participate in Maricopa County Sheriff's Posse Program that more or less stormed City Hall in pursuit of this allegedly undocumented immigrant from some anonymous tip.

Can you tell us what happened? Are there posses then used? Did the sheriff consult with you? Were there risks associated with this raid? As a police chief and a professional, can you advise us whether this is a good idea and what the downsides are?

Chief GASCÓN. Thank you, Madam Chair. And actually, if I could for a moment go back to the sweeps, because the Maricopa County Sheriff has been in the city of Mesa multiple times in pursuance of their 287(g) or some other immigration enforcement. It actually started, there was one of those crime suppression sweeps that occurred prior to the raid on City Hall and on the public library. And in that particular instance, the sheriff was asked what was the reason for him going into Mesa. And I am quoting here basically. It came out, it was published in the East Valley Tribune where the sheriff indicated, "I have a strange whole philosophy that if someone does something for you, gives you resources, gives you money, I think they want something back, and we ought to do it," he said. And he was referring to the fact that he had been asked by three or four local politicians to come into the city of Mesa.

If you look at the 287(g) program, really one of the things that ICE talks about is that there should be articulable reasons, such as patterns of crimes, 911 calls, and other information that indicates that there is a crime problem in this particular area and the enforcement of 287(g) would help reduce the crime. In this particular case, the sheriff himself indicated, according to the East Valley Tribune, that he was simply coming into Mesa because he was paying back a political favor.

Concerning the raid on City Hall and on the public library, that was a very disturbing moment, quite frankly. Many of us were shocked. We for a moment thought that we were perhaps in the Third World somewhere and not in a First World Nation.

What occurred was that at approximately 1:30 in the morning, I get a notification from my patrol personnel that one or more officers driving through a local park saw a very large number of people—it turned out to be later on they were approximately 60—that were suited up in tactical gear, many were wearing masks. And it was hard for the officer initially to discern what the origin of this group was.

And it was very concerning because not long before that, there had been an incident in the city of Phoenix where a group of individuals related to some drug organization had come in, they had dressed in police tactical gear in order to go and assault a contender and commit a homicide. And they actually confronted the police. So our officers were very concerned.

When our officers finally approached, they realized that these were members of the Maricopa County Sheriff's Office. They made contact. They asked what they were doing there. The first officer was told by the Maricopa County Sheriff personnel that they were

unable to discuss the reason for being there. So that was followed up.

They also called the supervisor. The supervisor came to the scene. Initially he was told by members of the Maricopa County Sheriff's Office that they were there to do canine training. The sergeant looked around; there were two or three canines, there were approximately 60 officers. The math didn't quite add up. So he called the lieutenant. The lieutenant came up. He was also not given the information. And finally, about 5 minutes before 2 o'clock, we realized that they were going to make entry into two municipal buildings: one, the main library, and the other one was City Hall.

Still to this point we had no idea what was going on. I was asked by my people for instructions. And basically what I told them was to cooperate and to stay out of the way of the sheriff's office. And then what occurred—and later on we saw this on closed circuit TV—is we saw large numbers of members of the Maricopa County Sheriff's Office dressed in tactical gear storming the two buildings.

In the case of the public municipal library, several minutes later you can see two females in their forties or fifties that are being taken out. And they were arrested—and then there was one other individual that was in the parking lot—allegedly for being in the country without authority at the City Hall. Many folks were interviewed, and we could see that on closed circuit TV. They were asked for identifications. There were no arrests made.

As we continue further down the line on this, obviously this was very shocking to us. There was another search warrant that was served later, at approximately 7 or 8 o'clock in the morning, in one of our police facilities and searched for records. And, quite frankly, we were extremely disturbed by the whole incident. We later found out as we started to investigate ourselves, as an allegation that came from the Sheriff's department, they were there to do a job that we were not doing because of the negligence of one of our lieutenants; that the declarations that were used to execute this warrant actually contained significant false information. It was provided to the sheriff's department as well as the county attorney, and we haven't heard since.

Ms. LOFGREN. By unanimous consent, I will take just one additional minute to ask you this. Would it be possible for you to share that footage with the Committee, to send it to us?

Chief GASCÓN. I will look into it. I believe we do have it saved. Let me look into it, please.

Ms. LOFGREN. And secondarily, it has been reported—and I don't know if this report is true or not—that in some of these raids, your police have actually had to be deployed to protect the citizens of Mesa from the sheriffs. Is that just false, or—

Chief GASCÓN. No, ma'am, it is not. One of the things that we noticed in some earlier operations by the sheriff's department in the city of Phoenix was that there were large numbers of people coming, both pro and against the operation. And the level of tensions was becoming very evident. There were incidents reported where people were shoving each other, brandishing weapons. We were very concerned. So I wanted to make sure that if the sheriff was going to do an operation in Mesa, we requested notification so



that we could deploy accordingly, because we anticipated a lot of people coming to Mesa to demonstrate, and certainly there in the first raid we had that. We had to deploy a significant number of people and actually separate people.

Ms. LOFGREN. Thank you very much. My time has expired. I understand that Mr. King has asked that Mr. Franks be recognized next for his 5 minutes, and he is so recognized.

Mr. FRANKS. Well, thank you, Madam Chair. And I just wanted to first start out by welcoming Police Chief Gascón from Arizona. I believe the police chief to be an honorable man that has dedicated his life to protecting the innocent in his society, and I don't know where we would be without people like him. So I want to welcome you, sir.

Madam Chairman, regardless of what the hearing here is ostensibly named or what my colleagues on the Democrat side choose to emphasize, the effect of this hearing is geared toward dismantling—at least in my opinion—any meaningful immigration enforcement policy, or at least the intimidation and chilling of lawful law enforcement activity.

My friends on the Democrat side seem to have a multifaceted systemic approach, with workplace inspection stopped, funding for E-Verify removed, and severely weakened 287(g) programs, all of which makes securing our borders very difficult.

And Madam Chair, it is so important to remember, I am on the Armed Services Committee, and I believe that the most important elements of border security remain to be national security.

But we still live in a 9/11 world.

Arizona is now the capital of kidnapping in all of the world, with the exception of Mexico City. The Arizona Criminal Justice Commission told my staff just this week that there are more kidnappings in Maricopa County than there are in Baghdad or Islamabad or Caracas. And that is because Arizona has hundreds of miles of border with Mexico to monitor, and our Federal Government is simply not doing the job.

And that is why 287(g) was put into place in the first place, because D.C. Either couldn't or wouldn't do the job, and so State and local officials responded. And they are doing a tremendous job toward curbing illegal immigration and securing the border in ways that are related, and, of course, the inherent criminal activity that comes with it.

Now, recently, Sheriff Joe Arpaio of Maricopa County has come under fire by Members of this Committee and the Department of Justice for, in my opinion, trying to enforce the law as he understands it and as it was written in section 287(g) by this Congress. And it appears to some in Arizona that a witchhunt has been initiated against Sheriff Arpaio for trying to enforce the law to keep Arizona safe.

And since I am the only Member here of the Committee that is on the ground in Maricopa County, perhaps I am more familiar with Sheriff Joe than anyone else here today. Now, I will just be very open. There are many times when I have not agreed with the sheriff and his approach or his tone. And I want to make that clear. But I still believe, along with many others in Arizona, that

it appears that he has become a scapegoat used in a tactical assault focused on diluting the powers of 287(g) nationwide.

The reason that I don't believe Sheriff Arpaio is guilty of racial profiling, as some have said, is simply because of my own observations. He has personally assured me that this is not the case and he has, at all times, tried to conduct his efforts within the boundaries of the law.

It is also true that a simple statistic gets in my way: 33 percent of those in Maricopa County jails are illegal immigrants—33 percent—and yet 53 percent of violent crime in Maricopa County is perpetrated by illegal immigrants. Now, I am not sure you can come away with a statistical way to indicate that racial profiling is happening, based on that statistical reality.

Over the last few years, the 370-mile Arizona border has experienced increased violence associated with drug and human trafficking and due to conflict among cartels and gangs such as the MS-13, resulting in a new breed of crime some refer to as narcoterrorism. And, of course, I have already mentioned the danger of potential terrorist incursion into our country.

United States border communities are being gravely affected by the spillover of drug-related violence, resulting in hundreds of assaults on border agents each year. Currently, as I said, over 33 percent of inmates in Maricopa County Sheriff facilities are illegal immigrants, and more than 53 percent of violent crimes are committed by illegal immigrants.

So my question, Professor Kobach, given your expertise in race and ethnicity guidelines and in law enforcement activity, and given the statistics I have just mentioned, and under current Supreme Court precedent, do you believe that there are statistical indications that there is law enforcement activity in Arizona, Maricopa County, creating a disparate impact on persons of Mexican or Central American national origin that violates the Constitution? It is a hard question, but I still ask it.

Ms. LOFGREN. The gentleman is, by unanimous consent, granted an additional minute so the witness can answer.

Mr. KOBACH. Well, certainly not. The statistics do not support it. And, of course, statistics alone wouldn't establish that racial profiling had occurred or that any discriminatory actions by police officers had occurred. So we have to be cautious about attributing too much to statistics about race of people arrested or incarcerated versus race of a community or ethnicity.

But I would point out that there are many, many legal avenues available if racial profiling occurs. There is not a specific Federal law, but there is, of course, a general Federal law. It is possible to bring a lawsuit under section 1983 to recover monetary damages for any State or local official who illegally or unconstitutionally engages in racial profiling. There are also State laws that can be brought to bear in almost every State.

So, if it were occurring significantly or disproportionately or even at all, you would see some of these suits being brought and achieving success in the courts. We have not seen that in any of the 287(g) jurisdictions. And so, again, I think it is wrong to attribute any causality. And, indeed, the effect hasn't yet occurred, in terms

of something that we can say, “yes, it has been proven in this incident.”

Ms. LOFGREN. The gentleman’s time has expired.

And we have been called for votes, but what we have agreed to do is to go as long as we can here. It is just one vote. So we will wait until the end, rush over, cast our votes, and then immediately return to finish this discussion.

But I think we have time for at least one additional Member to begin questioning. So I would recognize the Chairman of the Constitution Subcommittee, Mr. Nadler, for his questions.

Mr. NADLER. Before I ask my questions, I must just object to one thing that Professor Kobach said. I have never in my life heard the Southern Poverty Law Center called a spurious institution. The Southern Poverty Law Center is, by almost unanimous consent, one of the most respected institutions in this country. You may want to sue it for libel or slander, that is your privilege, if you think what it said was not correct. I am not going to comment—

Mr. KOBACH. You should—

Mr. NADLER. Excuse me, I am not asking a question. I am making a statement right now.

I am not going to comment on the letter or on your defense of it. That is beyond what I want to say. But to call the SPLC, which may or may not have done the wrong thing here—I think it didn’t do a wrong thing, but that is not the point. You can sue them for libel if you want, but to call them a spurious organization.

This is a group that helped implement the Civil Rights Act of 1964 and 1965, whose courtroom challenges led to the end of many discriminatory practices, including ending the involuntary sterilization of women on welfare, reformed prison and mental health conditions, resulted in landmark decisions by the U.S. Supreme Court, developed strategies to hold White supremacist leaders accountable for their followers’ violence, sued for monetary damages and recovered against the Klan, and shut down several Ku Klux Klans.

Its quarterly intelligence report is read by nearly 60,000 law enforcement officers nationwide. And its Intelligence Project research has led to criminal convictions in several hate crime cases. And they are generally considered the leading authority on racist and hate groups in this country today. So calling them spurious is a little beyond the pale.

Chief Gascón, the December 2008 report by the Goldwater Institute was already referenced. That report found that, in Maricopa County, between 2004 and 2007, violent crimes grew by over 69 percent, including a 166 percent increase in homicides over the 3-year period. In contrast, the annual report, violent crimes in Mesa, Arizona, your hometown, decreased by 11 percent, and the number of reported homicides stayed the same in Mesa, which is during the same time period. Mesa, of course, is located in Maricopa County.

So, in other words, there is a 166 percent increase in homicides, 69 percent of violent crime in the county as a whole, but a decrease of 11 percent in violent crime and static homicides in Mesa.

How do you account for the increase of violent crimes in Maricopa County at the same time that they decreased in Mesa?

Chief GASCÓN. Well, in my opinion, it has to do with the lack of police attention to the local law enforcement work. In Mesa, we

concentrate on dealing with the people that are committing the local crimes. And, frankly, many times, we have to deal even with crimes that are being committed in what we call the county islands, which are policed by the sheriff department, because it impacts our own crime.

I think the problem—and we have seen this not only in those areas that are policed by the county, but we also have seen it in areas that were previously contract to the county, for instance, like the city of El Mirage, where that city was policed by the county, they ended the contract, hired their own police department, and all of a sudden realized that there were about 300 violent crimes that had gone uninvestigated by the sheriff's department because they did not have the resources to do the work.

Mr. NADLER. So, in other words, the sheriff's department, in your opinion, is concentrating on this 287(g) work and leaving the violent crimes uninvestigated, to a large extent?

Chief GASCÓN. Well, certainly, they are not concentrating on local crime issues. And that is why their crime stats are going as high as they are.

Mr. NADLER. Thank you.

Let me ask any of the—Professor Harris or Mr. Williams or Police Chief Gascón. I am going to be very blunt in one question. Why should an American who is not an immigrant, does not have immigrant family members or friends, does not care about immigrants, why should such a person be concerned about State and local law enforcement getting involved in immigration enforcement?

Mr. HARRIS. Chairman, the answer is pretty straightforward. Crime goes up, just as you were pointing out, it went up in Maricopa County. When we divert local law enforcement resources into the task of immigration enforcement, where it doesn't belong, regular criminal behavior goes unaddressed. And that spills over onto everyone. Crime doesn't take a holiday as to any particular community. It spreads through the entire community, disorder spreads everywhere.

Number two is resources and cost. This isn't free. This is all taking away from what local law enforcement should be doing as its core mission: serving everybody, including people who might not care at all about immigrant issues or immigrant families.

Number three, you have lots of people whose safety is on the line every day in police departments. These people are risking themselves for our safety. We should allow them to concentrate on what they know and what they are good at.

Mr. NADLER. Thank you.

Let me ask one further—I ask unanimous consent for one further—

Ms. LOFGREN. Unanimous consent for 1 additional minute.

Mr. NADLER. Thank you.

Let me ask either Professor Harris or Police Chief Gascón, in the previous panel—I assume you heard the testimony of the previous panel—we heard Professor Tranchant talk about the killing of his daughter by someone who was drunk-driving, an illegal immigrant who had been arrested several times previously for drunk-driving.

Now, this hearing is on the question of 287(g) enforcement. My question is the question of a logical fallacy. The implication of what

he was saying is, if you had had 287(g) enforcement, this might not have happened.

My question is the following: Under the law, with or without 287(g) enforcement, if someone is arrested for a crime and this person is found to be an illegal immigrant, an undocumented alien, they can be reported to the INS or the ICE, whatever it is these days, and deported when their sentence is up.

So the real problem here seems to be that, despite several arrests and convictions for DWI or whatever, this person was not deported. So my question is, does this have anything to do with 287(g), or is it a question of failure to enforce existing law?

Ms. LOFGREN. The gentleman is granted an additional 30 seconds.

Mr. HARRIS. You have caught it exactly, Mr. Chairman. It is a question of enforcing existing law. We have immigration laws, as one of the other Members pointed out. None of us here are against immigration law or the ability of the Nation to police its borders and enforce its law. If the Federal Government would step up and do its job, as a number of people have said here already, it wouldn't be necessary for local law enforcement to come into it.

So this isn't a 287(g) problem that Professor Tranchant was pointing out. It is a problem of Federal role being properly fulfilled.

Ms. LOFGREN. Would the gentleman yield to me for a quick moment?

Mr. NADLER. Certainly.

Ms. LOFGREN. As our colleague from Arizona was reciting some statistics, I did note that the Chief was wincing.

And do you have a disagreement with our colleague on the statistics that he had recited?

Chief GASCÓN. Yes, Madam Chair. First of all, I can tell you, in my own jurisdiction, we have been tracking for over the last year who we arrest that is in the country illegally, and our numbers range around 9 to 10 percent annually. And we have a Hispanic population that probably exceeds 30 percent today but, certainly, according to the Census, over 25 percent. And we know that a substantial part of that population is in the country without authority.

I think also, if you look—

Ms. LOFGREN. Could I ask you this? Would you be willing to submit those statistics to us for the record?

And we are going to recess this hearing. We have one vote. We are going to rush over, vote, and come back, so we will not be having you wait here for a long, long time. But we don't want to get all of the Members an opportunity to ask questions. So we are going to recess for just a few minutes until we vote and return.

[Recess.]

Ms. LOFGREN. Under the rules, we can reconvene with two Members. And although the Ranking Member, I think, is on his way, we do have three Members and a bipartisan group. So we will turn now to the gentleman from Texas, Mr. Poe, for his opportunity to question our witnesses for as long as 5 minutes.

Chief, are you okay on time?

Chief GASCÓN. Madam Chair, they are trying to find out if there is another flight.

They did find it?

So I am good.

Ms. LOFGREN. Okay, so you got a later flight, and we appreciate that.

Chief GASCÓN. They said you are going to have to give me a hall pass. And I am probably going to be killed, not by the cartels, but by my family.

Ms. LOFGREN. I hope not.

We will turn now to Mr. Poe for his questions.

Mr. POE. Thank you, Madam Chair.

I direct most of my questions to the Chief.

And I just have a few minutes, Chief, and I know you have testified in court before. So, just answer the question; don't explain your answer, unless I ask you to do so.

There are 16 border counties in Texas. All of the counties are controlled by sheriffs who are Democrats. Most of them are Hispanics. To a person, they believe in enforcement of all of the laws in the county.

Hudspeth County, TX, a big county, size of Delaware, Chief Arvin West. When I visited with him over the weekend in Hudspeth County, watching the crime there, it has two jails, one a contract jail and one a county jail. The county jail has 125 inmates; the contract jail has 320-plus. Of all of those people in jail, two are American citizens. All of the people, except the two citizens, are not in jail on immigration violations, they are in jail for committing crimes in the county other than just being in the county illegally.

He, like most of the sheriffs on the Texas border anyway, believe that cross-border crime is a tremendous problem. And they need all the help they can get to enforce the law, immigration laws or otherwise.

I suspect that in Mesa, the city of Mesa, you enforce traffic violations, parking violations, jaywalking violations, prostitution violations, what we consider in the system the most minor of all crimes. Is that correct?

Chief GASCÓN. Yes.

Mr. POE. But you personally don't believe that the city should be helping in immigration violation arrests. Is that correct?

Chief GASCÓN. That is incorrect.

Mr. POE. So you think that you should participate in helping with immigration violation arrests.

Chief GASCÓN. When we have serious crimes, yes.

Mr. POE. Only when a crime is committed. I am talking about immigration violation. This person is in the country illegally; he didn't rape, commit a robbery, or steal. He is in the country illegally. Do you think the city should participate in that?

Chief GASCÓN. How would we know that the person is here illegally?

Mr. POE. Don't ask me questions. Answer the question. We assume—if you knew the person was in the city illegally, do you think that you have an obligation, as a peace officer, to help enforce that law? Either you do or don't.

Chief GASCÓN. I think the problem with your hypothetical is that I have no way of knowing how I got that information.

Mr. POE. So you don't believe you should enforce the law if the person is in the city illegally. You know he is in the city illegally.

Chief GASCÓN. How do I know that I—

Mr. POE. He tells you. If we are going to have hypotheticals, he tells you, "I am here illegally. I am from France." Do you think—

Chief GASCÓN. Right. Our policy is that if he tells us he is here illegally, the officer has the option to provide the information, and we give it to the Federal authorities so that they can act accordingly.

Mr. POE. But you don't believe you should arrest him, the city should arrest him?

Chief GASCÓN. That we should arrest him?

Mr. POE. Yes.

Chief GASCÓN. It would depend on the circumstances.

Mr. POE. Okay. Well, you are not answering the question. I will move on.

Isn't it true that you have had raids in the city before, with Sheriff Arpaio—interesting enough, he is not here to testify; he wasn't invited, but you were—and you have been told that he is coming into your city, as good law enforcement officers do, and all of a sudden—

Ms. LOFGREN. Would the gentleman yield? Because I want to make clear that he declined to come. And I would yield back.

Mr. POE. All right. I thank the Chair. I was told by him that he was not invited, but be that as it may, I accept the Chair's—

Mr. KING. Madam Chair, clarify that, please. Was he invited formally?

Ms. LOFGREN. No. He said in advance he would not intend to come, so we didn't follow up with a formal invitation, no.

Mr. KING. In a formal communication with the Committee?

Ms. LOFGREN. No, in a newspaper article. He said he would not come.

Mr. KING. Thank you.

Mr. POE. Isn't it ironic that, when you have been informed, as the police chief, that he is coming into your city on immigration violations under 287(g), that all of a sudden the newspaper in Phoenix, AZ, reports that before that raid occurs? Maybe that is the reason you are not told anymore, is because someone seems to tell the press. Has that occurred, to your knowledge?

Chief GASCÓN. Actually, it is very ironic, because I got notification from the media that he was coming, not from him.

Mr. POE. I am not talking about the most recent. I am talking about the ones before the most recent.

Chief GASCÓN. I am talking about the one before the most recent. The notification came from the media to me first and then—

Mr. POE. Who paid your way to get here today?

Chief GASCÓN. Who paid my way?

Mr. POE. You heard me. You paid your way?

Chief GASCÓN. A group of nonprofit organizations that are seeking immigration reform.

Mr. POE. Okay, so the city didn't pay your way, the taxpayers didn't pay your way, but some immigration people paid your way.

Chief GASCÓN. Some people that are seeking immigration reform.

Mr. POE. I see. Wouldn't you agree with the statement that we dance with the ones who brung us? And if you were brought here by a certain group, you are kind of beholden to them to testify a certain way?

Chief GASCÓN. Sir, I take offense to your comments. I don't dance with anyone. I am not beholden to anyone. I have been in this business for 30 years. Prior to that, I was honorably discharged from the U.S. Army. I have an impeccable career, with honesty and integrity. And I believe in standing for what I believe is correct.

Mr. POE. All right. What are the names of those groups?

Ms. LOFGREN. The gentleman's time has expired.

Mr. POE. Thank you, Madam Chairman.

Mr. KING. I would ask unanimous consent that the witness be allowed to answer.

Chief GASCÓN. I am sorry?

Ms. LOFGREN. There has been a request for an additional 30 seconds. So you may, if you wish, identify individuals who have donated for your opportunity to be here.

Chief GASCÓN. The individuals, I believe—what is the name of the organization?

Ms. LOFGREN. If you don't have them, you can submit them for the record later.

Chief GASCÓN. Yes, I will submit it to you.

Ms. LOFGREN. That will be fine.

At this point, I would recognize our colleague, Mr. Johnson, Chair of the Courts Subcommittee, for his opportunity to question the witnesses.

Mr. JOHNSON. Thank you, Madam Chair. And I think this is just a great topic for us to be delving into.

One thing that I would like to know, the local law enforcement agencies that sign up for this program under 287(g) to enforce the Federal immigration laws, is there a concentration as to, you know, like, South or Midwest that a lot of the requests and certifications, I guess, have been awarded to? In other words, are there places in the Nation where local law enforcement seems to be involved in this?

Mr. KOBACH. I have the list.

Mr. WILLIAMS. The great majority is in the Southeast and Southwest. Sheriff's offices constitute a significant number. It is something like 67 law enforcement organizations nationally involved with 287(g), out of 17,000 police departments.

Mr. JOHNSON. Total.

Mr. WILLIAMS. That is correct, total.

Mr. JOHNSON. And how many of these are in the Southeast—

Mr. WILLIAMS. I can tell you in excess of 50 percent is in Southeast and Southwest. I can't be more specific than that.

Mr. JOHNSON. And I will get to you, too, sir.

Other than the fact that—is there any other reasons for that kind of consolidation in certain parts of the country, other than the high number of Hispanics that reside in the area? Are there any other justifications or rationales that people have used to go for this certification, other than just we have a lot of Hispanics in the area.

Mr. WILLIAMS. Well, just one little comment on that.



Mr. JOHNSON. And I am sorry for being—it is kind of difficult for me to express myself the way I want to right now, because I am just coming in from an event and thinking about some other things. But if you could answer.

Mr. WILLIAMS. We just held focus group meetings with about 33 police departments in the State of Texas and Kansas and in Florida. If you talk to those police leaders about what they feel about 287(g) and the departments that are getting involved, you will find that there is considerable political pressure for local police departments to become involved in the enforcement of Federal immigration laws.

And I think that in the South you probably get a greater amount of pressure, because the South is one of the new migration points for the immigrants as they come into the country. There used to be gateway areas, but now the South is the area that they are moving to. And it is creating issues associated with the politics, because of the differential in terms of persons that are coming in.

Mr. JOHNSON. But there is really no other reason—

Mr. WILLIAMS. Those are the ones that I know.

Mr. JOHNSON. Okay.

And, Mr. Kobach, do you want to answer that question, also?

I want someone else to answer if any of the agencies get any Federal funding to do what they do.

Mr. KOBACH. I can answer specifically your—I have the list of the 67 agencies that have it. It is pretty well distributed around the country: four in California, three in the State of Massachusetts, one in Minnesota, one in Missouri, nine in Virginia alone. And in Arizona there are—sorry, I said in my testimony earlier that there were six; there is actually a total of seven jurisdictions in the State of Arizona. So it is pretty well widespread.

But I think it is fair to say there are a significant number in the Southwest and in the Southeast, but that is also the case that the Southwest and the Southeast have seen a large influx of illegal immigration. And so we can see the 287(g) program as local entities, sovereign States or countries—not sovereign counties—but sovereign States saying, we have a need—

Mr. JOHNSON. Certainly, States have the right, if they are not preempted by the government. So that is fine, I understand that. I want to—because I am running out of time. I also want to ask, I know that there is an approval and a training process.

Mr. KOBACH. Four to six weeks of training.

Ms. LOFGREN. The gentleman's time has expired. Does he ask unanimous consent for an additional minute?

Mr. JOHNSON. I do.

Ms. LOFGREN. Without objection, so ordered.

Mr. JOHNSON. All right.

Once you have certified, you start enforcing, picking folks up and enforcing the Federal law, is there a way for people who feel like they are aggrieved by the law enforcement conduct, or misconduct as they may see it, is there someplace that they can file a complaint with a neutral body that will look at it?

And, also, the money issue. How do we do continuing education, if you will, continuing certification to make sure that the standards are being upheld?

Mr. HARRIS. Mr. Johnson, as far as your question about complaints, one of the great problems with looking at what is going on in this area—and I have heard a couple of witnesses, different people, say this morning, “Well, we have no complaints about that.” There are two things you have to remember: Complaints are not a measurement of conduct by law enforcement or by anybody else about who—

Mr. JOHNSON. No, I am not inferring that it is, but I would think normally you would have some kind of mechanism.

Mr. HARRIS. Well, you should have a mechanism, but the problem is that the people in this process who might have complaints are often deported or they are in fear of making complaints because they, themselves, somebody in their household may be illegal, since we have millions of people in mixed-status households. That is why there is such a low level of complaints even when there are processes for it.

Ms. LOFGREN. The gentleman’s time has expired.

I would turn now to the Ranking Member, the gentlemen from Utah, and he is recognized for 5 minutes.

Mr. CHAFFETZ. Thank you, Madam Chair.

I ask unanimous consent to insert into the record an article that appeared in today’s *Examiner* entitled, “Violent Crime Down in Prince William.”

Ms. LOFGREN. Without objection.

Mr. CHAFFETZ. Thank you.

[The information referred to follows:]

...enthusiasm, a nonprofit youth violence organization, claims to have organized the gift of vehicles, which were transported as far south as Miami this week before being ordered turned around. The donation was authorized through an emergency rule quietly published in

...but the pair had been recently designated as surplus for disposal — which until recently demanded their sale at auction.

Attorney General Peter Nickles is investigating. He has said answers are forthcoming by the end of this week.

*mneibauer@doxxaminer.com*

## Violent crime down in Prince William

Violent crimes in Prince William County dropped by more than 20 percent in 2008, Police Chief Charlie Deane said Wednesday.

In 2008, 485 violent crimes were reported, including murders, rapes, robberies and aggravated assaults. That was down 21.8 percent from the 620 violent crimes committed in 2007, Deane said. The overall crime rate of 20.1 percent was "significantly below" the five-year average in the county, he said, though it rose from 19.8 percent in 2007.

Property crimes, which include burglary, larceny and motor vehicle theft, rose 5.8 percent in 2008, from about 6,900 to about 7,300.

Overall, 63, or 8.5 percent, of the 1,802 people arrested for major crimes — which include murder, rape, robbery, aggravated assault, burglary, larceny and auto theft — were found to be illegal immigrants, Deane said. The data for crime by illegal immigrants start in March, when the county began its immigration crackdown.

*David Sherfinski*

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Mr. CHAFFETZ. Thank you all for being here and changing your flight. It is very nice and very kind.

Professor, you were very emphatic at the beginning of your testimony that there is no training whatsoever for those in agencies and those officers that are engaged or fall into this 287(g). Do you care to clarify the record there? They are trained, are they not?

Mr. HARRIS. The agencies—

Mr. CHAFFETZ. Yes or no, are they trained?

Mr. HARRIS. The agencies that are involved in 287(g) receive 4 weeks of training. That is what the GAO said.

Mr. CHAFFETZ. Okay, but at the very beginning of your testimony, you said no training, no education, no ability—I mean, these are law enforcement officers who have gone through extensive training not only about the law but about the Constitution, and so they have about background in this. And they go through a very specific training, do they not?

Mr. HARRIS. Only the ones in 287(g). The rest of the local and State law enforcement officers that I was talking about get no training in immigration law, none.

Mr. CHAFFETZ. Professor Kobach, could you, from your point of view and perspective, tell us a little bit about that training that they do go through?

Mr. KOBACH. Each memorandum of agreement that is signed with a jurisdiction for 287(g) specifies what the areas of training will be, and it varies because some jurisdictions would like to do more with their authority than others. For example, if a jurisdiction is just reviewing prisoners and not actually out in the streets operating as so-called deputized agents of the Federal Government, then they would need less areas of training. So those would be only a 4-week program. But, for example, Florida, the first jurisdiction that got 287(g) authority, they had 6 weeks of training. Alabama's officers had 5 weeks of trainings. So it varies. Each MOA—

Mr. CHAFFETZ. But they are trained.

Mr. KOBACH. They are all trained, absolutely.

Mr. CHAFFETZ. Yes. Thank you.

Professor Harris, what other Federal laws do you suggest we not enforce at the local level?

Mr. HARRIS. I suggest that the appropriate agencies enforce all the laws that are on the books. The Federal Government and ICE should enforce immigration law. I want my local police enforcing my criminal codes and my city codes. And—

Mr. CHAFFETZ. But the implementation of 287(g) you believe would be inappropriate?

Mr. HARRIS. For local people to do that? Yes, because they have a job to do, and it interferes with that job. It shifts their resources away from—

Mr. CHAFFETZ. But it doesn't have anything to do with a lack of training. They go through training.

Mr. HARRIS. If they are under 287(g).

Mr. CHAFFETZ. So if they are under 287(g), there shouldn't be a problem with them enforcing the immigration laws, even at the local level?

Mr. HARRIS. That is if you assume that the 4 weeks of training is enough to get them up to speed on what is one of the most complicated bodies of law that we have. And I simply don't accept that.

Mr. CHAFFETZ. Well, okay. I think that is clear, that you have no desire to have them do that. I understand that.

Would you then join me, if you think that there is a lack of training and understanding, would you support me in supporting funding for thousands of new Federal immigration enforcement agents who would be trained in the nuances of immigration law?

Mr. HARRIS. If we want real immigration enforcement, yes. There has to be a lot more well-trained and experienced immigration, dedicated immigration—

Mr. CHAFFETZ. You would actually join in advocating that we spend much, much more—

Mr. HARRIS. Absolutely, absolutely. If that is what the American people and the Congress want, they have to step up and fund it.

Mr. CHAFFETZ. Very good. In your written testimony, you discuss the actions of Maricopa County Sheriff Joe Arpaio. Have you ever met the sheriff?

Mr. HARRIS. No.

Mr. CHAFFETZ. Have you ever been there?

Mr. HARRIS. Oh, yes.

Mr. CHAFFETZ. To his facility.

Mr. HARRIS. To his facility? No. I have been to his jurisdiction.

Mr. CHAFFETZ. I mean, you have been to Phoenix, okay. But have you ever been involved with the sheriff's department there? To what extent have you interacted with them whatsoever?

Mr. HARRIS. I haven't interacted with them, but I have read the Goldwater report very extensively. I have talked with its author very extensively. And I am aware—

Mr. CHAFFETZ. So you, personally, have no direct experience with Joe Arpaio or the sheriff's department there in Maricopa County, correct? Other than reading an article?

Mr. HARRIS. No, not other than reading an article. And I am also aware—

Mr. CHAFFETZ. Have you ever been there?

Mr. HARRIS [continuing]. That there are three lawsuits against him, as well.

Mr. CHAFFETZ. I am sorry, say that again?

Mr. HARRIS. There are three lawsuits existing now for racial profiling in Maricopa County.

Mr. CHAFFETZ. But you personally have never—okay, I think I understand that.

And, finally, could we talk a little bit about the NCIC? I think there was some confusion, and, Professor Kobach, I would appreciate it if you could expand a little bit and explain how that works, who goes into the system, who doesn't, from your perspective, please.

Mr. KOBACH. I would be happy to. Chairman Conyers earlier suggested he thought that maybe your name could appear in NCIC simply because you reported a crime. That is incorrect. NCIC is a shared database that is under the custody of the Department of Justice and Attorney General and that State and local jurisdictions can input data. The data they bring into it is usually arrests—where a person is formally documented, fingerprinted—arrests and criminal convictions.

Now, the Federal Government puts in all kinds of data. Recently, when I was working at the Department of Justice, we started bringing in alien data. There are only three categories of aliens in NCIC, and one of the witnesses, I think, misstated in written testimony the categories. The first one is previously deported felons, and these have previously been deported from the United States because of serious felonies and have tried to reenter or may reenter, and therefore we would want the local officer to know who he is encountering. Second is absconders. We have over half a million

people in this country who have had their day in immigration court, have been deported, and have become fugitives.

Ms. LOFGREN. The gentleman's time has expired and, by unanimous consent, is granted an additional minute.

Mr. CHAFFETZ. Thank you.

Mr. KOBACH. And those absconders are fugitives who have already had their day in immigration court. And, obviously, it is a mockery of the rule of law if we can't even enforce what our immigration courts are supposed to be doing.

The third category of aliens in NCIC are aliens of a national security risk. And those are individuals who have committed some immigration violation, no matter what it is, but are also of a higher national security concern. And that is borne in part out of the fact that there were five of the 9/11 cohort who had committed immigration violations. The most common violation was overstaying a visa, which is a civil violation.

On September 9, 2001, just north of here, on highway 95, Ziad Jarrah, one of the pilots, was pulled over for speeding. He was going about 90 miles an hour, trying to meet his group in Newark at the airport. If the officer had had information in NCIC saying that this individual is illegally present in the country and we have certain national security questions, we might have been able to get that officer to detain that individual. So that is the kind of character we are talking about.

Mr. CHAFFETZ. Thank you.

Thank you, Madam Chair.

Ms. LOFGREN. The gentleman's time has expired.

The Ranking Member is recognized for his opportunity to question the witnesses for 5 minutes.

Mr. KING. Thank you, Madam Chair.

I do want to thank all the witness for your testimony today, and this has been a very compelling hearing.

Looking across the panel of the distinguished witnesses that we have, and I recognize that Professor Kobach has drafted an Albany Law Review article that is dated 2005 that addresses the issue of local jurisdiction of enforcement of immigration law. And I would ask unanimous consent to introduce the Albany Law Review article.

Ms. LOFGREN. Without objection, it is entered into the record.

Mr. KING. Thank you, Madam Chair.

[The information referred to follows:]

THE QUINTESSENTIAL FORCE MULTIPLIER: THE  
INHERENT AUTHORITY OF LOCAL POLICE TO MAKE  
IMMIGRATION ARRESTS

*Kris W. Kobach\**

I. INTRODUCTION

The terrorist attacks of September 11, 2001 underscored for all Americans the link between immigration law enforcement and terrorism. Nineteen alien terrorists had been able to enter the country legally and undetected, overstay their visas or violate their immigration statuses with impunity, and move freely within the country without significant interference from federal or local law enforcement.<sup>1</sup> The abuse of U.S. immigration laws was instrumental in the deaths of nearly 3,000 people. Moreover, any suicide attack by an alien terrorist in the future will likely entail additional violations of U.S. immigration laws. Either the terrorist will attempt to enter the United States legally and will violate the terms of his nonimmigrant status in the planning and execution of his attack,<sup>2</sup> or the alien terrorist will enter without inspection (EWI), which is itself a violation of U.S. immigration law.<sup>3</sup>

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\* Professor of Law, University of Missouri (Kansas City) School of Law. A.B. 1988, Harvard University; M.Phil. 1990, Oxford University; D.Phil. 1992, Oxford University; J.D. 1995, Yale Law School. During 2001–2003, the author was a White House Fellow, then Counsel to U.S. Attorney General John Ashcroft. The author served as the Attorney General's chief advisor on immigration and border security. The following analysis is offered purely in the author's private capacity as a law professor and not as a representative of the Bush Administration.

<sup>1</sup> See *infra* Part IIA for a more detailed description of the 9/11 terrorists and their circumstances.

<sup>2</sup> This would not, however, be the case if the terrorist was an "immigrant" alien who possessed lawful permanent resident status (or, in common parlance, held a "green card," although the document is not actually green). See U.S. Citizenship & Immigration Servs., Glossary & Acronyms, <http://uscis.gov/graphics/glossary2.htm> (last visited Sept. 25, 2005) (defining "lawful permanent resident," also known as "green card holder," as a non-citizen "residing . . . in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant").

<sup>3</sup> 8 U.S.C. § 1201(f) (2000) (requiring nonimmigrants to surrender documentation at the port of entry to immigration officers); *id.* § 1225(a)(3) (requiring all aliens seeking admission to, readmission to, or transit through the United States to be inspected by immigration

The fact that the 9/11 terrorists had been able to exploit weaknesses in the enforcement of immigration laws was not surprising to those engaged in the execution of federal immigration law. Enforcing the immigration laws is one of the most daunting challenges faced by the federal government. With an estimated 7 to 10 million illegal aliens already present in the United States<sup>4</sup> and fewer than 2000 interior enforcement agents at its disposal, the U.S. Bureau of Immigration and Customs Enforcement (ICE) has a Herculean task on its hands—one that it cannot easily accomplish alone.<sup>5</sup> After 9/11, it became clear that an effective domestic war against terrorism would require improvements in the enforcement of immigration laws.

On June 6, 2002, Attorney General John Ashcroft announced the National Security Entry-Exit Registration System (NSEERS), a program that would require high-risk alien visitors to provide fingerprints and extensive biographical information. It would also require such aliens to re-register with U.S. immigration officials periodically and would, for the first time, impose real-time departure controls on such high-risk visitors.<sup>6</sup> Violators of the NSEERS requirements would be listed in the National Crime Information Center (NCIC) database, accessible in the squad cars of most local police departments, allowing local law enforcement officers to make arrests of such high-risk immigration law

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officers); *id.* § 1182(a)(9)(B)(ii) (defining “unlawful presence” as presence after expiration of authorized period of stay or presence without admission or parole).

<sup>4</sup> “The INS estimates that the total unauthorized immigrant population residing in the United States in January 2000 was 7.0 million.” OFFICE OF IMMIGRATION STATISTICS MATERIAL, U.S. IMMIGRATION & NATURALIZATION SERVS., ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: 1990 TO 2000, at 1 (2003), *available at* [http://uscis.gov/graphics/shared/aboutus/statistics/III\\_Report\\_1211.pdf](http://uscis.gov/graphics/shared/aboutus/statistics/III_Report_1211.pdf). The Urban Institute estimates that in March 2002 there were 9.3 million illegal aliens in the United States. JEFFERY S. PASSEL ET AL., UNDOCUMENTED IMMIGRANTS: FACTS AND FIGURES 1 (2004), [http://www.urban.org/UploadedPDF/1000587\\_undoc\\_immigrants\\_facts.pdf](http://www.urban.org/UploadedPDF/1000587_undoc_immigrants_facts.pdf).

<sup>5</sup> ICE is “the largest investigative arm of the Department of Homeland Security” and “is responsible for identifying and shutting down vulnerabilities in the nation’s border, economic, transportation and infrastructure security.” U.S. Immigration & Customs Enforcement, ICE Mission, <http://www.ice.gov/graphics/about/index.htm> (last visited Sept. 25, 2005). ICE is additionally described in the Budget of the United States as “bring[ing] a unified and coordinated focus to the enforcement of Federal immigration . . . laws” and as “[r]esponsible for promoting the public safety and national security by ensuring the departure from the United States of all removable aliens through the fair enforcement of the nation’s immigration laws.” OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2006 app. 493 (2005). More than 17,000 people are employed by ICE. *Id.* at 494.

<sup>6</sup> John Ashcroft, Att’y Gen., U.S. Dep’t of Justice, Prepared Remarks on the National Security Entry-Exit Registration System (June 6, 2002), *available at* <http://www.usdoj.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm>.



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violators.<sup>7</sup> Had local police officers had access to the names of the five 9/11 hijackers who violated civil provisions of the Immigration and Nationality Act (INA) prior to the attack, they might have been able to arrest and detain one or more of the hijackers.<sup>8</sup>

The assistance of state and local law enforcement agencies can also mean the difference between success and failure in enforcing the nation's immigration laws generally. The nearly 800,000 police officers nationwide represent a massive force multiplier.<sup>9</sup> This assistance need only be occasional, passive, voluntary, and pursued during the course of normal law enforcement activity. The net that is cast daily by local law enforcement during routine encounters with members of the public is so immense that it is inevitable illegal aliens will be identified. When a local police officer establishes probable cause to believe that an alien is in violation of U.S. immigration law, he may contact the ICE Law Enforcement Support Center in Williston, Vermont, to confirm that ICE wishes to take custody of the alien.<sup>10</sup>

The Department of Justice Office of Legal Counsel (OLC) provides oral advice and written opinions in response to various executive branch requests.<sup>11</sup> When Attorney General Ashcroft announced the NSEERS system, he also announced the unequivocal conclusion of the OLC: "[A]rresting aliens who have violated criminal provisions of [the INA] or civil provisions that render an alien deportable . . . is within the inherent authority of the states."<sup>12</sup> Shortly thereafter,

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<sup>7</sup> *Id.* The FBI's National Crime Information Center (NCIC) maintains a computerized database of arrest and identification records developed by local and state police agencies. This database is available nationwide for use by federal, state, and local police officials. THE FBI: A COMPREHENSIVE REFERENCE GUIDE 160, 199, 221 (Athanasios G. Theoharis et al. eds., 1999).

<sup>8</sup> The five hijackers who either exceeded their B visa periods of authorized stay or committed other identifiable civil violations of the INA were Nawaf al Hazmi, Mohammed Atta, Hani Hanjour, Ziad Jarrah, and Satam al Suqami. See *infra* Part II.A.

<sup>9</sup> Bureau of Justice Statistics, U.S. Dep't of Justice, Law Enforcement Statistics: Summary Findings, available at <http://www.ojp.usdoj.gov/bjs/lawenf.htm> (last visited Sept. 25, 2005). The Department of Defense defines "force multiplier" as "[a] capability that, when added to and employed by a combat force, significantly increases the combat potential of that force and thus enhances the probability of successful mission accomplishment." Def. Technical Info. Ctr., DOD Dictionary of Military Terms (2005), available at <http://www.dtic.mil/doctrine/jel/doddict>.

<sup>10</sup> U.S. Immigration & Customs Enforcement, Fact Sheet, ICE Law Enforcement Support Center (Jan. 21, 2005), available at <http://www.ice.gov>.

<sup>11</sup> The OLC serves as general counsel for the Department of Justice and outside counsel for the other executive branch agencies. Dep't of Justice, OLC Homepage, About OLC, <http://www.usdoj.gov/olc/index.html> (last visited Sept. 25, 2005).

<sup>12</sup> Ashcroft, *supra* note 6. On September 7, 2005, a slightly redacted version of the 2002 OLC opinion was made available, pursuant to the Freedom of Information Act, via a court

the OLC retracted the relevant section of an erroneous 1996 OLC opinion on the subject. The OLC's 2002 conclusion—that states possess inherent authority to make immigration arrests—was not an extraordinary one. However, it sparked an extraordinary reaction among those in Washington, D.C., who lobby for open borders and less effective enforcement of immigration laws.<sup>13</sup> It also prompted a few critics to opine at length in law review articles.<sup>14</sup>

It had long been widely recognized that state and local police possess the inherent authority to arrest aliens who have violated *criminal* provisions of the INA.<sup>15</sup> Once the arrest is made, the police officer must contact federal immigration authorities and transfer the alien into federal custody within a reasonable period of time. Confusion existed, however, on the question of whether the same authority extends to arresting aliens who have violated *civil* provisions of the INA that render an alien deportable. That confusion had been, to some extent, fostered by the erroneous 1996 OLC opinion, the relevant part of which was withdrawn by OLC in 2002.<sup>16</sup>

As I explain in this Article, the law on this question, however, is quite clear: arresting aliens who have violated either criminal provisions of the INA or civil provisions that render an alien deportable is within the inherent authority of the states. Additionally, such inherent arrest authority has never been preempted by Congress. This conclusion has been confirmed by

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order issued by the Second Circuit. Am. Civil Liberties Union, ACLU Releases DOJ Memo Justifying Controversial Policy Change (Sept. 7, 2005), <http://aclu.org/ImmigrantsRights/ImmigrantsRights.cfm?ID=19048&c=22>; Nat'l Council of La Raza v. Dep't of Justice, 411 F.3d 350 (2d Cir. 2005).

<sup>13</sup> Articulated concerns include discouraging immigrants from reporting crime or otherwise interacting with the police, diverting resources from public-safety missions, lack of immigration-enforcement training, and racial profiling and discrimination leading to litigation. Am. Civil Liberties Union, *supra* note 12.

<sup>14</sup> See Huyen Pham, *The Inherent Flaws in the Inherent Authority Position: Why Inviting Local Enforcement of Immigration Laws Violates the Constitution*, 31 FLA. ST. U. L. REV. 965, 966 (2004) (describing Attorney General Ashcroft's announcement as a reversal in position); Jill Keblawi, Comment, *Immigration Arrests by Local Police: Inherent Authority or Inherently Preempted?*, 53 CATH. U. L. REV. 817, 817–18 (2004) (describing Attorney General Ashcroft's position as a contradiction of prior OLC opinion); Michael J. Wishnie, *State and Local Police Enforcement of Immigration Laws*, 6 U. PA. J. CONST. L. 1084 (2004) (describing Attorney General Ashcroft's announcement as legally incorrect).

<sup>15</sup> 8 U.S.C. § 1357(g)(1)–(3) (2000) (authorizing the Attorney General to enter into memoranda of understanding with state and local authorities to enforce immigration laws).

<sup>16</sup> The following statement appears in the 1996 opinion on the OLC website: "Editor's Note: In 2002, the Office of Legal Counsel withdrew the advice set forth in this section." Op. Off. Legal Counsel, Assistance By State and Local Police in Apprehending Illegal Aliens (1996) (withdrawn in part in 2002), available at <http://www.usdoj.gov/olc/immstopo1a.htm>.

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every court to squarely address the issue. Indeed, it is difficult to make a persuasive case to the contrary. This inherent arrest authority has been possessed and exercised by state and local police since the earliest days of federal immigration law.

In this Article, I describe the inherent legal authority upon which state and local police may act when making arrests in order to assist federal immigration enforcement.<sup>17</sup> I also answer the challenges of those who insist that such inherent authority has been preempted by Congress. Before describing this legal landscape, I explain in greater detail why the authority of local law enforcement to make immigration arrests, both criminal and civil, is critical both to the success of the war against terrorism and to rebuilding the rule of law in immigration.

## II. THE VALUE OF LOCAL LAW ENFORCEMENT

The years that have passed since September 11, 2001, have yielded a wealth of cases in which an immigration-based arrest by a state or local police officer was crucial in securing the capture of a suspected terrorist, a career criminal, or an absconder fleeing a final removal order. The role that state and local police officers play is often pivotal in the apprehension of aliens who present a terrorist or criminal threat. The nearly 800,000 state and local officers are the eyes and ears of law enforcement across the United States. They are the officers who encounter thousands of aliens daily in traffic stops and other routine law enforcement situations. Federal immigration officers simply cannot cover the same ground. The fact that four of the nineteen 9/11 hijackers had law enforcement encounters with local police in the six months preceding September 11, 2001, is instructive. The following are the most important scenarios in which state and local assistance in making immigration arrests occurs or, in the case of the 9/11 terrorists, should have occurred.

### A. *The 9/11 Terrorists*

The nineteen Al Qaeda terrorists who carried out the 9/11 attacks had their final contacts with federal law enforcement officials at the

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<sup>17</sup> This explanation should not be understood as a description of the 2002 OLC opinion on the subject. It is offered solely in the author's capacity as a law professor, not in his former capacity as a U.S. Department of Justice official.

ports of entry when they were legally admitted into the United States. Four members of the 9/11 terrorist group, however, encountered state and local law enforcement while inside the country. In all four of those instances, the state or local officers might have been able to make immigration arrests if the aliens' immigration violations had been communicated to them by federal authorities or if the officers had independently developed probable cause to believe that the aliens were in violation of federal immigration law.

The first case is that of Saudi Arabian Nawaf al Hazmi. Hazmi entered the United States through the Los Angeles International Airport as a B-2 visitor for pleasure<sup>18</sup> on January 15, 2000.<sup>19</sup> He rented an apartment with fellow hijacker Khalid al Mihdhar in San Diego and lived there for more than a year.<sup>20</sup> The authorized period of stay for B-2 visas is six months in almost every instance, as a matter of regulatory policy.<sup>21</sup> Since Hazmi was admitted to the United States for a six-month stay,<sup>22</sup> he would be in the United States illegally after July 15, 2000.<sup>23</sup> In early 2001, he moved to Phoenix, Arizona to join another 9/11 hijacker, Hani Hanjour.<sup>24</sup> On April 1, 2001, Hazmi was stopped for speeding in Oklahoma while traveling cross-country with Hanjour.<sup>25</sup> Had the officer known that Hazmi was in violation of U.S. immigration law at the time, he could have detained him.<sup>26</sup>

The second case is that of Egyptian Mohammed Atta, the ringleader of the 9/11 attacks and the individual who was most

<sup>18</sup> A temporary visitor to the United States for business or pleasure is a nonimmigrant alien. 8 U.S.C. § 1101(a)(15)(B) (2000). This alien may be issued a B-1 or B-2 visa, respectively. 8 C.F.R. § 214.2(b)(1) (2005). This type of visa allows admittance for no more than one year and can be extended by no more than six months. *Id.*

<sup>19</sup> 9/11 AND TERRORIST TRAVEL: A STAFF REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 15 (2004) [hereinafter 9/11 AND TERRORIST TRAVEL].

<sup>20</sup> Barry Wigmore, *War on Terror: Security Failure: 9/11: The 7 Missed Clues; How CIA and FBI Kept On Blundering*, SUNDAY MIRROR, June 9, 2002, at 16–17.

<sup>21</sup> 8 C.F.R. § 214.2(b)(2) (2005).

<sup>22</sup> 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 15.

<sup>23</sup> 8 U.S.C. § 1182(a)(9)(b)(ii) (2000). See 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 17 (stating Hazmi's stay expired on July 14, 2000).

<sup>24</sup> Wigmore, *supra* note 20.

<sup>25</sup> *Panel II of the Twelfth Public Hearing of the National Commission on Terrorist Attacks upon the United States*, FED. NEWS SERV., June 16, 2004 (statement by Dietrich ("Peter") Snell) [hereinafter Snell]. Additionally, Hazmi was issued only two tickets because his California driver's license did not show any problems when run through the police crime computers. Wigmore, *supra* note 20.

<sup>26</sup> The officer also could have detained Hani Hanjour on immigration grounds. See *infra* text accompanying notes 37–47.

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likely at the flight controls of American Airlines Flight 11 when it crashed into the World Trade Center. Atta entered the United States on numerous occasions, using B1 and B2 visas (temporary visitor for business/pleasure).<sup>27</sup> His first entry into the country was on June 3, 2000, through Newark Airport.<sup>28</sup> As noted above, the normal period of stay for B visa holders is six months, authorized at the time of entry. A B visa holder, however, may gain a “new” six-month period of authorized stay by departing the country and reentering on the same visa.<sup>29</sup> In total, Atta spent more than thirteen months in the United States preparing for the attacks.<sup>30</sup> However, he was unable to completely avoid contact with local law enforcement. On April 26, 2001, a police officer in Broward County, Florida stopped Atta for a traffic violation and ticketed him for possessing an invalid driver’s license.<sup>31</sup> The officer did not know that Atta had overstayed his visa on a prior visit to the United States.<sup>32</sup> In May 2001, Atta obtained a valid Florida driver’s license, despite his prior illegal presence in the United States.<sup>33</sup> However, Atta failed to appear in court for the April 26 ticket, and a bench warrant was issued for his arrest.<sup>34</sup> On July 5, 2001, Atta was pulled over for a traffic violation in Palm Beach County, Florida.<sup>35</sup> The police officer was unaware of the bench warrant issued by the neighboring jurisdiction; accordingly, he allowed Atta to drive away after issuing Atta a warning.<sup>36</sup>

The third case is that of Saudi Arabian Hani Hanjour, who is believed to have been at the flight controls of American Airlines

<sup>27</sup> See note 18.

<sup>28</sup> 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 16.

<sup>29</sup> See *id.* at 23 (describing how terrorist Jarrah left the United States and upon his return a day later was reissued a six-month stay).

<sup>30</sup> See 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 15–23 (describing Atta’s actions leading up to the 9/11 terrorist attack).

<sup>31</sup> Atta produced an international driver’s license. THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 231 (2004) [hereinafter 9/11 COMMISSION REPORT]; see also Thomas C. Tobin, *Florida: Terror’s Launching Pad*, ST. PETERSBURG TIMES, Sept. 1, 2002, at 1A.

<sup>32</sup> See 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 23; Mark Krikorian, *Keeping Terror Out: Immigration Policy and Asymmetric Warfare*, 75 NAT’L INT. 5 (2004).

<sup>33</sup> Michael R. Turner, *Intel Bill a Good First Step in Reform but Drivers’ License Reform Still Needed*, U.S. FED. NEWS, Dec. 10, 2004; 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 31.

<sup>34</sup> See Tobin, *supra* note 31; Charlie Weaver & Robert Ulrich, *Mr. Magoo vs. the Terrorists: America Must Bolster its Tracking Aptitude*, WASH. TIMES, Aug. 5, 2002, at A17.

<sup>35</sup> See Weaver & Ulrich, *supra* note 34.

<sup>36</sup> *Id.*

Flight 77 when it hit the Pentagon.<sup>37</sup> Hanjour entered the United States on an F1 student visa<sup>38</sup> on December 8, 2000, at the Cincinnati/Northern Kentucky International Airport.<sup>39</sup> He stated that he intended to take classes at the ELS Language Center in Oakland, California.<sup>40</sup> However, he never went to the ELS Language Center.<sup>41</sup> Hanjour's immigration violation commenced when he failed to show up for classes.<sup>42</sup> Thereafter, he was in the country illegally.<sup>43</sup> On August 1, 2001, Hanjour was pulled over for speeding in Arlington County, Virginia.<sup>44</sup> The police officer apparently did not know that Hanjour had violated his immigration status.<sup>45</sup> Accordingly, Hanjour was issued a ticket and allowed to drive away.<sup>46</sup> He later paid his \$100 fine by mail.<sup>47</sup>

The fourth case is that of Lebanese terrorist Ziad Jarrah, the man believed to have been at the flight controls of United Airlines Flight 93, which crashed in rural Pennsylvania.<sup>48</sup> Jarrah first entered the United States on June 27, 2000, at the Atlanta Airport on a B-2 visa.<sup>49</sup> He immediately violated his immigration status by going directly to the Florida Flight Training Center in Venice, Florida, where he would study until January 31, 2001.<sup>50</sup> He never applied to change his immigration status from tourist to student.<sup>51</sup> He was therefore detainable and removable from the United States almost from the moment he entered the country.<sup>52</sup> He successfully avoided contact with state and local police for more than fourteen months. However, at 12:09 a.m. on September 9, 2001, two days before the attack, he was clocked at ninety miles per hour in a sixty-five miles

<sup>37</sup> Tobin, *supra* note 31.

<sup>38</sup> See 8 U.S.C. § 1101(a)(15)(F)(i) (2000) (describing who may obtain an "F1" student visa).

<sup>39</sup> 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 23.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> See Turner, *supra* note 33.

<sup>43</sup> 8 U.S.C. § 1227(a)(1)(C)(i); Turner, *supra* note 33.

<sup>44</sup> *Hijacker Had Been Stopped for Speeding*, MILWAUKEE J. SENTINEL, Jan. 9, 2002, at 8A. Hanjour produced a Florida driver's license and was driving a van with New Jersey license plates. Marsha Kranes, *Md. Cops Let 9/11 Hijacker Go*, N.Y. POST, Jan. 9, 2002, at 7.

<sup>45</sup> See Kranes, *supra* note 44 (stating that Hanjour was just issued a \$100 ticket and released).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> See Tobin, *supra* note 31.

<sup>49</sup> See 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 17.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> 8 U.S.C. § 1227(a)(1)(C)(i). On each of Jarrah's six subsequent entries into the United States, INS inspectors failed to detect his illegal immigration status. 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 17.

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per hour zone on Interstate 95 in Maryland, twelve miles south of the Delaware state line.<sup>53</sup> He was traveling from Baltimore to Newark, in order to rendezvous with the other members of his team at their staging point in New Jersey.<sup>54</sup> The Maryland trooper did not know that Jarrah had been attending classes in violation of his immigration status.<sup>55</sup> The trooper also did not know that Jarrah's visa had expired more than a year earlier, a second violation of immigration law that rendered him detainable and removable from the United States.<sup>56</sup> The trooper issued Jarrah a speeding ticket carrying a \$270 fine and let him go.<sup>57</sup> The ticket would be found in the glove compartment of the car, left at Newark Airport two days later.<sup>58</sup>

Of critical importance is the fact that *all four of the hijackers who were stopped by local police prior to 9/11 had violated federal immigration laws and could have been detained by the state or local police officers*. Indeed, there were only five hijackers who were clearly in violation of immigration laws while in the United States—and four of the five were encountered by state or local police officers.<sup>59</sup> These were four missed opportunities of tragic dimension. Had information about their immigration violations been disseminated to state and local police through the NCIC system, the four terrorist aliens could have been detained for their violations. Adding even greater poignancy to these missed opportunities is the fact that they involved three of the four terrorist pilots of 9/11. Had the police officers involved been able to detain Atta, Hanjour, and Jarrah, these three pilots would have been out of the picture. It is difficult to imagine the hijackings proceeding without three of the four pilots.<sup>60</sup> The four traffic stops also offered an opportunity to

<sup>53</sup> Kranes, *supra* note 44.

<sup>54</sup> Snell, *supra* note 25. Jarrah was in possession of a valid Virginia driver's license and was driving a rented Mitsubishi Gallant. Kranes, *supra* note 44.

<sup>55</sup> See 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 17.

<sup>56</sup> *Building an Agile Intelligence Community to Fight Terrorism and Emerging Threats: Hearing Before the S. Comm. on Governmental Affairs*, 108th Cong. 2 (2004) (statement of Sen. Susan M. Collins). This was also a fact that should have prevented his numerous reentries into the United States. *Id.*

<sup>57</sup> Kranes, *supra* note 44.

<sup>58</sup> *Id.*

<sup>59</sup> The fifth hijacker who was illegally present in the United States—in addition to Hazmi, Atta, Hanjour, and Jarrah—was Satam al Suqami. See 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 31–32. Suqami overstayed his period of authorized stay on his B1 visa on May 20, 2000. *Id.* He would be illegally present in the United States until the attack on September 11, 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 31–32.

<sup>60</sup> See 9/11 COMMISSION REPORT, *supra* note 31, at 238–39 (showing photographs of the 9/11 hijackers and labeling the pilots as such). Hazmi also trained as a pilot and is believed

detain the leadership of the 9/11 terrorists. Had the police arrested Atta and Hazmi, the operation leader and his second-in-command would have been out of the picture.<sup>61</sup> Again, it is difficult to imagine the attacks taking place with such essential members of the 9/11 cohort in custody.

Importantly, *all of these transgressions were civil, not criminal, violations* of the INA. Therefore, according to the view of those who contend that Congress has preempted state and local police from making arrests for *civil* violations of the INA, no local police officer would have had the authority to arrest any of these hijackers on the basis of his immigration violation(s). In other words, even if the INS had developed a program to detect such violations and report the names of violators to local law enforcement agencies prior to the 9/11 attacks, the hands of local police would have been tied, and they would have been unable to help stop the attacks. Not only is it implausible to assert that Congress would have intended such a consequence as a policy matter, it is difficult to sustain such an assertion as a legal matter, as discussed in Part IV.

#### *B. Arrests of Suspected Terrorists Listed in the NCIC System*

Four of the hijackers were questioned by local police in the most common of law enforcement encounters—the traffic stop.<sup>62</sup> This type of encounter offers a valuable opportunity to locate specific wanted aliens, because most police vehicles are equipped with laptop computers connected to the NCIC system.<sup>63</sup> Had the federal government possessed information regarding the hijackers' immigration violations and possible terrorist connections, and had that information been distributed to police officers via the NCIC system, the terrorist plot that claimed nearly 3,000 lives might have been derailed. Since 9/11, the federal government has developed

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to have flown at least reconnaissance flights in the Washington, D.C. area. *Id.* at 242.

<sup>61</sup> Although he did not pilot one of the airplanes on September 11, Hazmi was identified as the second-in-command. *Id.*

<sup>62</sup> BUREAU OF JUSTICE STATISTICS, U.S. DEPT OF JUSTICE, CONTACTS BETWEEN POLICE AND THE PUBLIC: FINDINGS FROM THE 2002 NATIONAL SURVEY, at iv, 6 (2005), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/cpp02.pdf> (estimating that 16.8 million drivers were stopped in 2002 by police in traffic stops).

<sup>63</sup> See generally Press Release, Fed. Bureau of Investigation, U.S. Dep't of Justice (July 15, 1999), *available at* <http://www.fbi.gov/pressrel/pressrel99/hcic2000.htm>; INFO. TECHS., INC., FROM CALLBOX TO COMPUTER: AN ITI WHITEPAPER ON THE CHANGING FACE OF TECHNOLOGY IN LAW ENFORCEMENT 3–4, *available at* <http://www.itiusa.com/papers/CallBox.pdf> (last visited Jan. 23, 2006) (discussing the use of laptops and other technology available to local police).



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information that is being disseminated to state and local police officers through NCIC. For example, NSEERS allows the federal government to determine when a high-risk alien overstays his visa or fails to report his address and activities after thirty days in the United States. The names and details of many NSEERS violators have been entered into the NCIC system. It is absolutely essential that state and local police officers have access to this information and that they act upon it when encountering an NSEERS violator in a traffic stop. If the alien is actively avoiding contact with law enforcement, this may be the only opportunity to apprehend the alien before he engages in a terrorist act.

In the first two years of its operation, the NSEERS system led to the identification of eleven suspected terrorists.<sup>64</sup> Others with potential involvement in terrorism were also listed in the NCIC system. In addition to the identification of specific terrorists, NSEERS has served to deter and disrupt terrorist activity in the United States. “[T]he proposition that these programs had the potential to disrupt and perhaps to deter terrorist plots forming inside the United States after 9/11 certainly has some support. . . . [R]esearch demonstrates that terrorists often need to break laws in order to successfully complete their operations . . . .”<sup>65</sup> NSEERS also led to the initiation of removal proceedings against approximately 13,000 aliens who were found to be in violation of immigration laws.<sup>66</sup> There is evidence of the disruptive effect that these removals had on terrorist planning. As one Al Qaeda detainee stated, these removals made Al Qaeda operations more difficult.<sup>67</sup>

### C. Other Cases Involving Terrorism

The details of actual cases in the wake of 9/11 cannot be discussed without revealing classified information.<sup>68</sup> But a hypothetical fact pattern suffices to illustrate the point. For example, suppose that a police officer learns that a university student from a country that is a state sponsor of terrorism has made several purchases of

<sup>64</sup> James R. Edwards, Jr., *Astray on Amnesty*, WASH. TIMES, Jan. 11, 2004, at B03.

<sup>65</sup> 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 159.

<sup>66</sup> *Id.* at 157.

<sup>67</sup> *Id.* at 160.

<sup>68</sup> 5 U.S.C. § 552(b)(7)(A)–(F) (2000) (granting law enforcement agencies the right to classify certain material due to confidentiality, possible interference with ongoing investigations, or potential endangerment to the life or physical safety of any individual).

significant quantities of fertilizer.<sup>69</sup> He may also learn from other university students that the individual has not been attending classes. Neither of these actions constitutes a crime. However, from these circumstances, the officer may reasonably suspect that the alien has violated the terms of his student visa.<sup>70</sup> His arrest and questioning of the alien, founded on the immigration violation but reflecting larger concerns about terrorist activity, would be lawful and would serve the security interests of the United States. Without the immigration violation, the officer would possess no legal basis to make the arrest. In this type of situation, the authority to make the immigration arrest is a powerful tool that the local police officer can use when necessary to protect the public.

#### D. *The Absconder Initiative*

There are now more than 465,000 absconders at large in the United States.<sup>71</sup> These aliens have had their days in immigration court and have disobeyed their final orders of removal.<sup>72</sup> The absconder problem has made a mockery of the rule of law in immigration. Thousands of absconders have engaged in serious criminal activity in addition to their immigration violations.<sup>73</sup> Many absconders have committed criminal violations of the INA.<sup>74</sup>

<sup>69</sup> The nations currently designated state sponsors of terrorism by the U.S. Department of State are Iran, Libya, Sudan, Syria, North Korea, and Cuba. Bureau of Consular Affairs, U.S. Dep't of State, Special Visa Processing Procedures—Travelers from State Sponsors of Terrorism (Aug. 22, 2005), [http://travel.state.gov/visa/temp/info/info\\_1300.html](http://travel.state.gov/visa/temp/info/info_1300.html); see also Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. No. 107-173, 116 Stat. 543, 555 (granting the Secretary of State the right to name state sponsors of terrorism based on specified criteria); Press Release, Hinchey Introduces Legislation to Restrict Sale of Bomb-Making Material (Mar. 17, 2005), available at [http://www.house.gov/apps/list/press/hy22\\_hinchey/morenews/031705amoniumnitrate.html](http://www.house.gov/apps/list/press/hy22_hinchey/morenews/031705amoniumnitrate.html) (discussing a proposal to restrict the sale of ammonium nitrate fertilizer).

<sup>70</sup> This would constitute a civil violation of immigration law, rendering the alien deportable under 8 U.S.C. § 1227(a)(1)(C)(i) (2000).

<sup>71</sup> *11-Day Wisconsin Operation Nets 21 Fugitive Aliens*, U.S. FED. NEWS, Mar. 28, 2005; see also WordReference.com, <http://www.wordreference.com/definition/alien%20absconder> (last visited Jan. 23, 2006) (defining "alien absconder" as "a fugitive remaining in the United States after an immigration judge has ordered them deported").

<sup>72</sup> See Susan Sachs, *A Nation Challenged: Deportations; U.S. Begins Crackdown on Muslims Who Defy Orders to Leave Country*, N.Y. TIMES, Apr. 2, 2002, at A5.

<sup>73</sup> See Mary Beth Sheridan, *Tracking Down Immigrant Fugitives; Md. Squad Part of Get-Tough Effort*, WASH. POST, Jan. 2, 2005, at A1.

<sup>74</sup> See *State and Local Authority to Enforce Immigration Law: Evaluating a Unified Approach for Stopping Terrorists. Hearing before the Subcomm. on Immigration, Border Sec. and Citizenship of the S. Comm. on the Judiciary*, 108th Cong. 120 (2004) (testimony of Kris W. Kobach, Professor of Law, University of Missouri (Kansas City) School of Law) [hereinafter Kobach Testimony].

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However, others have committed civil violations where the underlying immigration violation was of a civil provision and the refusal to obey the order of removal was not willful.<sup>75</sup> On December 5, 2001, the Department of Justice launched the Absconder Initiative, which has been continued under the Department of Homeland Security.<sup>76</sup> This initiative marked the beginning of the process of listing absconders' names and information in the NCIC system.<sup>77</sup> The presence of these names in the NCIC system gives local police the information necessary to make immigration arrests during the course of routine traffic stops.<sup>78</sup> The existence of the Absconder Initiative is based on the premise that local police have the authority to make immigration arrests—for both civil and criminal violations of the Immigration and Nationality Act.<sup>79</sup>

Beginning in December 2001, absconders from nations associated with Al Qaeda and absconders with criminal records were considered "priority absconders" and were listed in the NCIC system first.<sup>80</sup> As of November 30, 2005, 47,433 absconders had been listed.<sup>81</sup> Thousands of these fugitives have been arrested with the cooperation of state and local law enforcement officers. Between

<sup>75</sup> For example, an absconder may not have resided at the address to which the removal order, rendered in his absence, was delivered.

<sup>76</sup> *Seventh Public Hearing of the National Commission on Terrorist Attacks Upon the United States*, Jan. 26, 2004, [http://www.9-11commission.gov/hearings/hearing7/witness\\_ziglar.htm](http://www.9-11commission.gov/hearings/hearing7/witness_ziglar.htm) (statement of James W. Ziglar, INS Commissioner) [hereinafter *Seventh Public Hearing*]; Kobach Testimony, *supra* note 74, at 120.

<sup>77</sup> *Seventh Public Hearing*, *supra* note 76.

<sup>78</sup> *Clear Law Enforcement for Criminal Alien Removal Act of 2003: Hearing on H.R. 2671 Before the Subcomm. on Immigration, Border Sec., and Claims of the H. Comm. on the Judiciary*, 108th Cong. 31 (2003) (statement of James R. Edwards, Jr.).

<sup>79</sup> LISA M. SECHETTI ET AL., CONGRESSIONAL RESEARCH SERVICE (CRS) REPORT FOR CONGRESS: ENFORCING IMMIGRATION LAW: THE ROLE OF STATE AND LOCAL LAW ENFORCEMENT 3 n.4, 8 (2004), available at <http://fpc.state.gov/documents/organization/31349.pdf>.

<sup>80</sup> *Immigration and Naturalization Service's (INS) Interior Enforcement Strategy: Hearing Before the Subcomm. on Immigration, Border Sec., and Claims of the H. Comm. on the Judiciary*, 107th Cong. 9 (2002) (statement of Joseph R. Greene, Assistant Comm'r for Investigations, INS) [hereinafter *Greene Statement*]; Memorandum from the Deputy Atty Gen. to INS Comm'r et al., Guidance for Absconder Apprehension Initiative (Jan. 25, 2002), available at <http://news.findlaw.com/hdocs/docs/doj/absendr012502mem.pdf> (explaining "the process for apprehending and interviewing the priority absconders" under the first phase of the Absconder Initiative).

<sup>81</sup> E-mail from J. Scott Blackman, ICE, to author (Dec. 14, 2005) (on file with author) [hereinafter *Blackman E-mail*].

Although the [Absconder Initiative] has yielded many valuable arrests with the cooperation of state and local law enforcement, the effort has been hamstrung by the fact that the entry of names into NCIC has occurred at an alarmingly slow rate. Indeed, the number of absconders is growing faster than the entry of absconders into NCIC. Kobach Testimony, *supra* note 74, at 120.

November 2003 and November 2005, 3,944 absconders were apprehended by state and local law enforcement officers utilizing the NCIC.<sup>82</sup> These arrests have resulted in the removal of many violent criminals from America's streets.

Many of the absconders are murderers. One of the most notorious absconders, whose immigration violations were part of a long and violent criminal record, was Maximiliano Silerio Esparza, arrested by local police in Oregon in the Summer of 2002 for rape and murder.<sup>83</sup> Several absconders have become cop killers. For example, in March 2002, absconder Luis Alberto Gomez Gonzalez killed an off-duty police officer in the Bronx.<sup>84</sup> Fifteen months later, in June 2003, absconder Adrian Camacho killed police officer Tony Zeppetella in Oceanside, California.<sup>85</sup> If the Absconder Initiative had occurred years earlier, their victims might be alive today.

The Absconder Initiative has also contributed to federal government efforts in the war against terrorism. As of early 2003, INS/ICE authorities had reported fourteen absconder cases to the FBI due to apparent links between the absconders and terrorist activity.<sup>86</sup>

It is hard to overstate the importance of the Absconder Initiative in restoring the rule of law in immigration. For years, aliens unlawfully present in the United States have disregarded final orders of removal with impunity. In 2003, the Office of the Inspector General at the U.S. Department of Justice reported that 87 percent of those aliens who were not detained during their

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<sup>82</sup> Blackman E-mail, *supra* note 81.

<sup>83</sup> See Jim Lynch, *Suspect in Attack on Nuns is Arraigned*, OREGONIAN, Sept. 5, 2002, at A1; Donald L. Bartlett & James B. Steele, *Who Left the Door Open?*, TIME MAG., Sept. 20, 2004, at 51.

<sup>84</sup> Alice McQuillan et al., *Off Duty Officer is Slain: Stabbed to Death in Girlfriend's Apartment*, DAILY NEWS (N.Y.), Apr. 1, 2002, at 7.

<sup>85</sup> See *Deadly Consequences of Illegal Alien Smuggling: Hearing Before the Subcomm. on Immigration, Border Sec., and Claims of the H. Comm. on the Judiciary*, 108th Cong. 26 (2003) (prepared statement of Peter K. Nunez, former U.S. Atty); Jose Luis Jimenez, *Oceanside Cop's Killer Should Die, Jurors Say; Panel Calls for Execution, Cites Brutality of Shooting*, SAN DIEGO UNION-TRIBUNE, Dec. 1, 2005, at NC-1, NI-1.

<sup>86</sup> 9/11 AND TERRORIST TRAVEL, *supra* note 19, at 154. The 9/11 staff report notes further that none of the absconders who were removed during the first phase of the Absconder Initiative were deported under a terrorism statute or prosecuted for terrorism-related crimes. *Id.* What this statement fails to comprehend is that routine immigration violations are much easier to establish than terrorism-related violations. Federal immigration authorities typically take the path of least resistance when it is determined that the best course of action with a suspected terrorist is to remove him to his country of origin. Consequently, one cannot deduce from the fact that an alien is removed on a violation unrelated to terrorism that the alien was not, in fact, a terrorist.

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removal proceedings ignored their final orders of removal and absconded.<sup>87</sup> The Absconder Initiative has demonstrated promising results in tracking down the hundreds of thousands of fugitives who make a mockery of the immigration court system. For the first time, the United States is apprehending absconding aliens in significant numbers. This progress would be impossible without the assistance of state and local police in making immigration arrests.

#### *E. Violent Gangs*

On March 14, 2005, ICE announced 103 coordinated immigration arrests that had occurred during the preceding weeks in what was termed “Operation Community Shield.”<sup>88</sup> The arrested aliens were members of the Mara Salvatrucha 13 (MS-13) gang, a particularly violent criminal organization involved in drug trafficking, arms smuggling, human smuggling, and inter-gang violence.<sup>89</sup> The MS-13 gang originated in Los Angeles, with a large proportion of its members being natives of El Salvador who entered the United States in the 1980s.<sup>90</sup> The gang now has more than 10,000 members in the United States and operates in at least 33 states.<sup>91</sup> The majority of MS-13 members are illegal aliens.<sup>92</sup> All of the Operation Community Shield arrests were for immigration violations, many of which were civil violations of the INA.<sup>93</sup> Nevertheless, approximately half of the arrested gang members had prior arrests or convictions for violent crimes, including murder, weapons charges, and aggravated arson.<sup>94</sup>

<sup>87</sup> See OFFICE OF THE INSPECTOR GEN., U.S. DEPT OF JUSTICE, THE IMMIGRATION AND NATURALIZATION SERVICE’S REMOVAL OF ALIENS ISSUED FINAL ORDERS, Rep. No. I-2003-004, at ii (2003), available at <http://www.usdoj.gov/oig/reports/INS/e0304/final.pdf>.

<sup>88</sup> Press Release, U.S. Immigration and Customs Enforcement, ICE Launches Operation Community Shield with the Arrest of 103 MS-13 Gang Members in Six U.S. Cities (Mar. 14, 2005), available at <http://www.ice.gov/graphics/news/newsreleases/archive/mar05.htm> [hereinafter *Community Shield Arrests*].

<sup>89</sup> See *id.*

<sup>90</sup> See Gary Gately, *Indictments in Maryland Single Out MS-13 Gang*, N.Y. TIMES, Aug. 26, 2005, at A12.

<sup>91</sup> *Alien Gang Removal Act of 2005: Hearing on H.R. 2933 Before the Subcomm. on Immigration, Border Sec., and Claims of the H. Comm. on the Judiciary*, 109th Cong. 11 (2005) (prepared statement of Kris W. Kobach, Professor of Law, University of Missouri (Kansas City) School of Law) [hereinafter Kobach Prepared Statement]; *FBI Announces Coordinated Law Enforcement Action Against Gangs*, U.S. FED. NEWS (Sept. 8, 2005).

<sup>92</sup> *Community Shield Arrests*, *supra* note 88.

<sup>93</sup> *Id.* (noting the criminal and administrative immigration charges in many of the arrests); Kobach Prepared Statement, *supra* note 91, at 13.

<sup>94</sup> *Community Shield Arrests*, *supra* note 88.

Operation Community Shield continued after these initial 103 arrests. In May 2005, it expanded to encompass other violent gangs with a high proportion of illegal alien membership, including the 18th Street Gang, Surenos 13, Pelones 13, the Latin Kings, and others.<sup>95</sup> Operation Community Shield also expanded to other cities, including those far from any national border, such as Omaha, Nebraska.<sup>96</sup> By the end of October 2005, Operation Community Shield had resulted in the arrest of more than 1,600 gang members and associates.<sup>97</sup>

These arrests were the result of coordinated efforts between ICE and local law enforcement. Local police officers and departments reported the names of suspected gang members to ICE, which then ran the lists of gang members against federal immigration databases to determine the immigration statuses of the individuals in question.<sup>98</sup> The arrestees were all present in the United States illegally. All were arrested for immigration offenses, rather than for criminal gang activity. Some had committed criminal violations of the INA, while others had committed civil violations. ICE took the lead in making the arrests, but state and local law enforcement cooperated and participated in the operation. What is painfully clear from Operation Community Shield is that the federal government needed the help of local law enforcement to obtain the names of gang members, and the local police departments needed the help of ICE to verify the illegal alien status of the gang members. The immigration violations served as a valuable tool to remove violent criminals from the streets.

#### F. *Interception of Alien Smuggling*

In recent years, the country has witnessed many horrific deaths as a consequence of alien smuggling.<sup>99</sup> Victims of the trade have died from exposure in the desert, from heat and suffocation in

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<sup>95</sup> Tom Ford, *Illegal and in Gang? Prepare to Go Home*, MINNEAPOLIS-ST. PAUL STAR TRIB., Nov. 4, 2005; U.S. Immigration and Customs Enforcement, *News Release: Omaha ICE Apprehends 47 Gang Members, Associates as Part of Operation Community Shield* (Nov. 25, 2005), available at <http://www.ice.gov/graphics/news/newsreleases/articles/051125omaha.htm> [hereinafter ICE, *News Release*]; U.S. Immigration and Customs Enforcement, Fact Sheet: Operation Community Shield (Aug. 1, 2005), available at <http://www.ice.gov/graphics/news/factsheets/opshield031405.htm> [hereinafter Community Shield Fact Sheet].

<sup>96</sup> See ICE, *News Release*, *supra* note 95.

<sup>97</sup> See ICE, *News Release*, *supra* note 95.

<sup>98</sup> See Community Shield Fact Sheet, *supra* note 95.

<sup>99</sup> See, e.g., Ginger Thompson & Sandra Ochoa, *By a Back Door to the U.S.: A Migrant's Grim Sea Voyage*, N.Y. TIMES, June 13, 2004, at 1.

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railroad cars, and in highway accidents in overloaded and unsafe vehicles. It is often the case that smuggling activities become evident far from the border, where the only law enforcement officers likely to observe them are state or local police. Smuggling will not decrease unless and until enforcement capacity increases. State and local police have provided a critical boost to federal enforcement activities and will continue to play a decisive role in efforts to curtail immigrant smuggling.

Cases of immigrant smuggling arrests made by alert state and local police officers abound. To mention but a few recent examples, in December 2004, officers in El Paso, Texas arrested two alleged smugglers who had transported twenty-six illegal aliens into the United States from Costa Rica and Guatemala.<sup>100</sup> In October 2003, local police officers stopped a Ford Crown Victoria near San Diego after a high speed chase.<sup>101</sup> The sedan had ten suspected illegal immigrants inside.<sup>102</sup> The officers turned them over to the Border Patrol.<sup>103</sup> One of the deadliest and most notorious cases occurred in May 2003, when sheriff's deputies near Victoria, Texas discovered an abandoned trailer filled with illegal immigrants, nineteen of whom died due to the suffocating heat in the closed container.<sup>104</sup>

Immigrant smuggling cases often involve local police officers developing probable cause to believe that immigration violations have occurred. The textbook case occurs when a police officer pulls over a vehicle for a traffic infraction, only to discover that the vehicle is dangerously packed with passengers whose demeanor generates suspicion.<sup>105</sup> Indeed, one of the Tenth Circuit cases discussed below involving inherent arrest authority possessed by state and local law enforcement officers concerned precisely that

<sup>100</sup> Daniel Borunda, *Two Arrested After Immigrants Found*, EL PASO TIMES, Dec. 4, 2004, at 1B.

<sup>101</sup> Mark Arner, *Deputy Stops Driverless Car Loaded with People*, SAN DIEGO UNION-TRIB., Oct. 22, 2003, at B3.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* The Border Patrol is a part of the unified border agency that protects the points of entry into the United States from illegal entry, terrorism, and other illegal activity. See United States Customs and Border Protection, <http://www.cbp.gov> (last visited Sept. 26, 2005).

<sup>104</sup> *Driver Urged to Free Immigrants, Jury Told*, TULSA WORLD, Dec. 4, 2004, at A5; T.A. Badger, *18 Illegal Immigrants Die in Sweltering Truck Trailer*, N.Y. SUN, May 15, 2003, at 2.

<sup>105</sup> See, e.g., *United States v. Favela-Favela*, 41 F. App'x 185, 187 (10th Cir. 2002) (involving the discovery of illegal aliens due to a traffic stop for violating the state's seatbelt law); *United States v. Vasquez*, 298 F.3d 354 (5th Cir. 2002) (upholding an arrest that followed a traffic stop made due to suspicious actions of the driver), *cert. denied*, 537 U.S. 1024 (2002).

scenario.<sup>106</sup>

### G. Section 287(g) Authority

This Article discusses the legal basis for the inherent arrest authority possessed by state and local police. It is simply the power to arrest an illegal alien who is removable, detain the alien temporarily, and then transfer the alien to the custody of ICE. This arrest authority must be distinguished from the broader 287(g) authority that may be delegated to state and local law enforcement agencies through a formal Memorandum of Understanding (MOU). Such 287(g) authority includes not only the power to arrest, but also the power to investigate immigration violations, the power to collect evidence and assemble an immigration case for prosecution or removal, the power to take custody of aliens on behalf of the federal government, and other general powers involved in the enforcement of immigration laws. The mechanism to delegate such authority and effectively deputize members of state or local law enforcement agencies to perform such “function[s] of an immigration officer” was created by Congress in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which added subdivision (g) to section 287 of the Immigration and Nationality Act.<sup>107</sup>

[T]he Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.<sup>108</sup>

Importantly, Congress recognized that the broad 287(g) enforcement authority differed from the narrower inherent arrest authority already possessed by state and local law enforcement

<sup>106</sup> *Favela-Favela*, 41 F. App'x at 187, 191. See *infra* Part IV.G (discussing the basis for the authority of state and local police to arrest individuals for violations of federal immigration laws).

<sup>107</sup> See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, §§ 1(a), 133, 110 Stat. 3009-546, 3009-563 (codified as amended in scattered sections of 8 U.S.C.).

<sup>108</sup> 8 U.S.C. § 1357(g)(1) (2000).



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officers. In accordance with this distinction, Congress expressly recognized that such inherent arrest authority was not displaced by the new possibility that local police might be deputized to perform all of the functions of immigration officers:

Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.<sup>109</sup>

Section 287(g) stands as an invitation for state and local governments to contract with federal immigration authorities to exercise powers extending well beyond their inherent power to arrest.

To date, two states—Florida and Alabama—have accepted this invitation. The Florida MOU became effective on July 7, 2002.<sup>110</sup> Under that agreement, thirty-five Florida law enforcement officers were trained and delegated specific immigration enforcement powers, including the power to interrogate, the power to collect evidence, and the power to conduct broad immigration investigations.<sup>111</sup> The officers undertook six weeks of immigration enforcement training and were assigned to seven regional domestic security task forces.<sup>112</sup> Several law enforcement agencies in Florida each have one officer deputized under the program.<sup>113</sup> In the first year of the program in Florida, state and local police officers made 165 immigration arrests, including the bust of a phony document production ring in the Naples area.<sup>114</sup>

<sup>109</sup> *Id.* § 1357(g)(10).

<sup>110</sup> Jeff Sessions & Cynthia Hayden, *The Growing Role for State & Local Law Enforcement in the Realm of Immigration Law*, 16 STAN. L. & POL'Y REV. 323, 346 (2005).

<sup>111</sup> The Florida MOU itself is considered a law-enforcement sensitive document and is not a matter of public record. However, the outlines of enforcement powers delegated are evident in the public exercise of such powers, as described in the press. *See, e.g.*, Tanya Weinberg, *1 Year, 35 Agents, 165 Arrests; FDLE: State's Example has Inspired National Expansion*, FORT LAUDERDALE SUN-SENTINEL, Aug. 2, 2003, at 1B (discussing and describing Florida's pilot program in enforcing immigration law).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

The Alabama MOU was signed on September 10, 2003.<sup>115</sup> Under the agreement, twenty-one Alabama state troopers undertook five weeks of immigration enforcement training.<sup>116</sup> ICE also agreed to send at least three additional federal supervisory immigration agents to the state.<sup>117</sup> The first class of twenty-one troopers graduated in October 2003.<sup>118</sup> In addition to procedures of investigation, the state officers were trained in using national immigration databases, the details of immigration law, and specific document requirements for illegal aliens.<sup>119</sup> By the end of July 2005, the Alabama troopers vested with 287(g) authority had made approximately 200 immigration arrests, including 44 cases resulting in federal prosecution.<sup>120</sup> In February 2005, the Department of Homeland Security announced that a second class of twenty-five Alabama state troopers would receive the same training.<sup>121</sup> The authority conveyed by section 287(g) is not limited to states. Counties in California have also negotiated section 287(g) MOUs with the Department of Homeland Security.<sup>122</sup>

The distinction between the inherent arrest authority possessed by the states and the much broader immigration enforcement authority conveyed by section 287(g) is one that has been lost on some commentators. As one student comment indignantly asserted: "The INS clearly did not believe Florida had any 'inherent authority;' otherwise, it would not have entered into an MOU only one month after Ashcroft's announcement."<sup>123</sup> The author of the comment either did not bother to explore the difference in scope between inherent arrest authority and the 287(g) authority embodied in the Florida MOU, or did not understand that a

<sup>115</sup> Sessions & Hayden, *supra* note 110, at 346.

<sup>116</sup> *Troopers Graduate Program*, MONTGOMERY ADVERTISER, Oct. 15, 2003, at A8.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Press Release, Office of Sen. Jeff Sessions, Sessions Calls for Expansion of Federal Immigration Enforcement Training in Alabama (Feb. 21, 2005), available at <http://www.sessions.senate.gov/press.htm>.

<sup>120</sup> Mary Orndorff, *Rogers Urges More Trooper Immigration Training: Tells Congress 200 Arrests Prove Program Successful*, BIRMINGHAM NEWS, July 28, 2005, at 6C.

<sup>121</sup> Press Release, Office of Sen. Jeff Sessions, *supra* note 119.

<sup>122</sup> See *The 287(g) Program: Ensuring the Integrity of America's Border Security System through Federal-State Partnerships: Hearing Before the Subcomm. on Management, Integration, and Oversight of the II. Comm. on Homeland Sec.*, 109th Cong. (July 27, 2005) (testimony of Kris W. Kobach, Professor of Law, University of Missouri (Kansas City) School of Law), available at <http://homeland.house.gov/files/TestimonyKobach.pdf> (discussing interest expressed by two California counties in section 287(g) MOU programs).

<sup>123</sup> Keblawi, *supra* note 14, at 840-41.

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difference exists.<sup>124</sup> Somewhat less excusably, two articles by law professors similarly failed to make this distinction.<sup>125</sup>

### III. THE INHERENT ARREST AUTHORITY POSSESSED BY THE STATES

In assessing the authority of local police to make immigration arrests, the initial question is whether the states have inherent power to make arrests for violations of federal law. That is, may state police, exercising state law authority only, make arrests for violations of federal law, or do they possess the power to make such arrests only if they are exercising delegated federal power? The answer to this question is plainly the former.

The source of this authority flows from the states' status as sovereign governments possessing all residual powers not abridged or superseded by the U.S. Constitution. The source of the state governments' power is entirely independent of the U.S. Constitution.<sup>126</sup> Moreover, the enumerated powers doctrine that constrains the powers of the federal government does not so constrain the powers of the states. Rather, the states possess broad "police powers," which need not be specifically enumerated. Police powers are "an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people."<sup>127</sup> Essentially, states may take any action to protect these interests (consistent with their own constitutions and laws) unless there exists a prohibition in the U.S. Constitution or such action has been preempted by federal law.<sup>128</sup>

It is well established that the authority of state police to make arrests for violations of federal law is not limited to situations in which state officers are exercising power delegated by the federal government to the states. Rather, it is a general and inherent

<sup>124</sup> *See id.* at 840 ("Florida had no authority outside the MOU to make civil immigration arrests.").

<sup>125</sup> *See* Pham, *supra* note 14, at 970–71 (discussing Florida's attempt to limit their officers' "warrantless arrests" to "counter-terrorism and domestic security goals"); *see also* Wishnie, *supra* note 14, at 1095 ("Were the Attorney General and OLC correct that state and local police possess the 'inherent authority' to enforce all immigration laws, . . . Congress need not have . . . created emergency and nonemergency procedures for the Attorney General to authorize state and local immigration enforcement . . .").

<sup>126</sup> *See* *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193 (1819) (finding "powers proceed, not from the people of America, but from the people of the several states; and remain, after the adoption of the constitution, what they were before").

<sup>127</sup> *Manigault v. Springs*, 199 U.S. 473, 480 (1905).

<sup>128</sup> *See* ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 282–83 (1997).

authority based on the fact that the states retain their sovereignty in the U.S. constitutional framework. The states' arrest authority is derived from the basic power of one sovereign to assist another sovereign. This is the same inherent authority that is exercised whenever a state law enforcement officer witnesses a federal crime being committed and makes an arrest. That officer is not acting pursuant to delegated federal power. Rather, he is exercising the inherent power of his state to assist another sovereign.

There is abundant case law on this point. Even though Congress has never authorized state police officers to make arrest for federal offenses without an arrest warrant, such arrests occur routinely. Further, the Supreme Court has recognized that state law controls the validity of such an arrest. As the Court concluded in *United States v. Di Re*,

No act of Congress lays down a general federal rule for arrest without warrant for federal offenses. None purports to supersede state law. And none applies to this arrest which, while for a federal offense, was made by a state officer accompanied by federal officers who had no power of arrest. Therefore the New York statute provides the standard by which this arrest must stand or fall.<sup>129</sup>

The Court's conclusion rests on the assumption that state officers possess the inherent authority to make warrantless arrests of individuals who have committed federal offenses. The same assumption guided the Supreme Court in *Miller v. United States*, a case concerning an arrest for federal offenses by an officer of the District of Columbia.<sup>130</sup> No delegation of federal arrest authority was necessary; "[b]y like reasoning the validity of the arrest . . . [was] to be determined by reference to the law of the District of Columbia."<sup>131</sup> As the Seventh Circuit explained in *United States v. Janik*, "[state] officers have implicit authority to make federal arrests."<sup>132</sup> Accordingly, they may initiate an arrest on the basis of probable cause to believe that an individual has committed a federal offense.<sup>133</sup>

The Ninth and Tenth Circuits have reached the same conclusion in the immigration context specifically. In *Gonzales v. City of*

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<sup>129</sup> 332 U.S. 581, 591 (1948).

<sup>130</sup> 357 U.S. 301, 303-05 (1958).

<sup>131</sup> *Id.* at 305-06.

<sup>132</sup> *United States v. Janik*, 723 F.2d 537, 548 (7th Cir. 1983).

<sup>133</sup> *Id.*

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*Peoria*, the Ninth Circuit opined with respect to immigration arrests that “[t]he general rule is that local police are not precluded from enforcing federal statutes.”<sup>134</sup> The Tenth Circuit has reviewed this question on several occasions, concluding squarely in 1984 that “[a] state trooper has general investigatory authority to inquire into possible immigration violations.”<sup>135</sup> As the Tenth Circuit characterized this arrest power in 1999, there is a “preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws.”<sup>136</sup> And again in 2001, the Tenth Circuit reiterated that “state and local police officers [have] implicit authority within their respective jurisdictions ‘to investigate and make arrests for violations of federal law, including immigration laws.’”<sup>137</sup> None of these Tenth Circuit holdings drew any distinction between criminal violations of the INA and civil provisions that render an alien deportable. Indeed, in all of the cases, the officers involved inquired generally into possible immigration violations, often arresting without certainty as to whether the aliens’ immigration violations were of a civil or criminal nature.<sup>138</sup> Rather, the court described an inherent arrest authority that extends generally to all immigration violations.

#### IV. THE ABSENCE OF CONGRESSIONAL PREEMPTION

##### A. *The Framework of Preemption Analysis*

Having established that this inherent state arrest authority exists, the second question is whether such authority has been preempted by Congress. In conducting a preemption analysis, courts must look for (1) express preemption by congressional statement, (2) field preemption where the federal regulatory scheme is “so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,” or (3) conflict preemption, where compliance with both state and federal law is impossible or state law prevents the accomplishment of

<sup>134</sup> 722 F.2d 468, 474 (9th Cir. 1983) (citations omitted).

<sup>135</sup> *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301 n.3 (10th Cir. 1984).

<sup>136</sup> *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1295 (10th Cir. 1999).

<sup>137</sup> *United States v. Santana-Garcia*, 264 F.3d 1188, 1194 (10th Cir. 2001) (quoting *Vasquez-Alvarez*, 176 F.3d at 1295).

<sup>138</sup> See *infra* Part IV.D–G.

congressional objectives.<sup>139</sup> In all three categories, manifest congressional intent must be demonstrated for preemption to exist. Every preemption inquiry must “start[] with the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress.”<sup>140</sup> The Supreme Court has consistently reiterated that “[t]he purpose of Congress is the ultimate touchstone” of preemption analysis.<sup>141</sup>

Moreover, in the context of state arrests for violations of federal law, there is a particularly strong presumption against preemption. Normal preemption cases involve: (1) state *legislation* (2) that is *at odds with* federal purposes or statutes. However, state arrests for violations of federal law involve: (1) state *executive* action (2) that is intended to *assist* the federal government in the enforcement of federal law. The starting presumption must be that the federal government did not intend to deny itself any assistance that the states might offer. This presumption was articulated in 1928 by Second Circuit Judge Learned Hand, who stated that “it would be unreasonable to suppose that [the federal government’s] purpose was to deny itself any help that the states may allow.”<sup>142</sup>

*B. Congressional Actions Evincing an Intent to Preserve Inherent State Arrest Authority*

Congress has repeatedly legislated in ways that indicate a recognition of the states’ inherent arrest authority and an intent not to preempt that authority. Five examples of congressional action in this regard are particularly salient. First, in 1996 Congress expressly put to rest any suspicion that it did not welcome state assistance in making immigration arrests. Congress added section 287(g) to the INA,<sup>143</sup> described above in Part II.G, providing for the establishment of written agreements with state law enforcement agencies to convey federal immigration enforcement functions to such agencies. In doing so, Congress reiterated its understanding

<sup>139</sup> See *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992) (plurality opinion) (quoting *Fidelity Fed. Sav. & Loan Ass’n v. De la Cuesta*, 458 U.S. 141, 153 (1982)).

<sup>140</sup> *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (alteration in original) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

<sup>141</sup> *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978) (quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963)).

<sup>142</sup> *Marsh v. United States*, 29 F.2d 172, 174 (2d Cir. 1928).

<sup>143</sup> See discussion *supra* Part II.G.

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that states and localities may make immigration arrests regardless of whether a 287(g) agreement exists. Congress stated that a formal agreement is *not necessary* for

any officer or employee of a State or political subdivision of a State . . . to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or . . . otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.<sup>144</sup>

Second, in 1996 Congress anticipated that state and local law enforcement agencies would be apprehending and, at the request of federal immigration authorities, detaining illegal aliens. Accordingly, in 8 U.S.C. § 1103(a)(9), Congress authorized the Attorney General to make payments to states for the detention of illegal aliens in non-federal facilities.<sup>145</sup> And in 8 U.S.C. § 1103(c), Congress authorized the Commissioner of the INS to enter into any “cooperative agreements with State and local law enforcement agencies for the purpose of assisting in the enforcement of the immigration laws.”<sup>146</sup> This was not a provision that delegated federal enforcement powers, as section 287(g) did. Rather it served to provide compensation to states that assisted the federal government by arresting, transporting, and detaining illegal aliens. The federal government has used this provision to enter into hundreds of memoranda of agreement with state and local law enforcement agencies, stipulating the amount of money to be paid to such agencies when they transport and detain illegal aliens.

Third, in 1994 Congress began appropriating funds for the creation of the Law Enforcement Support Center (LESC) in Williston, Vermont, which serves as an INS point of contact with local police officers who apprehend illegal aliens.<sup>147</sup> The purpose of the LESL is expressly that of communicating with local law

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<sup>144</sup> 8 U.S.C. § 1357(g)(10) (2000).

<sup>145</sup> *Id.* § 1103(a)(9)(A).

<sup>146</sup> *Id.* § 1103(c).

<sup>147</sup> The LESL was created in order to help local and state law enforcement agencies in ascertaining the immigration status of possible felons. In its first year, it received nearly 15,000 inquiries from its pilot state. See *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1997: Hearings Before a Subcomm. of the H. Comm. on Appropriations*, 104th Cong. 1140 (1996) (testimony of Doris Meissner, INS Comm’r).

enforcement officers who make immigration arrests:

The primary mission of the LESC is to support other law enforcement agencies by helping them determine if a person they have contact with, or have in custody, is an illegal, criminal, or fugitive alien. The LESC provides a 24/7 link between Federal, state, and local officers and the databases maintained by the INS.<sup>148</sup>

The existence of the LESC is predicated on the assumption that state and local police will be making immigration arrests:

When a law-enforcement officer arrests an alien, LESC personnel are able to provide him or her with vital information and guidance, and if necessary, place the officer in contact with an [I]CE immigration officer in the field. The partnerships fostered by the LESC increase public safety. Every day, they result in the apprehension of individuals who are unlawfully present in the United States, many of who have committed a crime and pose a threat to the local community or our Nation.<sup>149</sup>

The number of LESC responses to inquiries from state and local police officers has been increasing steadily year after year. In FY 2005, the LESC responded to a staggering 504,678 calls from state and local law enforcement officers.<sup>150</sup> Put differently, that is an average of 1,383 calls per day.

Fourth, in 1998, as part of the FY 1999 INS appropriation, Congress established forty-five "Quick Response Teams" (QRT's) for the express purpose of responding to immigration arrests made by state and local police officers. Two years later, in the FY 2001

<sup>148</sup> *Law Enforcement: Are Federal, State, and Local Agencies Working Together Effectively?: Joint Hearing Before the Subcomms. on Criminal Justice, Drug Policy and Human Resources; Government Efficiency, Financial Management and Intergovernmental Relations; and National Security, Veterans Affairs and International Relations of the H. Comm. on Government Reform*, 107th Cong. 97 (2001) (testimony of Joseph R. Greene, Acting Deputy Executive Associate Comm'r for Field Operations, INS).

<sup>149</sup> *Department of Homeland Security Transition: Bureau of Immigration and Customs Enforcement: Hearing Before the Subcomm. on Immigration, Border Sec., and Claims of the H. Comm. on the Judiciary*, 108th Cong. 12 (2003) (prepared statement of Asa Hutchinson, Under Sec'y for Border and Transp. Sec., Dep't of Homeland Sec.) [hereinafter *DHS Transition Hearing*].

<sup>150</sup> E-mail from Mark Kahanic, LESC Officer, Williston, VT, to author (Dec. 5, 2005) (on file with author). In FY 2004, the LESC responded to 458,711 inquiries from state and local law enforcement agencies. *Id.* In 2003, DHS Under Secretary Asa Hutchinson reported that "[i]n FY 2002, the LESC received 426,895 law-enforcement inquiries. These included 309,489 from state and local law enforcement, 24,646 inquiries regarding foreign nationals seeking to purchase firearms, and 24,646 investigative inquiries." *DHS Transition Hearing*, *supra* note 149, at 12.



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budget, Congress was spending \$11 million annually on the QRTs.<sup>151</sup>

In some areas, immigration arrests increased by more than 500 percent.<sup>152</sup> Approximately 200 federal immigration officers staffed the 45 QRTs that were spread across the United States.<sup>153</sup> Statistics from the first quarter of FY 2001 reveal the huge number of arrests by local police to which the QRTs were responding. During that three-month period, state and local police requested the assistance of the QRTs 2,532 times.<sup>154</sup> The QRTs responded to over ninety percent of these requests, and responded in less than three hours ninety-eight percent of the time.<sup>155</sup> In total, QRT officers made 2,246 administrative arrests leading to removal (a civil proceeding).<sup>156</sup> A much smaller portion of the aliens, 171, faced criminal prosecution—for crimes such as alien smuggling, document fraud, and illegal entry.<sup>157</sup> These statistics illustrate the extent to which ICE relies on immigration arrests by state and local law enforcement officers.<sup>158</sup> As Under Secretary of Homeland Security Asa Hutchinson reported to Congress in May 2003:

Another way in which [ICE continues to respond to the needs of the law enforcement community is through Quick Response Teams (QRTs), which have been established across the United States. There are [ICE] Special Agents with immigration expertise and Deportation Officers assigned to QRTs. Their primary duty is to work directly with state and local enforcement officers to take into custody and remove illegal aliens who have been arrested for violating state or local laws or who are found to be illegally in the U.S.<sup>159</sup>

Plainly, the existence and expansion of the QRTs evinces a clear congressional intent to continue cooperating with state and local police officers who encounter and arrest illegal aliens in the course

<sup>151</sup> *INS and the Executive Office for Immigration Review: Hearing Before the Subcomm. on Immigration and Claims of the H. Comm. on the Judiciary*, 107th Cong. 10 (2001) (prepared statement of Kevin D. Rooney, Acting INS Comm'r) [hereinafter *INS Hearing*].

<sup>152</sup> Deborah Frazier, *INS Arrests in Region up 500%*, ROCKY MOUNTAIN NEWS (Denver, Colo.), Jan. 22, 2001, at 4A; see also Michael Riley & Mike Soraghan, *INS Set to Join Homeland Security*, DENVER POST, Mar. 2, 2003, at B4 (reporting that “[t]he number of INS arrests has been rising steadily since 1999, the year the agency set up Quick Response Teams”).

<sup>153</sup> Greene Statement, *supra* note 80, at 8.

<sup>154</sup> *INS Hearing*, *supra* note 151, at 10.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *DHS Transition Hearing*, *supra* note 149, at 12.

of their normal law enforcement duties.<sup>160</sup> A Congress that was intent on displacing local arrest authority certainly would not continue to appropriate funds for the purpose of facilitating, responding to, and benefiting from that arrest authority.

Fifth, in 1996 Congress took steps to discourage those state and local law enforcement agencies that might seek to withhold their cooperation in making immigration arrests. In 1979, the City of Los Angeles had become the first major American city to adopt a so-called "sanctuary policy." Special Order 40 barred Los Angeles police officers from asking individuals about their immigration status and from conveying such information to the federal government.<sup>161</sup> In 1989, New York City enacted a similar policy by mayoral decree.<sup>162</sup> Congress, concerned that such policies might proliferate, enacted two separate provisions designed to smooth the way for closer cooperation with state and local law enforcement, while preventing future sanctuary policies.<sup>163</sup> Under 8 U.S.C. § 1373, enacted in part under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,<sup>164</sup> and 8 U.S.C. § 1644, part of

<sup>160</sup> Many of these encounters with illegal aliens occur during routine traffic stops. For example, in May 2001, a Georgia state patrolman stopped a van that was heading south on Interstate 75 for a traffic violation. The patrolman encountered eleven individuals that he suspected were illegal aliens. He detained the occupants of the vehicle, contacted the INS, and transferred them to INS custody when the QRT arrived. *Traffic Stop on I-75 Nets 11 Illegal Aliens*, CHATTANOOGA TIMES FREE PRESS, May 4, 2001, at B3. The same patrolman had arrested a total of 151 illegal aliens during the previous year. Pat Mahony, *INS Office Opens Permanent Headquarters in Dalton*, CHATTANOOGA TIMES FREE PRESS, Apr. 27, 2001, at D3.

<sup>161</sup> Office of the Chief of Police of the L.A. Police Dep't, Special Order No. 40 (Nov. 27, 1979), available at <http://keepstuff.homestead.com/Spe40orig.html>. The specific text of Special Order 40 states: "[U]ndocumented alien status in itself is not a matter for police action. It is, therefore, incumbent upon all employees of this Department to make a personal commitment to equal enforcement of the law and service to the public, regardless of alien status." *Id.* Special Order 40 further provides that LAPD officers may not "initiate police action with the objective of discovering the alien status of a person," nor may they "arrest [or] book a person for [illegal entry into the United States]." *Id.*; see also Patrick McGreevy, *LAPD Passes on Immigration; Commission Spurns Request for Increased Involvement in Handling Illegals*, DAILY NEWS OF L.A., June 25, 1997 (highlighting the LAPD's limited involvement in enforcing immigration laws).

<sup>162</sup> Bankim Kalra & Ihsin Yu-Yu, *Immigration in Global Cities: A Comparative Study of New York and Toronto as Immigrant Cities* 9 (Dec. 2003) (unpublished Masters thesis, University of Michigan), available at [http://sitemaker.umich.edu/bankimportfolio/files/comparative\\_analysis.pdf](http://sitemaker.umich.edu/bankimportfolio/files/comparative_analysis.pdf).

<sup>163</sup> See generally *Criminal Aliens in the United States: Hearings Before the Permanent Subcomm. on Investigations of the S. Comm. on Governmental Affairs*, 103d Cong. 22, 23 (1993) (Staff Statement of the Permanent Subcomm. on Investigations).

<sup>164</sup> § 1373 reads as follows:

(a) In general. Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way

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the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,<sup>165</sup> Congress expressly barred federal, state, and local entities from preventing their officials from exchanging information with federal immigration authorities regarding the immigration status or citizenship of any individual. In the Senate report accompanying this legislation, the intent to maximize cooperation between federal immigration authorities and state or local governments was clear:

Effective immigration law enforcement requires a cooperative effort between all levels of government. The acquisition, maintenance, and exchange of immigration-related information by State and local agencies is consistent with, and potentially of considerable assistance to, the Federal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act.<sup>166</sup>

This statement demonstrates a clear congressional intent to maximize cooperation with state and local authorities in the enforcement of immigration law. Moreover, these statutory provisions plainly assume that local police will have reason to inquire into the immigration statuses of aliens, as well as to share such information with the federal government. Shortly after Congress enacted these statutes, New York City challenged their constitutionality, arguing that the provisions in question violated the Tenth Amendment and exceeded Congress' plenary power over

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restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities. Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

8 U.S.C. § 1373(a)-(b) (2000).

<sup>165</sup> See Pub. L. No. 104-193, §§ 1, 434, 110 Stat. 2105, 2275 (1996). The actual text of § 1644 reads as follows:

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

8 U.S.C. § 1644.

<sup>166</sup> S. REP. NO. 104-249, at 19-20 (1996).

immigration.<sup>167</sup> The Second Circuit rejected these challenges, holding that the two federal statutes were facially constitutional.<sup>168</sup>

All of these Congressional actions demonstrate an unmistakable intent to encourage state and local assistance in arresting violators of immigration law. None of these actions suggested any distinction between civil and criminal violations of immigration law. Consequently, it is hardly surprising that no appellate court has expressly ruled that states are preempted from arresting aliens for civil violations of the INA. The only case that even comes close is the 1983 opinion of the Ninth Circuit in *Gonzales v. City of Peoria*.<sup>169</sup>

### C. *Gonzales v. City of Peoria (9th Circuit)*

In *Gonzales*, the Ninth Circuit held that local police officers have the authority to arrest an alien for a violation of the criminal provisions of the INA if such an arrest is authorized under state law.<sup>170</sup> Individuals of Mexican descent challenged a policy of the City of Peoria, Arizona that instructed the city's police officers to arrest and detain aliens suspected of illegally entering the United States in violation of 8 U.S.C. § 1325—a criminal provision of federal immigration law.<sup>171</sup> The court began with the “general rule . . . that local police are not precluded from enforcing federal statutes.”<sup>172</sup> The court also observed that, “[w]here state enforcement activities do not impair federal regulatory interests concurrent enforcement activity is authorized.”<sup>173</sup> After conducting a preemption analysis to determine whether Congress had displaced this enforcement authority, the court concluded that no such preemption had occurred.<sup>174</sup>

In upholding the city's power to arrest aliens who violate criminal provisions of federal immigration law, the court stated, “There is nothing inherent in that specific enforcement activity that conflicts with federal regulatory interests.”<sup>175</sup> In passing, the court “assume[d] that the civil provisions of the [INA] regulating

<sup>167</sup> *City of New York v. United States*, 179 F.3d 29, 31, 33 (2d Cir. 1999), cert. denied, 528 U.S. 1115 (2000).

<sup>168</sup> *Id.*

<sup>169</sup> 722 F.2d 468 (9th Cir. 1983).

<sup>170</sup> *Id.* at 476.

<sup>171</sup> *Id.* at 472–73.

<sup>172</sup> *Id.* at 474.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 475.

<sup>175</sup> *Id.* at 474.

authorized entry, length of stay, residence status, and deportation, constitute such a pervasive regulatory scheme, as would be consistent with the exclusive federal power over immigration.”<sup>176</sup> In other words, the civil provisions might implicitly preempt state arrest authority, under a field preemption theory. However, this possibility of field preemption with respect to civil provisions of the INA was merely an *assumption*, suggested *without any analysis*, and made in *dicta*—entirely outside of the specific holding of the case, which concerned a criminal arrest. It does not constitute binding precedent.<sup>177</sup> Furthermore, even if the Ninth Circuit had squarely reached this conclusion in 1983, such a holding would have been undermined by the court’s failure to apply the strong presumption against preemption discussed above.<sup>178</sup> More importantly, the subsequent actions of Congress made such a holding unsustainable.

In contrast, the case law supporting the conclusion that Congress has *not* preempted state arrests of aliens for violations of civil provisions of federal immigration law is solid and on point. The Tenth and Fifth Circuits have issued several opinions on the subject, all pointing to the conclusion that Congress has never sought to preempt the states’ inherent authority to make immigration arrests for both criminal and civil violations of the federal immigration law.<sup>179</sup> The Tenth Circuit’s 1984 holding in the case of *United States v. Salinas-Calderon* was the first to confirm the inherent arrest authority possessed by the states.<sup>180</sup>

#### D. *United States v. Salinas-Calderon (10th Circuit)*

The defendant in *Salinas-Calderon* was the driver of a pickup truck who was stopped by a highway patrol officer in western Kansas for driving erratically.<sup>181</sup> The officer suspected that Salinas was driving under the influence of alcohol.<sup>182</sup> Salinas and his wife were in the cab; six passengers, none of whom spoke English, were in the bed of the pickup under an aluminum camper shell.<sup>183</sup>

<sup>176</sup> *Id.* at 474–75.

<sup>177</sup> 20 AM. JUR. 2D *Courts* § 134 (2005).

<sup>178</sup> See *supra* text accompanying notes 140–42.

<sup>179</sup> See discussion *supra* Part III.

<sup>180</sup> 728 F.2d 1298 (10th Cir. 1984).

<sup>181</sup> *Id.* 1299.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

Salinas did not possess a driver's license and did not speak English.<sup>184</sup> In talking with Salinas' wife, the officer learned that Salinas was from Mexico and that they were traveling from Florida to Colorado.<sup>185</sup> The officer asked her if Salinas possessed a "green card"; he did not.<sup>186</sup> The officer then investigated the circumstances of the six passengers in the bed of the truck.<sup>187</sup> All were from Mexico.<sup>188</sup> None possessed any identification or documentation of their immigration status.<sup>189</sup> The officer testified at trial that he suspected that the occupants of the vehicle were in violation of U.S. immigration law, but that he was unsure what the precise violation was. In his words, "I didn't know exactly what I had."<sup>190</sup> The officer then contacted the INS and transferred the occupants of the vehicle to INS custody.<sup>191</sup> Salinas was later charged with transporting illegal aliens within the United States.<sup>192</sup>

The defendant claimed that the state trooper did not have the authority to detain the transported passengers while he questioned them about their immigration status.<sup>193</sup> In rejecting this claim, the Tenth Circuit held that a "state trooper has general investigatory authority to inquire into possible immigration violations."<sup>194</sup> The court did not differentiate between criminal and civil violations. Plainly, because the officer was unsure what immigration law the aliens in the vehicle had violated, he did not know whether they had violated criminal or civil provisions of the INA.<sup>195</sup> Indeed, because there is no indication in the opinion that there was any reason to believe the alien passengers had committed any criminal violations, the court's affirmation of general investigatory authority applies fully to civil as well as criminal violations.

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<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at 1299–1300.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.* at 1300.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*; see also 8 U.S.C. § 1324(a)(1) (2000) (defining and outlining the criminal penalties for harboring and transporting aliens).

<sup>193</sup> *Salinas-Calderon*, 728 F.2d at 1301 n.3.

<sup>194</sup> *Id.*

<sup>195</sup> The court also rejected the defendant's contention that, because the officer lacked particular knowledge of immigration laws, "his call to the [INS] was tantamount to a fishing expedition." *Id.* at 1301 n.4. The court held that the officer's "lack of knowledge of the immigration laws does not preclude a finding of probable cause," because "lack of experience does not prevent a police officer from 'sensing the obvious.'" *Id.* (quoting *United States v. Strahan*, 674 F.2d 96, 100 (1st Cir. 1982)).

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*E. United States v. Vasquez-Alvarez (10th Circuit)*

The Tenth Circuit's most salient case on the preemption question is *United States v. Vasquez-Alvarez*, decided in 1999.<sup>196</sup> In that case, an Edmond, Oklahoma, police officer arrested the defendant alien solely because he was an illegal alien.<sup>197</sup> The day before the arrest, an INS agent eating dinner at a restaurant in the same city observed what appeared to be a drug transaction between the defendant and another individual near their vehicles in the restaurant parking lot.<sup>198</sup> The next morning, the INS agent telephoned the police officer, described the vehicles involved, and asked him to investigate the situation.<sup>199</sup> The INS agent also expressed suspicion that the defendant was in the country illegally.<sup>200</sup> That night, the police officer went to the restaurant and saw the vehicles that had been described by the INS officer.<sup>201</sup> He learned from the restaurant manager that the defendant owned one of the vehicles and was an employee of the restaurant.<sup>202</sup> The officer questioned the defendant, who admitted that he was an illegal alien.<sup>203</sup> The officer then arrested the defendant and transported him to the city jail, to be held there until the INS took him into custody.<sup>204</sup>

The officer did not know at the time whether the defendant alien had committed a civil or criminal violation of the INA.<sup>205</sup> It was later discovered that the defendant had illegally reentered the country after three prior deportations,<sup>206</sup> in violation of 8 U.S.C. § 1326—a criminal violation. After his indictment, the defendant moved to suppress his post-arrest statements, fingerprints, and identification.<sup>207</sup> He maintained that a local police officer is without authority to arrest an illegal alien unless the arrest meets the conditions listed in 8 U.S.C. § 1252c, and that because his arrest did not meet those conditions, the officer had arrested him without legal

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<sup>196</sup> 176 F.3d 1294 (10th Cir. 1999).

<sup>197</sup> *Id.* at 1295.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* at 1295–96.

<sup>203</sup> *Id.* at 1296.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* It was also learned that the defendant had two prior state felony convictions. *Id.*

<sup>207</sup> *Id.* at 1295.

authority.<sup>208</sup> Section 1252c authorizes state and local police to make a warrantless arrest and to detain an illegal alien if (1) the arrest is permitted by state and local law, (2) the alien is illegally present in the United States, (3) the alien was previously convicted of a felony in the United States and subsequently was deported or left the country, and (4) prior to the arrest the police officer obtains “appropriate confirmation” of the alien’s “status” from federal immigration authorities.<sup>209</sup> According to the defendant’s theory, § 1252c displaced the authority of state police to make any immigration arrest that did not meet those four conditions.

The Tenth Circuit’s conclusion was unequivocal: § 1252c “does not limit or displace the preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws. Instead, § 1252c merely creates an additional vehicle for the enforcement of federal immigration law.”<sup>210</sup> The court rejected the alien’s contention that all arrests by local police not authorized by § 1252c are prohibited by it.<sup>211</sup> The court reviewed the legislative history of § 1252c and analyzed the comments of Representative John T. Doolittle, who sponsored the floor amendment containing the text that would become § 1252c.<sup>212</sup> The court concluded that the purpose of the amendment was to overcome a perceived federal limitation on the states’ arrest authority.<sup>213</sup> However, neither Doolittle, nor the government, nor the defendant, nor the court itself had been able to identify any such limitation.<sup>214</sup>

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

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<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at 1296 & n.2 (citing 8 U.S.C. § 1252c (2000)).

<sup>210</sup> *Id.* at 1295.

<sup>211</sup> *Id.* at 1299.

<sup>212</sup> *Id.* at 1298.

<sup>213</sup> *Id.* at 1298–99.

<sup>214</sup> *Id.* at 1299 n.4.



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government and the states in the enforcement of federal immigration laws.”<sup>215</sup> Put succinctly, the “legislative history does not contain the slightest indication that Congress intended to displace any preexisting enforcement powers already in the hands of state and local officers.”<sup>216</sup> This holding is the most comprehensive analysis of the preemption question that any federal court has performed to date. The Supreme Court denied certiorari in *Vasquez-Alvarez* on October 4, 1999.<sup>217</sup>

*F. United States v. Santana-Garcia (10th Circuit)*

In *United States v. Santana-Garcia*, shortly after its decision in *Vasquez-Alvarez*, the Tenth Circuit again confirmed the authority of local law enforcement to arrest individuals for immigration violations.<sup>218</sup> *Santana-Garcia* presented the same question of local immigration arrest authority in a slightly different context. The aliens were not ultimately transferred to the INS; rather, the immigration violation justified continued detention during a traffic stop, which eventually led to the discovery of drugs in the aliens’ possession.<sup>219</sup> The incident began when a Utah state trooper pulled a car over for running a stop sign.<sup>220</sup> The driver was not in possession of a driver’s license and did not speak English.<sup>221</sup> The passenger spoke only limited English.<sup>222</sup> At that point, the trooper returned to his patrol car to request the assistance of a Spanish-speaking trooper.<sup>223</sup> While waiting for the Spanish-speaking trooper, the original trooper returned to the detained vehicle to ask the occupants about the ownership of the vehicle and their travel plans.<sup>224</sup> They indicated that they were traveling to Colorado from Mexico.<sup>225</sup> The trooper proceeded to ask whether they were “legal.”<sup>226</sup> Both answered in the negative.<sup>227</sup> After the second trooper arrived, the troopers questioned the occupants further and

<sup>215</sup> *Id.* at 1300 (citing 8 U.S.C. §§ 1103(a)(9), (c), 1357(g)(1) (2000)).

<sup>216</sup> *Id.* at 1299.

<sup>217</sup> *Vasquez-Alvarez v. United States*, 528 U.S. 913 (1999).

<sup>218</sup> *United States v. Santana-Garcia*, 264 F.3d 1188, 1194 (10th Cir. 2001).

<sup>219</sup> *Id.* at 1190–91.

<sup>220</sup> *Id.* at 1190.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

obtained their consent to search the vehicle.<sup>228</sup> The troopers discovered drugs in the vehicle, behind the glove compartment and the dashboard radio.<sup>229</sup>

At the suppression hearing, the first trooper testified as to the factors that led him to continue to detain the occupants of the vehicle beyond the initial reason for the stop.<sup>230</sup> He did not mention their illegal presence in the United States.<sup>231</sup> The district court suppressed the physical evidence of the drugs, concluding that the trooper could not have formed the requisite reasonable suspicion of criminal activity to justify the continued detention.<sup>232</sup> The Tenth Circuit considered the question of whether the continued detention of the defendants on the basis of the immigration violation was permissible, regardless of whether the trooper articulated that basis for the detention.<sup>233</sup> The Tenth Circuit concluded that the officer “had probable cause to arrest Defendants for violations of state traffic and federal immigration law,” and that the continued detention was lawful.<sup>234</sup> The court reiterated its prior conclusion that “state and local police officers had implicit authority within their respective jurisdictions ‘to investigate and make arrests for violations of federal law, including immigration laws.’”<sup>235</sup> Once again, the Tenth Circuit observed that Congress has never preempted this authority: “[F]ederal law as currently written does nothing ‘to displace . . . state or local authority to arrest individuals violating federal immigration laws.’”<sup>236</sup> Indeed the court reiterated that the opposite was true: “[F]ederal law ‘evinces a clear invitation from Congress for state and local agencies to participate in the process of enforcing federal immigration laws.’”<sup>237</sup> Once again, the Court did not draw any distinction between criminal and civil provisions of federal immigration laws. Similar facts led the Tenth Circuit to the same conclusion in another 2001 case, *United States v. Hernandez-Dominguez*.<sup>238</sup>

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<sup>228</sup> *Id.*

<sup>229</sup> *Id.* at 1191.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 1191–92.

<sup>233</sup> *Id.* at 1192.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 1194 (quoting *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1295 (10th Cir. 1999)).

<sup>236</sup> *Id.* at 1193 (quoting *Vasquez-Alvarez*, 176 F.3d at 1296, 1299 n.4, 1300).

<sup>237</sup> *Id.* (quoting *Vasquez-Alvarez*, 176 F.3d at 1300).

<sup>238</sup> See 1 F. App'x 827 (10th Cir. 2001). In this case, a Kansas Highway Patrol officer stopped a car for crossing the center line of Interstate 70 three times. *Id.* at 829. While the

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## G. United States v. Favela-Favela (10th Circuit)

In 2002, the Tenth Circuit continued its unbroken line of case law affirming the power of state and local police to arrest individuals for violations of federal immigration laws in *United States v. Favela-Favela*.<sup>239</sup> In that case, a Clinton, Oklahoma police officer observed a van with two people in the front seats and a female passenger apparently kneeling between the two front seats.<sup>240</sup> The officer concluded that she was not wearing a seatbelt, based on her position in the vehicle.<sup>241</sup> This constituted a violation of Oklahoma law.<sup>242</sup> The officer stopped the van and when he stood near the driver's door, he noticed that there were approximately twenty people inside the vehicle, well beyond the safe capacity of the van.<sup>243</sup> He noted that the passengers avoided looking at him, which he regarded as unusual and suspicious behavior.<sup>244</sup>

The police officer commenced a line of questioning with the driver, Mr. Favela. "First, he asked Mr. Favela if he was on a trip, and Mr. Favela responded affirmatively. Then, the officer asked if the van's passengers were family members or if they were on a church function. To both those questions, Mr. Favela said, 'No.'"<sup>245</sup> The officer knew that other members of the Clinton Police Department had stopped "vans or other large vehicles" and "discovered illegal aliens being transported across the country."<sup>246</sup> Based on all of this information, the officer believed that he had grounds for suspecting that individuals in the van were illegally present in the United States. "Then, he asked Mr. Favela 'if everybody in the van was

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officer was checking the identification documents, driver's license, and registration information of the two vehicle occupants, their statements led the officer to suspect that they were present in the country illegally. See *id.* at 829-30. When asked, they conceded that they were illegal aliens. *Id.* at 829. The officer detained the aliens further on this basis. *Id.* Their suspicious behavior while in his custody led the officer to ask permission to search the vehicle. *Id.* They granted the officer permission to search the vehicle, and he discovered packages of methamphetamines hidden in the car battery. *Id.* at 829-30. The aliens were charged with drug crimes. *Id.* at 830. The Tenth Circuit upheld the continued detention on the basis of the immigration violation, noting the officer's "general investigatory authority to inquire into possible immigration violations." *Id.* at 832 (quoting *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301 n.3 (10th Cir. 1984)).

<sup>239</sup> 41 F. App'x 185 (10th Cir. 2002).

<sup>240</sup> *Id.* at 187.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*; see also OKLA. STAT. ANN. tit. 47, § 12-417(A) (West 2000).

<sup>243</sup> *Favela-Favela*, 41 F. App'x at 187.

<sup>244</sup> *Id.* nt 187 & n.3.

<sup>245</sup> *Id.* at 187.

<sup>246</sup> *Id.* at 191.

“legal.” Mr. Favela responded, “No.”<sup>247</sup> The officer continued to ask questions, inquiring “whether the passengers were paying Mr. Favela. Mr. Favela responded that each passenger had paid him approximately \$180.00.”<sup>248</sup>

The officer asked Favela to wait in the van and then called his supervising sergeant.<sup>249</sup> The sergeant came to the scene and questioned Favela, asking him whether the passengers were “legal” and Favela again answered negatively.<sup>250</sup> The officers took Favela and the passengers into custody and transported them to the Clinton police station, where the officers contacted the INS, and INS agents arrived at the police station shortly thereafter.<sup>251</sup> The INS later returned eighteen of the twenty passengers to their country of origin.<sup>252</sup> Favela was convicted for transporting illegal aliens in the United States.<sup>253</sup>

The Tenth Circuit concluded that the officer had formulated an objectively reasonable suspicion of illegal activity and that his question about the passengers’ immigration status was justified.<sup>254</sup> More importantly, the court reaffirmed the general investigatory authority of the officer to inquire about possible immigration violations and to arrest and detain individuals on that basis.<sup>255</sup> The officer did not know whether the aliens in the vehicle had committed civil or criminal violations of the INA; he merely suspected, and was later told, that they were not “legal.”<sup>256</sup>

#### *H. Lynch v. Cannatella (5th Circuit)*

The Tenth Circuit is without question the court that has most thoroughly explored the issue of inherent immigration arrest authority and whether such authority has been preempted. However, it is not alone in concluding that state and local law enforcement possess this authority. The Fifth Circuit has also recognized the inherent immigration arrest authority possessed by

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<sup>247</sup> *Id.* at 187 (citation omitted).

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.* at 187–88.

<sup>252</sup> *Id.* at 188.

<sup>253</sup> *Id.* at 186, 192; *see also* 8 U.S.C. § 1324(a)(1)(A)(ii) (2000).

<sup>254</sup> *Favela-Favela*, 41 F. App’x at 191.

<sup>255</sup> *Id.* (citing *United States v. Santana-Garcia*, 264 F.3d 1188, 1193 (10th Cir. 2001); *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301 n.3 (10th Cir. 1984)).

<sup>256</sup> *See id.* (stating the officer’s grounds for suspecting illegal activity).

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the states and has squarely rejected the suggestion that Congress has preempted such authority. In *Lynch v. Cannatella*, the Fifth Circuit considered a case involving sixteen Jamaican stowaways aboard a barge headed for ports on the Mississippi River.<sup>257</sup> After they were discovered by the crew of the barge, the stowaways were detained for several days by the Port of New Orleans Harbor Police.<sup>258</sup> Among other issues, the Fifth Circuit considered whether 8 U.S.C. § 1223(a) defined the sole process for detaining alien stowaways, thereby preempting the harbor police from detaining the illegal aliens.<sup>259</sup> The Fifth Circuit's conclusion was broad and unequivocal: "No statute precludes other federal, state, or local law enforcement agencies from taking other action to enforce this nation's immigration laws."<sup>260</sup> Like the Tenth Circuit, the Fifth Circuit did not limit this authority to criminal provisions of federal immigration law.

#### I. *United States v. Rodriguez-Arreola (8th Circuit)*

In addition to the Ninth, Tenth, and Fifth Circuits, one other circuit has weighed in on the matter, albeit indirectly. The Eighth Circuit has offered implicit support for the existence of local arrest and detention authority for violations of immigration law.

In *United States v. Rodriguez-Arreola*, the Eighth Circuit considered a case in which a South Dakota state trooper stopped a vehicle for speeding.<sup>261</sup> The trooper asked the driver a variety of general questions, including whether he was a U.S. citizen or a resident alien.<sup>262</sup> The driver stated that he was legally in the United States, but that he had left his green card at home.<sup>263</sup> The trooper asked the passenger, Rodriguez, whether he was a legal resident.<sup>264</sup> Rodriguez answered, "No."<sup>265</sup> The trooper then asked Rodriguez whether he had a green card, and Rodriguez answered, "No."<sup>266</sup> Then the trooper asked Rodriguez whether he was "here legally,"

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<sup>257</sup> 810 F.2d 1363, 1367 (5th Cir. 1987).

<sup>258</sup> *Id.*

<sup>259</sup> *See id.* at 1370–71.

<sup>260</sup> *Id.* at 1371.

<sup>261</sup> 270 F.3d 611, 613 (8th Cir. 2001).

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.* at 614 & n.5.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.* at 614 & n.6.

and Rodriguez again answered negatively.<sup>267</sup> The trooper then detained the two individuals while he contacted the INS on his radio.<sup>268</sup> The INS agent confirmed that the driver was a legal alien, but Rodriguez was in the country illegally.<sup>269</sup> The trooper then gave the speeding ticket to the driver and allowed him to go.<sup>270</sup> The trooper placed Rodriguez into custody and took him to a local jail facility to await INS processing.<sup>271</sup> Importantly, as the court noted, the trooper and the INS viewed this detention of the alien “as part of an administrative procedure,” rather than as part of a criminal procedure.<sup>272</sup> Accordingly, neither the trooper nor the INS informed Rodriguez of his Miranda rights during the traffic stop.<sup>273</sup> Rodriguez received notification of his Miranda rights later, when the INS elected to pursue criminal charges under 8 U.S.C. § 1326(a).<sup>274</sup> The court held that the trooper “had reasonable suspicion to inquire into Rodriguez’s alienage” and that the district court erred in suppressing the evidence obtained during the traffic stop.<sup>275</sup> Thus, the Eighth Circuit implicitly recognized the authority of the state trooper to make an administrative immigration arrest (with the expectation that only civil removal, not criminal prosecution, would follow). If such authority did not exist, the arrest would not have been legal.<sup>276</sup>

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<sup>267</sup> *Id.*

<sup>268</sup> *Id.* at 614.

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.* at 614–15.

<sup>272</sup> *Id.* at 615.

<sup>273</sup> *Id.*

<sup>274</sup> *Id.* at 613, 615 n.8; *see also* 8 U.S.C. § 1326(a) (2000) (defining the crime of reentry after removal or exclusion).

<sup>275</sup> *Rodriguez-Arreola*, 270 F.3d at 617, 619.

<sup>276</sup> The Eighth Circuit had also previously upheld an immigration arrest by a Nebraska state trooper who arrested the driver of a van after receiving an anonymous tip that said van was speeding and carrying a large number of people. *United States v. Perez-Sosa*, 164 F.3d 1082, 1083–84 (8th Cir. 1998). Approaching the vehicle at a truck stop gas pump, the trooper learned that the van was full of passengers who did not speak English and did not possess evidence of legal residency in the United States. *See id.* at 1084. The trooper arrested the driver, who was subsequently charged with transporting illegal aliens under 8 U.S.C. § 1324(a)(1)(A)(ii), and the occupants were subsequently deported to Mexico. *Id.* at 1085. Importantly, the Eighth Circuit cited the Tenth Circuit’s decision in *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301 (10th Cir. 1984), in reaching its holding. *Perez-Sosa*, 164 F.3d at 1084.

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*J. The Untenable Distinction Between Civil and Criminal Violations of the INA*

No circuit court has ever directly held that the federal government has preempted the states from making arrests for civil violations of immigration law that render an alien removable. Such a claim of field preemption would have to establish that the civil provisions of federal immigration law create a pervasive regulatory scheme indicating congressional intent to preempt, while the criminal provisions do not. This claim is extremely difficult to make in the wake of Congressional legislation expressly recognizing local arrest authority and inviting local assistance in the enforcement of immigration law—particularly the legislation passed in 1996.<sup>277</sup> The closest that any court has come is the Ninth Circuit, which thirteen years earlier merely assumed in *dicta* that it might be possible to regard civil immigration law as a “pervasive regulatory scheme”—therefore evincing a congressional intent to preempt—while criminal provisions in the INA “are few in number and relatively simple in their terms.”<sup>278</sup> Therefore, the Ninth Circuit supposed, this difference in scope and complexity might justify different answers to the preemption question.

The Ninth Circuit’s speculation in *Gonzales v. City of Peoria* was faulty in 1983, and it is even more inaccurate today. Indeed, the statement that the criminal provisions of immigration law are “few in number” and “simple” reveals a surprising lack of familiarity with immigration law. The *Gonzales* court identified only three criminal sections of federal immigration law.<sup>279</sup> In fact, there are *at least forty-seven criminal provisions in federal immigration law*.<sup>280</sup> To be sure, immigration law has expanded considerably since the Ninth Circuit made this assertion in 1983, but most of the forty-seven criminal provisions were already in place at that time.<sup>281</sup>

<sup>277</sup> See *supra* Part IV.B.

<sup>278</sup> *Gonzales v. City of Peoria*, 722 F.2d 468, 475 (9th Cir. 1983).

<sup>279</sup> *Id.* The Ninth Circuit referred to “the specific statutes regulating criminal immigration activities, 8 U.S.C. §§ 1324, 1325, and 1326.” *Id.* Although the three sections actually included seventeen distinct crimes, the Court still failed to identify even half of the criminal provisions of immigration law.

<sup>280</sup> In 1994, Linda Yañez and Alfonso Soto criticized the Ninth Circuit for this mistake. Linda Reyna Yañez & Alfonso Soto, *Local Police Involvement in the Enforcement of Immigration Law*, 1 *IIISP*, L.J. 9, 26–28 (1994). Yañez and Soto attempted to create a comprehensive list of criminal provisions in federal immigration law at the time, coming up with a total of twenty-five. *Id.* at 27–28. It appears that Yañez and Soto failed to consider those immigration crimes codified outside of Title 8 of the United States Code. See *id.*

<sup>281</sup> See *infra* tbl.1.

TABLE 1<sup>282</sup>  
*Criminal Offenses in Immigration Law*

<b>Statutory Provision</b>	<b>Offense</b>
8 U.S.C. § 1160(b)(6)	Misuse of information—special agricultural workers
8 U.S.C. § 1160(b)(7)	False statements in applications—special agricultural workers
8 U.S.C. § 1253(a)	Failure to depart after final order of removal
8 U.S.C. § 1253(b)	Failure to comply with terms of release under supervision
8 U.S.C. § 1255a(c)(5)	Misuse of information—adjustment of status
8 U.S.C. § 1255a(c)(6)	False statements in applications—adjustment of status
8 U.S.C. § 1282(c)	Overstay of conditional permit issued to alien crewman
8 U.S.C. § 1304(e)	Failure to carry alien registration card
8 U.S.C. § 1306(a)	Failure to register
8 U.S.C. § 1306(b)	Failure to notify of change of address
8 U.S.C. § 1306(c)	False statements in application for registration
8 U.S.C. § 1306(d)	Counterfeiting of registration documents
8 U.S.C. § 1324	Bringing in and harboring certain aliens
8 U.S.C. § 1324(a)(2)(A)	Bringing in and harboring aliens with knowledge they are unauthorized
8 U.S.C. § 1324(a)(2)(B)(i)	Bringing in and harboring aliens with knowledge that they are unauthorized and that they will commit a criminal offense
8 U.S.C. § 1324(a)(2)(B)(ii)	Bringing in and harboring aliens with knowledge that they are unauthorized, for the purpose of commercial advantage or private financial gain
8 U.S.C. § 1324(a)(3)	Hiring unauthorized aliens
8 U.S.C. § 1324a(f)	Engaging in pattern or practice of employing unauthorized aliens
8 U.S.C. § 1324c(e)(1)	Failure to disclose role as document preparer
8 U.S.C. § 1324c(e)(2)	Unlawful preparing of application for immigration benefits
8 U.S.C. § 1325(a)	Initial unlawful entry—improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts
8 U.S.C. § 1325(a)	Subsequent unlawful entry
8 U.S.C. § 1325(c)	Marriage fraud

<sup>282</sup> All statutory citations in Table 1 are to the 2000 edition of the United States Code.



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8 U.S.C. § 1325(d)	Immigration-related entrepreneurship fraud
8 U.S.C. § 1326	Reentry after removal or exclusion
8 U.S.C. § 1326(b)(1)	Reentry after removal subsequent to conviction for felony
8 U.S.C. § 1326(b)(2)	Reentry after removal subsequent to conviction for aggravated felony
8 U.S.C. § 1326(b)(3)	Reentry after removal on security grounds
8 U.S.C. § 1326(b)(4)	Reentry of nonviolent offender removed prior to completion of sentence
8 U.S.C. § 1327	Aiding or assisting entry of inadmissible aliens
8 U.S.C. § 1328	Importation of alien for immoral purpose
18 U.S.C. § 1423	Misuse of evidence of citizenship or naturalization
18 U.S.C. § 1424	Personation or misuse of papers in naturalization proceedings
18 U.S.C. § 1425	Procurement of citizenship or naturalization unlawfully
18 U.S.C. § 1426	Reproduction of naturalization or citizenship papers
18 U.S.C. § 1427	Sale of citizenship or naturalization papers
18 U.S.C. § 1428	Failure to surrender canceled naturalization certificate
18 U.S.C. § 1429	Neglect or refusal to answer subpoena to appear at naturalization hearing
18 U.S.C. § 1541	Issuance of passport or other instrument without authority
18 U.S.C. § 1542	False statement in application for and use of passport
18 U.S.C. § 1543	Forgery or false use of passport
18 U.S.C. § 1544	Misuse of passport
18 U.S.C. § 1545	Safe conduct violation
18 U.S.C. § 1546(a)	Forgery or alteration of visa, permit, or other immigration document
18 U.S.C. § 1546(a)	Personation or false statements in application for immigration document
18 U.S.C. § 1546(b)	Use of false immigration document
18 U.S.C. § 2424	Failure to file factual statement about alien harbored for immoral purpose

The Ninth Circuit also suggested, without analysis or explanation, that the criminal provisions of immigration law were “simple in their terms.”<sup>283</sup> Again, this characterization is way off the

<sup>283</sup> *Gonzales*, 722 F.2d at 475.

mark. The criminal provisions of immigration are complex, to say the least. Linda Reyna Yañez and Alfonso Soto also highlight the Ninth Circuit's mischaracterization of the criminal provisions of immigration law in this respect, noting that the plethora of cases defining the term "entry" with respect to illegal entry crimes illustrates just how complicated the criminal provisions are.<sup>284</sup> Another illustration of the complexity of the criminal provisions of immigration law can be seen in the crime of reentry after removal on security grounds.<sup>285</sup> This crime applies to aliens removed under the specific expedited removal proceedings for arriving aliens who are inadmissible on security and related grounds—a civil removal process defined in 8 U.S.C. § 1225(c).<sup>286</sup> However, it only applies to those aliens removed because of their inadmissibility stemming from terrorist activity, defined at considerable length in 8 U.S.C. § 1182(a)(3)(B).<sup>287</sup> This immigration crime, which is defined with reference to a specific set of civil immigration proceedings and which involves a complex definition of applicable terrorist activities, can hardly be described as "simple."

This example also illustrates the substantial overlap of civil and criminal provisions of federal immigration law. Numerous immigration crimes are defined with specific reference to civil violations or civil proceedings. Other examples include the crime of reentry of a nonviolent offender removed prior to completion of sentence,<sup>288</sup> the crime of failure to depart after a final order of removal,<sup>289</sup> and the crime of making a false statement in an application for adjustment of status,<sup>290</sup> to name but a few. This interweaving of criminal and civil provisions makes it impossible to regard them as completely separate regulatory schemes in any

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<sup>284</sup> Yañez & Soto, *supra* note 280, at 29.

<sup>285</sup> See 8 U.S.C. 1326(b).

Notwithstanding subsection (a) of this section, in the case of any alien described in such subsection . . . who has been excluded from the United States pursuant to section 1225(c) of this title because the alien was excludable under section 1182(a)(3)(B) of this title or who has been removed from the United States pursuant to the provisions of subchapter V of this chapter, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.

8 U.S.C. § 1326(b).

<sup>286</sup> See *id.*

<sup>287</sup> See *id.*

<sup>288</sup> *Id.* § 1326(b)(4).

<sup>289</sup> *Id.* § 1253(a).

<sup>290</sup> *Id.* § 1255a(c)(6).

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meaningful sense. Accordingly, the Ninth Circuit's attempt to separate the criminal and civil provisions of immigration law when conducting a preemption analysis simply cannot stand up under scrutiny.

The overlap between civil and criminal provisions of immigration law is also demonstrated by the many actions in the immigration arena that trigger both civil and criminal penalties. For example, the creation of fraudulent or counterfeit immigration documents is a civil violation of immigration law under 8 U.S.C. § 1324c(d)(3),<sup>291</sup> but it is also a criminal violation under 18 U.S.C. § 1546(a).<sup>292</sup> The same may be said of employing illegal aliens. This action carries civil penalties administered through the civil proceedings described in 8 U.S.C. § 1324a(e). However, the employment of illegal aliens is also a crime, as described in 8 U.S.C. § 1324a(f), if the employer engages in a pattern or practice of such hiring. The same act may also be a crime under 8 U.S.C. § 1324(a)(3) if the employer hires ten or more illegal aliens meeting certain requirements.<sup>293</sup> Some provisions of immigration law include civil and criminal penalties *in the same sentence*. For example, making false statements in a registration document (such as that required by the NSEERS program)<sup>294</sup> is a criminal misdemeanor, punishable by a fine of up to \$1000 and a prison term of up to six months.<sup>295</sup> The sentence defining this criminal penalty continues with civil consequences in administrative proceedings: ". . . and any alien so convicted shall, upon the warrant of the Attorney General, be taken into custody and be removed."<sup>296</sup> The implication of the Ninth Circuit's assumption, that the first half of the sentence, delineating criminal penalties, invites state assistance, while the second half of the sentence, delineating civil consequences, evinces preemptive intent,<sup>297</sup> is plainly absurd. The notion that Congress created one simple set of provisions, demonstrating an intent not to preempt,

<sup>291</sup> Anyone found to have created such documents in violation of § 1324c(a) is required to "cease and desist from such violations and to pay a civil penalty" of up to \$2,000 per document for first time offenders. A repeat offender under the section may face a penalty as high as \$5,000 per document. *Id.* § 1324c(d)(3).

<sup>292</sup> Persons who knowingly create or use such counterfeit documents face a fine, imprisonment for up to five years, or both. 18 U.S.C. § 1546 (2000).

<sup>293</sup> The requirements are that the alien be unauthorized, as defined in 8 U.S.C. § 1324a(h)(3), and that the alien have been brought into the United States in violation of 8 U.S.C. § 1324(a). 8 U.S.C. § 1324(a)(3) (2000).

<sup>294</sup> *See supra* Part I.

<sup>295</sup> 8 U.S.C. § 1306(c).

<sup>296</sup> *Id.*

<sup>297</sup> *See* *Gonzales v. City of Peoria*, 722 F.2d 468, 474–75 (9th Cir. 1983).

while also creating a parallel but distinct set of complex regulatory provisions, evincing an intent to preempt, simply is not reflected in the structure of immigration law.

When the same act carries both civil penalties and criminal penalties under immigration law, it is almost always a single agency that decides which enforcement route to take.<sup>298</sup> ICE agents and attorneys assume the lead role in determining which course to follow.<sup>299</sup> It is not as if two parallel enforcement structures operate alongside one another, with ICE pursuing civil penalties while the Department of Justice pursues criminal penalties. This unified enforcement approach at the federal level further illustrates the fallacy in assuming that civil provisions preempt while criminal provisions do not.

Finally, on the subject of preemption, it must be noted that the distinction between arrests by state police for criminal violations of the INA and arrests by state police for civil violations of the INA is utterly unsustainable in practice. Often, it is not intuitively determinable which immigration violations are criminal and which violations are civil. For example, all of the immigration violations committed by the 9/11 hijackers, described above in Part II.A, were civil violations. However, that fact certainly did not render such violations less significant or less damaging to national security. Overstaying a visa is a civil violation of immigration law,<sup>300</sup> while entering without inspection is a criminal violation.<sup>301</sup> Yet both are means by which millions of illegal aliens have entered and remain in the United States.<sup>302</sup> Therefore, while it is reasonable to expect a police officer to understand generally what the indicators of illegal presence in the United States may be, it is not practical to expect the police officer to remember which immigration violations carry

<sup>298</sup> See Dep't of Homeland Sec., Immigration & Borders: Serving Our Visitors, Securing Our Borders, [http://dhs.gov/dhspublic/theme\\_home4.jsp](http://dhs.gov/dhspublic/theme_home4.jsp) (last visited Sept. 25, 2005); U.S. Immigration & Customs Enforcement, Fact Sheet: Immigration & Customs Enforcement (Apr. 5, 2004), <http://www.ice.gov/graphics/news/factsheets/040505ice.htm>.

<sup>299</sup> See Immigration & Customs Enforcement, Immigration: Interior Enforcement, <http://www.ice.gov/graphics/interior> (last visited Sept. 25, 2005) (referencing ICE's "comprehensive [interior] enforcement strategy").

<sup>300</sup> See 8 U.S.C. § 1182(a)(9)(B)(iii) (2000).

<sup>301</sup> *Id.* § 1325(a).

<sup>302</sup> The Department of Homeland Security has estimated that at least 2.3 million of the estimated 7 million illegal aliens present in the United States in the year 2000 were aliens who entered legally and then overstayed their visas. This figure likely undercounted such visa overstayers. U.S. GEN. ACCOUNTING OFFICE, GAO-04-82, OVERSTAY TRACKING: A KEY COMPONENT OF HOMELAND SECURITY AND A LAYERED DEFENSE 11, 12-13 (2004), available at <http://www.gao.gov/new.items/d0482.pdf>.

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criminal penalties and which violations trigger civil proceedings. Indeed, most lawyers are unaware that such distinctions exist. Furthermore, in some scenarios, distinguishing between civil and criminal violations at the time of arrest may be impossible. For example, if a police officer comes into contact with a group of aliens who are being transported within the United States and who are revealed to be illegally present (as in *Favela-Favela*), the aliens may be unable or unwilling to explain to the officer whether they overstayed their visas (a civil violation), entered without inspection (a criminal violation), or presented fraudulent documents at the port of entry (a criminal violation). For these reasons, maintaining a criminal-civil distinction in arrest authority would be utterly unworkable in practice. Fortunately, no court has attempted to compel police officers to do so.

V. THE AUTHORITY OF POLICE TO INQUIRE INTO IMMIGRATION STATUS

Closely related to the authority of state and local police to make arrests on the basis of immigration violations is the authority of state and local police to initiate questioning regarding an individual's immigration status. Police officers may, and do, routinely ask members of the public to provide their names, dates of birth, and other basic information without any suspicion of wrongdoing. Can police also permissibly inquire into immigration status without first establishing reasonable suspicion of an immigration violation? In many cases, such as *United States v. Favela-Favela*,<sup>303</sup> police officers have been careful to establish, and reviewing courts have been equally careful to note, the premises on which suspicions regarding immigration status were generated. But are such premises actually necessary?

In March 2005, the Supreme Court provided an unequivocal answer to this question. In the case of *Muehler v. Mena*,<sup>304</sup> the Court considered a case in which police officers conducted a search of a suspected gang safe house for evidence of gang-related crimes. During the course of the search, police officers asked the four occupants of the house their names, dates of birth, places of birth, and immigration statuses.<sup>305</sup> The Ninth Circuit held that this

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<sup>303</sup> See *supra* Part IV.G.

<sup>304</sup> 125 S. Ct. 1465 (2005).

<sup>305</sup> *Id.* at 1468.

questioning about immigration status violated the respondent's Fourth Amendment rights.<sup>306</sup> The Supreme Court emphatically disagreed:

The Court of Appeals also determined that the officers violated Mena's Fourth Amendment rights by questioning her about her immigration status during the detention. This holding, it appears, was premised on the assumption that the officers were required to have independent reasonable suspicion in order to question Mena concerning her immigration status because the questioning constituted a discrete Fourth Amendment event. But the premise is faulty. We have "held repeatedly that mere police questioning does not constitute a seizure." "[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual; ask to examine the individual's identification; and request consent to search his or her luggage." As the Court of Appeals did not hold that the detention was prolonged by the questioning, there was no additional seizure within the meaning of the Fourth Amendment. Hence, *the officers did not need reasonable suspicion to ask Mena for her name, date and place of birth, or immigration status.*<sup>307</sup>

The Court made clear that a person's immigration status is the sort of basic information that police officers may inquire about, without first establishing reasonable suspicion, where the person has been lawfully stopped or detained for another reason. The Court also rejected the Ninth Circuit's attempt to read a reasonable suspicion requirement into the Supreme Court's opinion in *United States v. Brignoni-Ponce*.<sup>308</sup> "We certainly did not, as the Court of Appeals suggested, create a 'requirement of particularized reasonable suspicion for purposes of inquiry into citizenship status.'<sup>309</sup> Such inquiry, even if it is unrelated to the initial reason for the stop, is not a "shift in purpose" requiring additional Fourth Amendment justification.<sup>310</sup>

In light of the Court's opinion in *Muehler v. Mena*, it is clear that

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<sup>306</sup> *Mena v. City of Simi Valley*, 332 F.3d 1255, 1264, 1266 (9th Cir. 2003).

<sup>307</sup> *Muehler*, 125 S. Ct. at 1471 (emphasis added) (citations omitted) (quoting *Florida v. Bostick*, 501 U.S. 429, 434–35 (1991)).

<sup>308</sup> *Id.* at 1472 n.3 (construing *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)).

<sup>309</sup> *Id.* (quoting *Mena*, 332 F.3d at 1267).

<sup>310</sup> *Id.* at 1471 (quoting *Illinois v. Caballes*, 125 S. Ct. 834, 837–38 (2005)).

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a police officer is entirely within his rights, in the course of a routine traffic stop, to ask the occupant of a vehicle his immigration status. Although this most often occurs when an officer has generated particularized suspicion about the occupant's immigration status, the Court has held that no such suspicion is necessary. And if, as a result of such questioning, the officer develops reasonable suspicion that the occupant is not lawfully present in the United States, he may detain that alien for a reasonable amount of time in order to determine (by contacting the LESC) whether or not the alien is lawfully present in the United States.<sup>311</sup>

#### VI. RESPONSES TO COUNTERARGUMENTS

Although the authority of local police to make immigration arrests for both criminal and civil violations of federal immigration law is well-established in case law, the critics of stronger immigration enforcement continue to insist that this authority does not exist—or that it should not be exercised if it does exist. One common misstatement made by such critics is that the federal government has attempted to mandate state and local cooperation in enforcing immigration law. It is essential to recognize that any assistance that state or local police provide to the federal government in the enforcement of federal immigration laws is entirely voluntary.<sup>312</sup> There is no provision of the U.S. Code or the Code of Federal Regulations that obligates local law enforcement agencies to devote any resources to the enforcement of federal immigration laws. This fact seems to escape those who assert that the federal government has by statute or policy imposed costly enforcement burdens on state and local government.<sup>313</sup> This assertion is false. Indeed, when local law enforcement agencies do

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<sup>311</sup> See *United States v. Tehrani*, 49 F.3d 54, 61 (2d Cir. 1995) (“A permissible investigative stop may become an unlawful arrest if the means of detention are ‘more intrusive than necessary.’” (quoting *United States v. Perea*, 986 F.2d 633, 644 (2d Cir. 1993)). It is crucial “whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.” *United States v. Sharpe*, 470 U.S. 675, 686 (1985). In order for the detention to be considered reasonable the officers must make “speedy and appropriate inquiries in a reasonable way.” *Tehrani*, 49 F.3d at 61.

<sup>312</sup> Ashcroft, *supra* note 6.

<sup>313</sup> See, e.g., Andy Sher, *Area Law Enforcement Agencies not Interested in Policing Immigration Laws*, CHATTANOOGA TIMES FREE PRESS, June 17, 2002, at B1; Paul Coggins, *Fostering Immigration Enforcement on Local Police Won't Work*, FULTON COUNTY DAILY REP., May 9, 2002; Chris McGann, *Police Balk at Watching for Illegal Immigrants: Local Departments Say They Don't Have Time or Money to do Federal Agencies' Work*, SEATTLE POST-INTELLIGENCER, May 2, 2002, at A1.

arrest and detain aliens for violations of immigration law prior to transfer to federal immigration authorities, it has been the regular practice of the federal government to reimburse such agencies for any detention costs incurred.<sup>314</sup> Others claim that cooperating police departments will lose the assistance of illegal aliens in reporting crimes.<sup>315</sup> Of course, this claim is based on the assertion that illegal aliens make a regular practice of contacting the police to report crimes—an unproven assertion that is dubious, at best.<sup>316</sup> Nonetheless it impels some observers to advocate non-cooperation. One student comment, without even mentioning the federal prohibition of sanctuary policies in 8 U.S.C. §§ 1373 and 1644,<sup>317</sup> urges states to withhold virtually all cooperation with ICE by adopting statutes patterned after New York City's sanctuary policy.<sup>318</sup>

While some critics of local immigration arrests refuse to recognize the voluntary nature of such assistance, others focus their opposition to local arrest authority squarely on its voluntary nature. They complain about the inevitable consequence that flows from a system of voluntary cooperation—differences in the enforcement resources devoted to such arrests by various law enforcement agencies.<sup>319</sup> One critic, Huyen Pham, goes so far as to argue that variation in local police interest in making immigration arrests renders all local arrests unconstitutional. According to Pham, “Because of its effect on foreign policy, the immigration power must be exercised exclusively and uniformly by the federal government.”<sup>320</sup>

Unfortunately for Pham, there is no case law supporting his

<sup>314</sup> This reimbursement authority is provided in 8 U.S.C. §§ 1103(a)(10), 1103(a)(11), § 1103(c).

The Attorney General, in support of persons in administrative detention in non-Federal institutions, is authorized—(A) to make payments from funds appropriated for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration for necessary clothing, medical care, necessary guard hire, and the housing, care, and security of persons detained by the Service pursuant to Federal law under an agreement with a State or political subdivision of a State[.]

8 U.S.C. § 1103(a)(11) (2000).

<sup>315</sup> See, e.g., Sher, *supra* note 313.

<sup>316</sup> See Kobach Testimony, *supra* note 74.

<sup>317</sup> See *supra* Part IV.B.

<sup>318</sup> Keblawi, *supra* note 14, at 846–47.

<sup>319</sup> See, e.g., Yañez & Soto, *supra* note 280, at 31. Yañez and Soto criticize inconsistency in enforcement, and argue that this is a reason for Congress to exercise its preemption authority. However, they do not leap to the conclusion that a lack of uniform enforcement is unconstitutional. See *id.* at 31.

<sup>320</sup> Pham, *supra* note 14, at 995.



conclusion. Rather, he relies on the Supreme Court's holding in *Graham v. Richardson* that a state law denying welfare benefits to certain resident aliens encroached on the federal government's exclusive immigration power.<sup>321</sup> Contrary to Pham's assertion, the *Graham* Court did not rely on, or even mention, foreign policy in reaching its conclusion.<sup>322</sup> Rather, the Court found that, because the state law at issue was "inconsistent with federal policy," it "encroach[ed] upon exclusive federal power" to regulate immigration.<sup>323</sup> The crucial qualifier here is the fact that the state law was *inconsistent* with federal policy. The provision of state assistance to the federal government by making immigration arrests for violations of law defined by Congress is in no way inconsistent with federal policy.

The second flaw in Pham's reasoning is his leap from diverse state laws defining the rights and privileges of aliens to diverse state resources used to assist in the enforcement of uniform federal law. Where the former poses an obvious threat to the federal power to define immigration laws in a uniform manner, the latter poses no such threat. The fact that enforcement resources may be concentrated in one part of the country and scattered in another part of the country does not change the reality that the same federal laws govern the entire country. Bizarrely, Pham concludes that because the federal government devotes a lower level of ICE manpower to some interior regions of the country, a decision by local police in that region to assist ICE by making immigration arrests is tantamount to the creation of a new immigration policy.<sup>324</sup> Pham's argument assumes that when ICE devotes a comparatively lower level of manpower to a particular region it is because ICE has made a conscious "policy" decision not to apply the law in that region of the country. On the contrary, such decisions regarding the deployment of limited ICE resources are made because the highest concentrations of law breakers are elsewhere. The law remains the same everywhere.

The third problem with Pham's argument is that it proves too much. If the uneven distribution of state and local enforcement resources really does violate a "constitutional mandate for uniform immigration laws" because it creates "uncertainty as to how a

<sup>321</sup> *Id.* at 994–95 (citing *Graham v. Richardson*, 403 U.S. 365, 376–77 (1971)).

<sup>322</sup> *See Graham*, 403 U.S. at 378–80.

<sup>323</sup> *Id.* at 380.

<sup>324</sup> Pham, *supra* note 14, at 996.

country's nationals will be treated within the United States,"<sup>325</sup> then the uneven distribution of federal enforcement resources poses the same problem. For example, the forces of the Border Patrol operate only in border states,<sup>326</sup> and ICE agents are distributed to the areas of greatest need, not according to a uniform geographic distribution plan.<sup>327</sup> Pham attempts to answer this argument by saying that the uneven distribution of federal resources is distinguishable because it reflects unitary decision-making by a single federal government.<sup>328</sup> But the uncertainty on the part of foreign nationals is the same, and it is this uncertainty that "in turn, affect[s] that country's relations with the United States" and leads to the constitutional violation imagined by Pham.<sup>329</sup> Although one might object to the uneven distribution of enforcement resources on various policy grounds, a constitutional objection is difficult, if not impossible, to sustain.

Michael J. Wishnie, another academic critic of state and local arrest authority, presents a less fanciful case.<sup>330</sup> But he makes a number of crucial mistakes nonetheless. Wishnie takes the position that Congress has preempted state and local police from arresting aliens not only for civil violations of immigration law, but also for criminal violations of immigration law.<sup>331</sup> The greatest problem for Wishnie is that the case law ostensibly supporting his claim has evaporated. He rests his position chiefly on the Ninth Circuit opinion in *Mena v. City of Simi Valley*, in which the court stated, "[I]t is doubtful that the police officer had any authority to question Mena regarding her citizenship."<sup>332</sup> Wishnie should have waited for

<sup>325</sup> *Id.* at 995.

<sup>326</sup> *See id.* at 972; Jon Bonne, *Huge Gaps Remain on Northern Border*, MSNBC (July 2002), <http://www.msnbc.msn.com/id/3070731/>.

<sup>327</sup> *See, e.g.*, U.S. Immigration & Customs Enforcement, Fact Sheet: ICE Border Security & Immigration Enforcement (Oct. 13, 2004), <http://www.ice.gov>.

<sup>328</sup> Pham, *supra* note 14, at 996–97.

<sup>329</sup> *Id.* at 995. Of course the supposition that uncertainty on the part of foreign nationals defeats federal law enforcement interests is itself absurd. If aliens knew with certainty where immigration law enforcement resources were deployed, it would be even easier to break the law and evade law enforcement.

<sup>330</sup> *See* Wishnie, *supra* note 14.

<sup>331</sup> *Id.* at 1089–90.

<sup>332</sup> *Mena v. City of Simi Valley*, 332 F.3d 1255, 1265 n.15 (9th Cir. 2003); *see* Wishnie, *supra* note 14, at 1091. Wishnie also overstates the effect of this language in the *Mena* decision, implying that the Ninth Circuit somehow reversed its earlier holding in *Gonzales v. City of Peoria* that "nothing in federal law precluded Peoria police from enforcing the criminal provisions of the Immigration and Naturalization Act." 722 F.2d 468, 477 (9th Cir. 1983). In fact, the Ninth Circuit in *Mena* did not even mention *Gonzales*. Apparently, Wishnie believes that the Ninth Circuit was attempting to reverse a precedent without even mentioning that

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the Supreme Court to hear the case before writing. The Supreme Court reversed the Ninth Circuit in *Muehler v. Mena*,<sup>333</sup> holding unequivocally that police officers are within their rights to question individuals about their citizenship.<sup>334</sup>

Wishnie's second error is that he fails to distinguish between legislative enactment and executive enforcement. He leans heavily on the oft-quoted statement by the Supreme Court that "[p]ower to regulate immigration is unquestionably exclusively a federal power."<sup>335</sup> But he neglects to mention that in the following sentence the Court made clear that "regulate" referred to "state enactment[s]."<sup>336</sup> Wishnie wrongly equates state *enactment* of independent state laws (which may contradict or undermine federal law) with state assistance to the federal government in the *enforcement* of federal law.<sup>337</sup> He starts with the correct premise that the states may not exercise the "constitutional power to regulate immigration," but then he extends that premise to bar the states from making arrests for violations of federal immigration law.<sup>338</sup> This extension of the premise is unsustainable, because

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precedent.

<sup>333</sup> 125 S. Ct. 1465 (2005).

<sup>334</sup> See *supra* Part V. The only other case law that Wishnie can muster is equally flimsy. He attempts to draw some support from the Third Circuit's use of the word "uncertainty" in *Carasca v. Pomeroy*, 313 F.3d 828 (3d Cir. 2002), a case in which the Third Circuit vacated summary judgment in a § 1983 action contending that New Jersey park rangers engaged in racial profiling when they arrested the plaintiffs for violations of state and federal law and detained them for two to four hours while the rangers contacted federal immigration authorities. See *id.* at 830–34, 837. Wishnie claims that the Third Circuit used the word "uncertainty" to describe the authority of state and local police to make immigration arrests. See Wishnie, *supra* note 14, at 1091. However, close examination of the case casts doubt on such a reading. The court stated, "There is too much uncertainty on *this record* of the state of the law with respect to state rangers' authority to detain immigrants in this pre-September 11 period to affirm the District Court's holding of qualified immunity . . ." 313 F.3d at 837 (emphasis added). The court's use of the phrase "on this record" is instructive—most likely referring to the disputed factual question of whether the park rangers suspected only a violation of state law (swimming in the park after hours) when they made the arrests and only later developed suspicion that the plaintiffs had violated federal immigration laws, or whether the park rangers suspected both state and federal violations from the outset. *Id.* at 836–37. Factual "uncertainty" drove the court's decision: "[T]he true facts as to what happened on August 3, 1998, elude us. But they are the basis for all the legal theories that have developed around this case. . . . [I]n light of the differing versions of the facts, any judgment was premature." *Id.* at 837. Regardless of what the court was referring to when it used the word "uncertainty," the court offered no judgment whatsoever on the question of whether state and local police possess authority to make immigration arrests.

<sup>335</sup> *De Canas v. Bica*, 424 U.S. 351, 354 (1976), quoted in Wishnie, *supra* note 14, at 1088–89.

<sup>336</sup> *Id.* at 354.

<sup>337</sup> See Wishnie, *supra* note 14, at 1089.

<sup>338</sup> *Id.* at 1089–95.

while state enactments might well impede federal plenary authority to regulate immigration, state assistance in the form of arrests enhances the federal government's ability to enforce its laws. Indeed, "it would be unreasonable to suppose that [the federal government's] purpose was to deny to itself any help that the states may allow."<sup>339</sup> As the Ninth Circuit has observed, "Although the regulation of immigration is unquestionably an exclusive federal power, it is clear that this power does not preempt every state activity affecting aliens. . . . Federal and local enforcement have identical purposes—the prevention of the misdemeanor or felony of illegal entry."<sup>340</sup>

Wishnie's third error in constructing his argument that Congress has preempted all local arrest authority is that he interprets congressional actions in a selective and untenable way. He completely ignores the congressional recognition and preservation of local arrest authority in 8 U.S.C. § 1357(g)(10), the authorization of compensation for local law enforcement agencies that arrest and detain aliens in 8 U.S.C. § 1103, the prohibition of local policies restricting the sharing of immigration status information in 8 U.S.C. § 1373 and 8 U.S.C. § 1644, and the congressional authorization of funds to create the LESC and QRTs, which facilitate immigration arrests by local police.<sup>341</sup> Instead, Wishnie focuses on a select few provisions of immigration law and attempts to draw a rather strained conclusion from them. He points to 8 U.S.C. § 1324(c) and 8 U.S.C. § 1252c, which expressly convey local enforcement authority (something he claims is constitutionally impermissible, in any case)<sup>342</sup> and declares that Congress intended to implicitly preempt general arrest authority by conveying arrest authority in specific circumstances.<sup>343</sup> His argument assumes that there can be no other explanation for these relatively narrow conveyances of arrest authority. However, the Ninth and Tenth Circuits have analyzed the legislative history of the statutes in question and have found that there are in fact other explanations—explanations that lead to a different conclusion. The Ninth Circuit held that the wording of 8 U.S.C. § 1324(c) was the product of a conference committee that chose to make the enforcement authority

<sup>339</sup> *Marsh v. United States*, 29 F.2d 172, 174 (2d Cir. 1928); see *supra* Parts III–IV.A.

<sup>340</sup> *Gonzalez v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983).

<sup>341</sup> See *supra* Part IV.B; Wishnie, *supra* note 14, at 1092–95.

<sup>342</sup> Wishnie, *supra* note 14, at 1089.

<sup>343</sup> *Id.* at 1092–94.

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of that provision consistent with 8 U.S.C. §§ 1325 and 1326, where local arrest authority implicitly existed. Therefore, 8 U.S.C. § 1324(c) was not intended to preclude local arrest authority.<sup>344</sup> The Tenth Circuit reviewed the history of 8 U.S.C. § 1252c at great length and concluded that the wording was chosen to clarify that a “perceived federal limitation” on local arrest authority did not exist.<sup>345</sup> Accordingly, the court concluded, the “legislative history does not contain the slightest indication that Congress intended to displace any preexisting enforcement powers already in the hands of state and local officers.”<sup>346</sup>

The only other provisions of federal law that Wishnie points to are those that authorize the federal government to enter into special agreements with state and local law enforcement—section 287(g), which is basis for the Florida and Alabama MOUs,<sup>347</sup> and 8 U.S.C. § 1103(a)(8), which allows enforcement authority to be conveyed in response to a “mass influx of aliens.”<sup>348</sup> He asserts that such agreements would be “superfluous” if inherent local arrest authority existed.<sup>349</sup> Here, Wishnie fails to recognize that the comprehensive enforcement authority conveyed by both provisions goes well beyond the inherent arrest authority possessed by local police. The breadth of section 287(g) authority is discussed at length above.<sup>350</sup> As for 8 U.S.C. § 1103(a)(8), the sweeping terms of the provision leave no doubt on this score: state or local police may be authorized “to perform or exercise *any* of the powers, privileges, or duties conferred” on federal immigration officers.<sup>351</sup> This provision allows local police to be effectively transformed into federal immigration officers during periods of mass influx. This broad authority cannot be equated with mere arrest authority. Thus, Wishnie’s claim that these statutory provisions would be superfluous in the presence of inherent arrest authority collapses.

## VII. CONCLUSION

In summary, the conclusion that state and local police possess

<sup>344</sup> *Gonzales*, 722 F.2d at 475.

<sup>345</sup> *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1298–1300 (10th Cir. 1999); *see supra* Part IV.E.

<sup>346</sup> *Vasquez-Alvarez*, 176 F.3d at 1299.

<sup>347</sup> *See supra* Part II.G.

<sup>348</sup> *Wishnie*, *supra* note 14, at 1094–95.

<sup>349</sup> *Id.* at 1095.

<sup>350</sup> *See supra* Part II.G.

<sup>351</sup> 8 U.S.C. § 1103(a)(8) (2000) (emphasis added).

inherent authority to make immigration arrests where individuals have violated either criminal provisions of the INA or civil provisions of the INA that render an alien deportable rests on a solid legal foundation. All federal circuit courts that have addressed the issue have recognized such inherent arrest authority, and no court has opined to the contrary. The question of whether this inherent arrest authority has been preempted by the federal government is also one on which a relatively stable consensus exists. The Tenth and Fifth Circuits have squarely concluded that no preemption has taken place with respect to arrests for either criminal or civil violations of immigration law. The Eighth Circuit has implicitly reached the same conclusion. And the Ninth Circuit has only suggested a distinction between civil and criminal violations by assuming one in dicta in the case of *Gonzales v. Peoria*.<sup>352</sup> Moreover, as the Ninth Circuit itself acknowledged, any judicial finding of preemption hinges upon the clear demonstration of congressional “intent to preclude local enforcement.”<sup>353</sup> In the twenty-three years since *Gonzales v. Peoria*, Congress has done much to dispel any illusion that it intended to displace local assistance. Congress has repeatedly acted to preserve, support, and encourage local arrest authority.<sup>354</sup>

This authority is being exercised regularly throughout the country. The reality on the street is that local police make thousands of immigration arrests for both civil and criminal violations of federal immigration laws every year.<sup>355</sup> Beleaguered ICE agents already rely heavily on this assistance, and improvements in immigration enforcement are likely to depend on even greater state and local participation in federal immigration enforcement efforts. If the rule of law is ever to be restored in immigration, state and local arrest authority will be a crucial component of that restoration. It is important to note that in the four years after 9/11, despite determined federal efforts to expand the number of ICE interior enforcement agents, the total number of such agents remained relatively constant, hovering just below the 2,000 mark. Even if the number of such agents magically doubled in a single year, ICE would still lack the manpower necessary to

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<sup>352</sup> *Gonzales v. City of Peoria*, 722 F.2d 468, 474–75 (9th Cir. 1983).

<sup>353</sup> *Id.* at 474.

<sup>354</sup> *See supra* Part III.B.

<sup>355</sup> This is evident in the statistics provided by ICE regarding the more than 2,300 arrests by QRTs in a three-month period. *See supra* text accompanying note 154.

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enforce immigration law single-handedly. The more than 800,000 state and local law enforcement officers in the United States constitute a vital force multiplier.

Most importantly, state and local police officers represent a critical line of defense in the war against terrorism. In the six months before 9/11, there were four tragic missed opportunities to arrest the leaders and pilots of the 9/11 terrorists.<sup>356</sup> Had the federal government acquired and disseminated information about basic civil immigration violations to local law enforcement through the NCIC system, several terrorists might have been arrested, and the 9/11 plot might have unraveled. This reality is instructive. As George Santayana reminded us: "Progress, far from consisting in change, depends on retentiveness. . . . Those who cannot remember the past are condemned to repeat it."<sup>357</sup>

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<sup>356</sup> See *supra* Part II.A.

<sup>357</sup> GEORGE SANTAYANA, *THE LIFE OF REASON* 82 (Charles Scribner's Sons 1953) (1905).

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Mr. KING. And while I am working my way down through this list of paperwork that has been accumulated during this hearing,

I have in my hand three articles that address the Southern Poverty Law Center. One is Harper's magazine, one is Discover the Networks, the other is Human Events. And I ask unanimous consent to enter those into the record.

Ms. LOFGREN. Without objection, so ordered.

Mr. KING. Thank you, Madam Chair.

[The information referred to follows:]



## DISCOVERTHENETWORKS.ORG

### A GUIDE TO THE POLITICAL LEFT

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Southern Poverty Law Center: Activities, Agendas, and Worldview

By Jacob Laksin  
*Discover The Networks*  
 2005

The Southern Poverty Law Center is characterizing critics of last week's pro-open borders rallies (held in several U.S. cities) as "anti-immigration extremists" who have made "open calls for terrorist violence, including truck bombs, machine gun attacks, and assassinations of U.S. senators and members of Congress." To make the point, the SPLC website quotes extremist New Jersey radio host Hal Turner, who said, "I advocate using extreme violence against illegal aliens. Clean your guns. Have plenty of ammunition. Find out where the largest gathering of illegal aliens will be near you. Go to the area well in advance, scope out several places to position yourself and then do what has to be done."

To further buttress its condemnatory portrayal of those who oppose amnesty and open borders, SPLC quotes several anonymous individuals who recently posted similarly incendiary comments on various Internet websites. For example, it cites the comments of "a neo-Nazi using the pseudonym 'Mr. 88' ... in a post on the white supremacist website Stormfront." Said Mr. 88: "We are headed for civil war, folks. Are you ready? We have to start killing in massive numbers so that the savages of the world have fear of the almighty white man again! Killing is the only way to cure these ills!" SPLC also quotes what it called an "anti-immigration hardliner" identifying himself (or herself) as "GoHomeIllegals," who, in a post on the "Close Borders" Yahoo user group, advocated running over young protesters with automobiles. Moreover, SPLC notes that another Closed Borders user wrote: "When violent responses occur, the amount of support they receive will amaze you. Furthermore, when people see how utterly unable to stop them the government is, it will incite further acts, and so, until it snowballs into a full-scale shooting war. Picture every major city within 500 miles of Mexico turned into Beirut in 1983. All that's missing is the spark, and it won't be long in coming."

In SPLC's calculus, opponents of immigration control and enforcement are nothing more than hate-filled racists intent on killing nonwhite "immigrants."

Founded in 1971 by a pair of Alabama lawyers, Morris Dees and Joe Levin, the Montgomery-based Southern Poverty Law Center quickly built a reputation as America's leading "civil rights law firm," suing Southern institutions resistant to desegregation, publicizing hate crimes, and using the media to denounce the perpetrators of those crimes. At the time of the SPLC's founding, Julian Bond, who currently chairs the NAACP, was named the fledgling group's first president.

During the 1970s and 1980s, SPLC courtroom challenges focused on such issues as reforming conditions in prisons and mental health facilities. When Klansmen in Decatur, Alabama disrupted a May 26, 1979 civil rights gathering, the SPLC filed its first civil suit against a major Klan organization. Within two years, the Center had launched its Klanwatch campaign (later renamed the Intelligence Project) "to monitor organized hate activity across the country." In an effort to hold white supremacist leaders accountable for their followers' violence, the SPLC sued for monetary damages on behalf of victims of Klan violence, effectively bankrupting several major Klan organizations and "draw[ing] national attention to the growing threat of white supremacist activity." In the SPLC's view, American society remains irredeemably rife with bigotry aimed at racial and ethnic minorities.

More recently, however, it is the SPLC that has found itself on the defensive. Critics from across the political spectrum charge the Center with betraying its professed commitment to advancing civil rights. The SPLC levels accusations of racism unjustly, branding as "bigoted" many groups and individuals whose only crime lies in their refusal to embrace the SPLC's leftwing agenda. Some accuse the SPLC of pursuing revenue rather than justice, by orchestrating fundraising campaigns that exaggerate the prevalence of racism to ensure a steady stream of donations from the Center's alarmed supporters. The SPLC consistently claims to detect evidence of white racism infesting virtually every crevice of American society. The Center states, for instance, "Like most of the southeastern U.S., Georgia has seen an explosion in Hispanic immigration in recent years — over a half million since 1990 alone. As hate groups exploit the racial tension stemming from the area's growth, locals have launched violent attacks against immigrant workers."

The SPLC's ideological biases are evident in its map of Active U.S. Hate Groups. Although the SPLC denounces extremist religious groups like the Jewish Defense League and Westboro Baptist Church, no mention is made of even a single extremist Muslim group. Similarly, while far-right groups like the Council of Conservative Citizens are tagged as hate groups, the SPLC withholds judgment on extremist leftwing groups. The aforementioned Intelligence Project, an SPLC initiative that monitors hate and extremist groups around the United States, is conspicuously selective in its scrutiny. Whereas rightwing groups are routinely the subjects of Intelligence Project reports, the political left, as evidenced by the dearth of critical literature, is above suspicion. In 2003, for instance, the SPLC hosted a forum called "Right-Wing Extremism in a Transatlantic Perspective," which, as one SPLC report noted, sought to develop strategies to combat "the radical right." Of the radical left, no mention was made.

As part of its transparently one-sided approach to outing alleged hate groups, the SPLC is not above flinging fictional charges against its ideological adversaries. One particularly egregious example was a 2003 article called "Into the Mainstream," featured in the SPLC's quarterly magazine, *Intelligence Report*. Authored by fringe leftist Chip Berlet, this tendentious report deliberately mangled quotes and omitted context, to make the case that "right-wing foundations and think tanks support efforts to make bigoted and discredited ideas respectable." Among the groups that came in for the SPLC's scorn was the Center for the Study of Popular Culture, and its founder, David Horowitz. After wresting, out of context, several of his quotes on the subjects of African Americans and slavery, the report charged Horowitz with a "selective rewriting of history"—a distortion so patently dishonest that it prompted Horowitz to pen an open letter to SPLC co-founder Morris Dees, wherein he answered the attack and called on Dees to apologize and remove the report from the SPLC's Web site. Dees complied on neither count. In support of the charge that the SPLC unfairly targets groups that do not share its politics, critics point to the Center's comparatively charitable treatment of leftwing groups. Radical organizations like United for Peace and Justice, for instance, are hailed as "social justice groups," a designation that also extends to feminist groups like Equality Now, a number of gay rights groups, Human Rights First, Amnesty International, and Jesse Jackson's National Rainbow/PUSH Coalition.

The SPLC takes its commitment to leftwing politics yet further in its Teaching Tolerance program. Established in 1991, this initiative is billed as "an educational program to help K-12 teachers foster respect and understanding in the classroom." Closer inspection, however, reveals that the program, far from a good-faith effort to instruct schoolchildren in the merits of tolerance, is designed to spread the virtues of political correctness among pupils while promoting liberal pieties among their teachers. One recent Teaching Tolerance campaign, for instance, urged students to oppose the use of Native American mascots among sports teams by taking up a letter-writing campaign. "The audience for their letters have included, but not been limited to, owners and players of professional sports teams, members of organizations opposed to the use of Native American mascots, high school and middle school principals, school board members, university trustees, university coaches, and the editor of the local newspaper," boasted one teacher involved in the campaign.

Highlights of these campaigns are featured in a biannual publication, *Teaching Tolerance* magazine, which, according to the SPLC, boasts a circulation of 600,000 educators in more than 70 countries. Noting that nearly 90 percent of K-12 teachers in the United States are white, while 36 percent of students "are students of color," one recent article suggested that this fact was evidence of racism in the teacher-hiring process. The article's author ruminated about "how white teachers can help dismantle a legacy of racial domination and injustice," offering proposals to "white teachers in challenging racial bias in curriculum and in school culture."

A corollary to the Teaching Tolerance initiative is another SPLC Web site, *Tolerance.org*. Created in 2001, this site "offers a wide variety of resources to support anti-bias activism." But *Tolerance.org*, like Teaching Tolerance, promulgates its own set of biases. In January of 2004, the site featured a broadside against the film *The Lord of the Rings: The Return of the King*—calling it "little more than a glorified vision of white patriarchy." The reviewer, a black woman, proceeded to denounce the cast as "manly men who are whiter than white." She derided the film as "Eurocentric" and mocked its protagonists as "Anglo-Saxon souls."

The SPLC regularly engages in fear-mongering to raise funds for its various campaigns. For instance, in 1992 it asserted that some 346 white-supremacist organizations were operating in the United States. However, that number was disputed by critics like Laird Wilcox, an author who has conducted research into extremism on both the far left and far right. According to Laird, "the actual figure is about 50." Similarly, leftwing journalist Alexander Cockburn accused the SPLC's Dees of raising funds "by frightening elderly liberals that the heirs of Adolf Hitler are about to march down Main Street." Ethical questions about the SPLC's tactics were also raised by *Harper's Magazine*, which took issue with the SPLC's wont for suing entire hate groups for the crimes committed by its individual members, "a practice that, however seemingly justified, should give civil libertarians pause." *Harper's* further chastised the SPLC for abandoning leftwing causes in order to woo well-heeled benefactors with trumped-up claims of right-wing extremism.

On the evidence of its current activities, such censure has gone unheeded by the SPLC, which persists in maintaining that the danger posed by rightwing hate groups is far greater than generally believed. When a November 2004 FBI report revealed a total of 7,489 hate crime incidents in 2003, spokeswoman Heidi Beirich immediately faulted the findings for understating the magnitude of hate crimes committed in the U.S. "We have found several flaws [with the FBI report]," insisted Beirich. "We think there's really more like 50,000 hate crimes out there each year."

On occasion, in its zeal to highlight the alleged dangers of rightwing extremism, the SPLC puts forth erroneous information. In October 2004, for instance, the SPLC's chief investigator, Joe Roy, accused Macon State College professor Roger Roots, who had a history of extremism, of being a former leader of the Knights of the KKK—charges that were published in Georgia's *Macon Telegraph* newspaper but were later proved to be wholly untrue.

However dubious from an ethical standpoint, such tactics have proven a financial windfall for the SPLC, —a fact demonstrated by the Center's significant endowment. Created in 1974, the endowment sets aside funds for the day when, according to the SPLC's directors, "nonprofits like the Center can no longer afford to solicit support through the mail because of rising postage and printing costs." Reports indicate that the SPLC will have little to worry about in this respect. In 1996, *USA Today* hailed the SPLC, with its \$68 million in assets, as "the nation's richest civil rights organization." Since then, the Center's fortunes have only improved. At the end of fiscal year 2003, the SPLC's endowment totaled \$120.6 million.

The SPLC's financing strategy has incurred the ire of critics. In 1995 Alabama's *Montgomery Advertiser* published a series of investigative reports about the Center's operations. Although the paper had initially been sympathetic to the SPLC's leftwing aims—"We were essentially boosters for the Center. We parroted their press releases," *Advertiser* editor Jim Tharpe later recalled—it decided to pursue the series based on leads from former SPLC employees. What the paper found was that the SPLC, throughout its history, had never spent more than 31 percent of its income on actual programs. Whereas many nonprofit organizations spent upward of 75 percent of their budgets on operational programs, the SPLC regularly spent as little as 18 percent.

The *Advertiser's* reports also raised questions about the SPLC's fundraising practices. In one instance, the SPLC won a celebrated \$7 million settlement after suing a Ku Klux Klan organization in Alabama. However, because the Klan had no means of paying off the sum, the SPLC's client, the mother of a black man lynched by Klansmen, received only a \$51,000 building, formerly belonging to the Klan, as reimbursement. Far more substantial was the SPLC's profit. Having garnered \$9 million in donations in a two-year fundraising campaign for the trial, the SPLC's directors afforded themselves salaries of \$350,000 for its duration. A 1998 survey conducted by the *National Journal*, a nonpartisan publication, shed further light on the benefits that SPLC heads have reaped from their organization. Comparing a list of 78 advocacy groups, the survey showed that Morris Dees earned tens of thousands of dollars more than the officers of most of the groups, including the heads of such prominent organizations as the ACLU, the NAACP Legal Defense and Education Fund, and the Children's Defense Fund.

Findings like these provoked more questions about the SPLC's fundraising practices. After the SPLC took in more than \$44 million in revenue—\$27 million from fundraising and \$17 million from stocks and other investments—in 1999, *The Nation* magazine lambasted the Center for spending nearly \$6 million on fundraising activities but only \$2.4 million on litigation. "What is the Southern Poverty Law Center doing?" asked *Nation* senior editor JoAnn Wypijewski. Answering her own question, she wrote, "Mostly making money." More criticism lay in store. In 2003, Virginia's *Fairfax Journal* called attention to the fact that the tax-exempt SPLC, a participating member of the federal government's yearly workplace fundraising drive known as the Combined Federal Campaign, had failed an audit by the Arlington-based Better Business Bureau's Wise Giving Alliance. The audit stipulated that at least 50 percent of an organization's total income should be set aside to fund its programs. Instead, 89 percent of the Center's budget went toward fundraising and administrative costs. Adding up the numbers, the *Journal* observed that anyone wishing to make a \$100 donation to the SPLC would find that only \$11 went to the Center's expressed mission of advancing civil rights. "Not much bang for the buck there," the paper stated.

Between 2000 and 2003, the SPLC was the recipient of 48 foundation grants of \$1,000 or more, including grants of \$300,000 and \$545,000 from Cisco Systems Foundation; \$500,000 from the Richard and Rhoda Goldman Fund; and one \$466,000 grant and two \$545,000 grants from the Picower Foundation.

Other funders of the SPLC include: the Arcus Foundation; the Baltimore Community Foundation; the Beneficia Foundation; the Boston Foundation; the Caplan Charity Foundation; the Community Foundation for Southeastern Michigan; the Community Foundation (Silicon Valley); the Cushman Family Foundation; the Dibner Fund; the Falcon Charitable Foundation; the Joseph and Bessie Feinberg Foundation; the Feldman Foundation; the Fuchsberg Family

Foundation; the Gardner Foundation; the Edward and Verna Gerbic Family Foundation; the Gilo Family Foundation; the Jackson and Irene Golden 1989 Charitable Trust; the Grove Foundation; the John S. Hilson Family Fund; the Handleman Charitable Foundation Trust; the J.M. Kaplan Fund; the Kaplen Foundation; the Marble Fund; the Morgan Chase Foundation; the New York Community Trust; the Peninsula Community Foundation; the Louis and Harold Price Foundation; the St. Paul Foundation; the Raine and Stanley Silverstein Family Foundation; the Spiegel Foundation; the Mike and Corky Hale Stoller Foundation; the Wasserman Foundation; the Willow Springs Foundation; and the Jim and Elaine Wolf Foundation.

The SPLC's attempts to parry criticism that its operations amount to a fundraising racket have served only to fuel it. Morris Dees raised eyebrows in the 1990s when he told an interviewer, "I learned everything I know about hustling from the Baptist Church. Spending Sundays on those hard benches listening to the preacher pitch salvation – why, it was like getting a Ph.D. in selling."

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## **The Church of Morris Dees**

By Ken Silverstein -- Harper's Magazine, November 2000

### **How the Southern Poverty Law Center profits from intolerance**

Ah, tolerance. Who could be against something so virtuous? And who could object to the Southern Poverty Law Center, the Montgomery, Alabama-based group that recently sent out this heartwarming yet mildly terrifying appeal to raise money for its "Teaching Tolerance" program, which prepares educational kits for schoolteachers? Cofounded in 1971 by civil rights lawyer cum direct-marketing millionaire Morris Dees, a leading critic of "hate groups" and a man so beatific that he was the subject of a made-for-TV movie, the SPLC spent much of its early years defending prisoners who faced the death penalty and suing to desegregate all-white institutions like Alabama's highway patrol. That was then.

Today, the SPLC spends most of its time--and money--on a relentless fund-raising campaign, peddling memberships in the church of tolerance with all the zeal of a circuit rider passing the collection plate. "He's the Jim and Tammy Faye Bakker of the civil rights movement," renowned anti-death-penalty lawyer Millard Farmer says of Dees, his former associate, "though I don't mean to malign Jim and Tammy Faye." The Center earned \$44 million last year alone--\$27 million from fund-raising and \$17 million from stocks and other investments--but spent only \$13 million on civil rights program, making it one of the most profitable charities in the country.

The Ku Klux Klan, the SPLC's most lucrative nemesis, has shrunk from 4 million members in the 1920s to an estimated 2,000 today, as many as 10 percent of whom are thought to be FBI informants <<http://www.servtech.com/~grugyn/kkk-5.htm>>. But news of a declining Klan does not make for inclining donations to Morris Dees and Co., which is why the SPLC honors nearly every nationally covered "hate crime" with direct-mail alarums full of nightmarish invocations of "armed Klan paramilitary forces" and "violent neo-Nazi extremists," and why Dees does legal battle almost exclusively with mediagenic villains--like Idaho's arch-Aryan Richard Butler--eager to show off their swastikas for the news cameras.

In 1987, Dees won a \$7 million judgment against the United Klans of America on behalf of Beulah Mae Donald, whose son was lynched by two Klansmen. The UKA's total assets amounted to a warehouse whose sale netted Mrs. Donald \$51,875. According to a groundbreaking series of newspaper stories in the Montgomery Advertiser, the SPLC, meanwhile, made \$9 million from fund-raising solicitations featuring the case, including one containing a photo of Michael Donald's corpse.

Horrifying as such incidents are, hate groups commit almost no violence. More than 95 percent of all "hate crimes," including most of the incidents SPLC letters cite (bombings, church burnings, school shootings), are perpetrated by "lone wolves." Even Timothy McVeigh, subject of one of the most extensive investigations in the FBI's history--and one of the most extensive direct-mail campaigns in the SPLC's--was never credibly linked to any militia organization.

No faith healing or infomercial would be complete without a moving testimonial. The student from whose tears this white schoolteacher learned her lesson is identified only as a

child of color. "Which race," we are assured, "does not matter." Nor apparently does the specific nature of "the racist acts directed at him," nor the race of his schoolyard tormentors. All that matters, in fact, is the race of the teacher and those expiating tears. "I wept with him, feeling for once, the depth of his hurt," she confides. "His tears washed away the film that had distorted my white perspective of the world." Scales fallen from her eyes, what action does this schoolteacher propose? What Gandhi-like disobedience will she undertake in order to "reach real peace in the world"? She doesn't say but instead speaks vaguely of acting out against "the pain." In the age of Oprah and Clinton, empathy--or the confession thereof--is an end in itself.

Any good salesman knows that a product's "value" is a highly mutable quality with little relation to actual worth, and Morris Dees--who made millions hawking, by direct mail, such humble commodities as birthday cakes, cookbooks (including Favorite Recipes of American Home Economics Teachers), tractor seat cushions, rat poison, and, in exchange for a mailing list containing 700,000 names, presidential candidate George McGovern--is nothing if not a good salesman. So good in fact that in 1998 the Direct Marketing Association inducted him into its Hall of Fame. "I learned everything I know about hustling from the Baptist Church," Dees has said. "Spending Sundays on those hard benches listening to the preacher pitch salvation--why, it was like getting a Ph.D. in selling." Here, Dr. Dees (the letter's nominal author) masterfully transforms, with a mere flourish of hyperbole, an education kit available "at cost" for \$30 on the SPLC website into "a \$325 value."

This is one of the only places in this letter where specific races are mentioned. Elsewhere, Dees and his copywriters, deploying an arsenal of passive verbs and vague abstractions, have sanitized the usually divisive issue of race of its more disturbing elements--such as angry black people--and for good reason: most SPLC donors are white. Thus, instead of concrete civil rights issues like housing discrimination and racial profiling, we get "communities seething with racial violence." Instead of racially biased federal sentencing laws, or the disparity between poor predominantly black schools and affluent white ones, or the violence against illegals along the Mexican border, the SPLC gives us "intolerance against those who are different," turning bigotry into a color-blind, equal-opportunity sin. It's reassuring to know that "Caucasians" are no more and no less guilty of this sin than African Americans, Asian Americans, Native Americans, and Hispanics. In the eyes of Morris Dees, we're all sinners, all victims, and all potential contributors.

Morris Dees doesn't need your financial support. The SPLC is already the wealthiest civil rights group in America, though this letter quite naturally omits that fact. Other solicitations have been more flagrantly misleading. One pitch, sent out in 1995--when the Center had more than \$60 million in reserves--informed would-be donors that the "strain on our current operating budget is the greatest in our 25-year history." Back in 1978, when the Center had less than \$10 million, Dees promised that his organization would quit fund-raising and live off interest as soon as its endowment hit \$55 million. But as it approached that figure, the SPLC upped the bar to \$100 million, a sum that, one 1989 newsletter promised, would allow the Center "to cease the costly and often unreliable task of fund raising." Today, the SPLC's treasury bulges with \$120 million, and it spends twice as much on fund-raising--\$5.76 million last year--as it does on legal services for victims of civil rights abuses. The American Institute of Philanthropy gives the Center one of the worst ratings of any group it monitors, estimating that the SPLC could operate for 4.6 years without making another tax-exempt nickel from its investments or raising another tax-deductible cent from well-meaning "people like you."

The SPLC's "other important work justice" consists mainly in spying on private citizens who belong to "hate groups," sharing its files with law-enforcement agencies, and suing the most prominent of these groups for crimes committed independently by their members—a practice that, however seemingly justified, should give civil libertarians pause. The legal strategy employed by Dees could have put the Black Panther Party out of business or bankrupted the New England Emigrant Aid Company in retaliation for crimes committed by John Brown. What the Center's other work for justice does not include is anything that might be considered controversial by donors. According to Millard Farmer, the Center largely stopped taking death-penalty cases for fear that too visible an opposition to capital punishment would scare off potential contributors. In 1986, the Center's entire legal staff quit in protest of Dees's refusal to address issues—such as homelessness, voter registration, and affirmative action—that they considered far more pertinent to poor minorities, if far less marketable to affluent benefactors, than fighting the KKK. Another lawyer, Gloria Browne, who resigned a few years later, told reporters that the Center's programs were calculated to cash in on "black pain and white guilt." Asked in 1994 if the SPLC itself, whose leadership consists almost entirely of white men, was in need of an affirmative action policy, Dees replied that "probably the most discriminated people in America today are white men when it comes to jobs."

Contributors to Teaching Tolerance might be surprised to learn how little of the SPLC's reported educational spending actually goes to education. In response to lobbying by charities, the American Institute of Certified Public Accountants in 1987 began allowing nonprofits to count part of their fundraising costs as "educational" so long as their solicitations contained an informational component. On average, the SPLC classifies an estimated 47 percent of the fund-raising letters that it sends out every year as educational, including many that do little more than instruct potential donors on the many evils of "militant right-wing extremists" and the many splendid virtues of Morris Dees. According to tax documents, of the \$10.8 million in educational spending the SPLC reported in 1999, \$4 million went to solicitations. Another \$2.4 million paid for stamps.

In the early 1960s, Morris Dees sat on the sidelines honing his direct-marketing skills and practicing law while the civil rights movement engulfed the South. **"Morris and I...shared the overriding purpose of making a pile of money," recalls Dees's business partner, a lawyer named Millard Fuller (not to be confused with Millard Farmer). "We were not particular about how we did it; we just wanted to be independently rich."** They were so unparticular, in fact, that in 1961 they defended a man, guilty of beating up a journalist covering the Freedom Riders, whose legal fees were paid by the Klan. ("I felt the anger of a black person for the first time," Dees later wrote of the case. "I vowed then and there that nobody would ever again doubt where I stood.") In 1965, Fuller sold out to Dees, donated the money to charity, and later started Habitat for Humanity. Dees bought a 200-acre estate appointed with tennis courts, a pool, and stables, and, in 1971, founded the SPLC, where his compensation has risen in proportion to fund-raising revenues, from nothing in the early seventies to \$273,000 last year. A National Journal survey of salaries paid to the top officers of advocacy groups shows that Dees earned more in 1998 than nearly all of the seventy-eight listed, tens of thousands more than the heads of such groups as the ACLU, the NAACP Legal Defense and Educational Fund, and the Children's Defense Fund. The more money the SPLC receives, the less that goes to other civil rights organizations, many of which, including the NAACP, have struggled to stay out of bankruptcy. Dees's compensation alone amounts to one quarter the annual budget of the Atlanta-based Southern Center for Human Rights,

which handles several dozen death-penalty cases a year. "You are a fraud and a conman," the Southern Center's director, Stephen Bright, wrote in a 1996 letter to Dees, and proceeded to list his many reasons for thinking so, which included "your failure to respond to the most desperate needs of the poor and powerless despite your millions upon millions, your fund-raising techniques, the fact that you spend so much, accomplish so little, and promote yourself so shamelessly." Soon the SPLC will move into a new six-story headquarters in downtown Montgomery, just across the street from its current headquarters, a building known locally as the Poverty Palace.

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### **Southern Poverty Law Center Pushes Twisted Definition of 'Hate'**

by **Matthew Vadum** (more by this author)  
 Posted 12/11/2006 ET  
 Updated 12/11/2006 ET

The Southern Poverty Law Center (SPLC) has one key message: The nation is boiling over with hatred and intolerance. Decades after the civil rights movement forever changed America and despite the enactment of the Civil Rights Act, the Voting Rights Act and the imposition of affirmative action, American race relations are always worse today than in the days of Jim Crow, according to SPLC.

"Hate in America is a dreadful, daily constant. The dragging death of a black man in Jasper, Tex.; the crucifixion of a gay man in Laramie, Wyo.; and post-9/11 hate crimes against hundreds of Arab-Americans, Muslim Americans and Sikhs are not 'isolated incidents.' They are eruptions of a nation's intolerance." That's the message posted at Tolerance.org, a center website for its special project, "Ten Ways to Fight Hate: A Community Response Guide."

"Somewhere in America ... EVERY HOUR someone commits a hate crime. EVERY DAY at least eight blacks, four gays or lesbians, two Jews, two whites and one Latino become hate crimes victims. EVERY WEEK a cross is burned," according to the guide [emphasis in original]. If the center's math is correct, 8,760 "hate crimes" are committed in the U.S. every year and 52 crosses are burned. But that's not exactly a tidal wave of bigotry in an ethnically diverse nation of 300 million people.

The SPLC understands the importance of language. It fights what it labels "hate," "intolerance" and "discrimination," but it defines those terms very differently than most Americans would. To the center, you practice "hate" whenever you fail to genuflect with politically correct reverence before every human difference.

In the SPLC's world, armies of the night are forever on the march. Cross-burnings, lynchings and rampant racial discrimination are omnipresent. Those who question

the SPLC's approach to race are blacklisted as contemptible bigots.

The center lumps all sorts of groups on America's political right together, labeling them enemies of the Republic. Conservative, libertarian, anti-tax, immigration reductionist and other groups are all viewed as legitimate targets for vilification.

#### Big Money

SPLC has an enormous endowment of more than \$152 million, according to its 2005 annual report. Its IRS Form 990 for the fiscal year ended Oct. 31, 2005, shows that the center took in gross receipts of \$49.8 million that year, \$29.7 million of which consisted of contributions and grants.

According to its balance sheet, by Oct. 31, 2005, its total assets had ballooned from \$173.2 million at the beginning of the fiscal year, to \$189.4 million by year's end. SPLC's endowment is so large that it reported endowment income of nearly \$3.5 million, including interest income of \$728,356.

Although SPLC bills itself as a civil rights law firm, it devotes only a fraction of its resources to actual legal work. Of the \$28.9 million in expenses it declared for the year ended Oct. 31, 2005, only \$4.5 million went to "providing legal services for victims of civil rights injustice and hate crimes," and \$837,907 for "specific assistance to individuals" in the form of "litigation services," according to its Form 990. Roughly half of its expenditures, \$14.7 million, were devoted to "educating the general public, public officials, teachers, students and law enforcement agencies and officers with respect to issues of hate and intolerance and promoting tolerance of differences through the schools."

In the same period, SPLC paid attorney Morris Dees \$297,559 in salary and

pension-plan contributions. On the list of nonprofit "employees who earned more than their organization's chief executive," (part of the *Chronicle of Philanthropy's* annual survey of top nonprofit executive salaries, published September 28), Dees ranked 48th in the nation. SPLC President Richard Cohen took home \$274,838, but center co-founder Joseph L. Levin received only \$171,904 for his efforts as general counsel.

### Bond's Smear Tactics

SPLC is based in Montgomery, Ala., site of the famous bus boycott that gave birth to the civil rights movement and made a national icon of Rosa Parks, the woman who courageously refused to move to the back of the bus. The center's fortress-style headquarters seems intended to shield employees from the hordes of neo-Nazis, skinheads and militia groups the center wants people to believe wish to do it harm.

The co-founders of SPLC were Julian Bond and Morris Dees. Bond is the founding president. Since 1998, he has been chairman of the NAACP but remains active with the center and currently serves on its board of directors. A highly visible public figure, he is well acquainted with its smear tactics, having compared conservatives and the Bush Administration to Afghanistan's ousted Taliban regime.

Bond has smeared black conservatives with relish, deriding them for joining what he calls "a right-wing conspiracy" aimed at eliminating affirmative action, abridging voting rights and reforming public education. In 2002, he told an NAACP convention that black conservatives were participants in "an interlocking network of funders, groups and activists.... They are the money, the motivation and the movement behind vouchers, the legal assault on affirmative action and other remedies for discrimination, attempts to reapportion us out of office and attacks on equity everywhere." These conservatives are "black hustlers and hucksters ... [who], like ventriloquists' dummies, speak in their puppet master's voice," he said. Bond called anti-racial quota campaigner Ward Connerly a "fraud" and a "con man."

In February of this year, at Fayetteville State University in Arkansas, Bond warned that Republicans' "idea of equal rights is the American flag and the Confederate swastika flying side by side," the Fayetteville Observer reported. When his comments provoked a firestorm of criticism, Bond lied, denying he likened the GOP to the Nazi Party. He accused "right-wing blogs" of mischaracterizing his statement: "I didn't say these things I'm alleged to have said. There is no one in the audience who can say I said them." How wrong he was: The Observer posted a 45-minute recording of Bond's speech online. In the same speech, Bond implied that Colin Powell and Condoleezza Rice were token black appointees in the Bush Administration, which was using them as "human shields against any criticism of

their record on civil rights.”

For Bond, America is hopelessly racist. “Everywhere we see clear racial fault lines, which divide American society as much now as at any time in our past,” he said in 1999. One might expect Americans to push someone with Bond’s views to the margins of public life, alongside such racial provocateurs as Al Sharpton, yet Bond is an in-demand public speaker. He holds 23 honorary degrees and is now distinguished professor at American University and professor of history at the University of Virginia.

But Bond is strictly B-list compared to Morris Dees.

#### Dees' Obsession

Dees is admired by left-wing and not-so-left-wing lawyers from coast to coast. A prestigious legal award has been named after him, and on November 16, the high-powered law firm of Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates and the University of Alabama School of Law awarded the first annual “Morris Dees Justice Award” to U.S. District Judge William Wayne Justice of the Eastern District of Texas. The award will be given annually to “a lawyer who has devoted his or her career to serving the public interest and pursuing justice and whose work has brought about positive change in the community, state or nation.” One of the rulings for which Judge Justice is honored would puzzle many strict constructionist legal scholars and limited-government supporters. Justice’s ruling in a 1982 case, *Plyler v. Doe*, opened the doors for children of illegal aliens to attend public schools through grade 12 at public expense.

Dees is a consummate salesman and a champion fundraiser. “I learned everything I know about hustling from the Baptist Church. Spending Sundays sitting on those hard benches, listening to the preacher pitch salvation ... why it was like getting a Ph.D. in selling,” he said. Dees was finance director for Democrat George McGovern’s failed 1972 presidential bid and for other Democratic candidates. He raised more than \$24 million from 600,000 small donors, marking the first time a presidential campaign was financed with small gifts by mail, according to Dees’s official biography on SPLC’s website.

Years before co-founding the SPLC, Dees launched a successful direct-mail sales company specializing in book publishing. However, he experienced an epiphany in 1967 and decided to take his life in a new direction and “speak out for my black friends who were still ‘disenfranchised’ even after the Voting Rights Act of 1965,” Dees wrote in his autobiographical *A Season for Justice*. “Little had changed in the South. Whites held the power and had no intention of voluntarily sharing it.”

Dees’s former legal associate, Millard Farmer, describes the crusading lawyer as “the Jim and Tammy Faye Bakker of the civil rights movement,” adding, “though I don’t mean to malign Jim and Tammy Faye.” Former associates say Dees is obsessed with making money.

#### Criticism and Scandal

The media generally accord Dees roughly the same level of respect as the late Mother Teresa. He has been the subject of a made-for-television movie, along with countless articles, and worshipful magazine profiles. Yet a rare, scathing portrait of Dees titled “The Church of Morris Dees” by left-wing author Ken Silverstein appeared in the November 2000 Harper’s magazine. Under the leadership of Dees, SPLC “spends most of its time—and money—on a relentless fundraising campaign, peddling memberships in the church of tolerance with all the zeal of a circuit rider passing the collection plate,” wrote Silverstein.

The SPLC took another hit in 2001 when JoAnn Wypijewski wrote in the leftist Nation magazine that the center was preoccupied with making money. “In 1999, it spent \$2.4 million on litigation and \$5.7 million on fundraising, meanwhile taking in more than \$44 million—\$27 million from fundraising, the rest from investments,” she wrote.

Wypijewski also criticized the center’s work on hate groups. “No one has been more assiduous in inflating the profile of [hate] groups than the center’s millionaire huckster, Morris Dees, who, in 1999, began a begging letter, ‘Dear Friend, The danger presented by the Klan is greater now than at any time in the past 10 years,’” she wrote. Of course, the Ku Klux Klan is a genuine hate group. It had about four million members 80 years ago when it held sway over several state legislatures. Today, however, it has withered away to maybe 3,000 members.

The SPLC seems to have steered clear of scandal in recent years, but it received plenty of bad press in the mid-1990s. In 1994, the Montgomery Advertiser published a series of investigative articles alleging improprieties, including financial mismanagement and institutionalized racism. Black former employees of the center complained that white supervisors ran it “like a plantation.” The series was a nominated finalist for a Pulitzer Prize in 1995, but Dees orchestrated a lobbying campaign to stop publication and prevent it from being considered by the Pulitzer board.

Jim Tharpe, then managing editor of the Advertiser, described his SPLC-related adventures at a Nieman Foundation for Journalism panel discussion held at Harvard University in May 1999. According to Tharpe, SPLC deployed what is typically considered a corporate public relations weapon to prevent the investigation. It threatened what has come in recent years to be known as a strategic lawsuit against public participation, or SLAPP action. Such suits are calculated to intimidate and silence critics by burdening them with the cost of a legal defense unless they withdraw their criticism.

“These guys threatened us with a lawsuit from the moment we asked to look at their financial records,” Tharpe said, according to a transcript of the talk provided on the Nieman Foundation’s website.

#### Hoarding Money

Reporters found the center had accumulated a huge surplus. “It was \$50-something million at that time; it’s now approaching \$100 million, but they’ve never spent more than 31% of the money they were bringing in on programs, and sometimes they spent as little as 18%. Most nonprofits spend about 75% on programs,” Tharpe said. SPLC donors had no idea how financially secure the center was, he said. “The charity watchdog groups, the few that are in existence, had consistently criticized the center, even though nobody had reported that.”

Reporters also uncovered that what is arguably the nation’s wealthiest civil rights group—which contends that racism pervades all of American society—had no blacks in top management positions. “Twelve out of the 13 black current and former

employees we contacted cited racism at the center, which was a shocker to me. As of 1995, the center had hired only two black attorneys in its entire history," Tharpe said.

Tharpe's team also uncovered what he called "questionable fundraising tactics." The SPLC handled the case of Michael Donald, a young black man who was brutally murdered in Mobile by Klansmen in 1981. After the perpetrators were convicted, the center filed suit against the KKK organization to which they belonged and secured a \$7-million judgment, Tharpe explained.

"The problem was the people who killed this kid didn't have any money. What they really got out of it was a \$51,000 building that went to the mother of Michael Donald. What the center got and what we reported was they raised \$9 million in two years using the Donald case, including a mailing with the body of Michael Donald as part of it. The top center officials, I think the top three, got \$350,000 in salaries during that time, and Morris got a movie out of it, a TV movie of the week."

#### Defining 'Hate Group'

The SPLC frequently smears groups it disagrees with as "racist."

Although the SPLC's list of hate groups includes groups that are based on racial hatred such as the Ku Klux Klan and the black separatist groups New Black Panther Party and Nation of Islam, which is headed by anti-Semite Louis Farrakhan, it lists other groups whose claim to the dishonor is more dubious.

The SPLC accuses the American Enterprise Institute, an influential conservative think tank, of links to racism, in part because it has employed a well-known conservative intellectual, writer Dinesh D'Souza, as its John M. Olin Fellow. AEI is part of "an array of right-wing foundations and think tanks [that] support efforts to make bigoted and discredited ideas respectable," noted the summer 2003 issue of Intelligence Report, a center magazine. D'Souza is a scholar "whose views are seen by many as bigoted or even racist," the article stated. But why attack D'Souza, a dark-skinned immigrant to the U.S. from India? Could it be because the acclaimed author has made powerful attacks on the kind of racial alarmism that is the SPLC's bread and butter?

In *The End of Racism* (1995), D'Souza argued that "virtually all contemporary liberal assumptions about the origin of racism, its historical significance, its contemporary effects, and what to do about it are wrong." D'Souza also pilloried opportunistic race-baiters. "It is the civil rights industry that now has a vested interest in the persistence of the ghetto, because the miseries of poor blacks are the best advertisement for continuing programs of racial preference and set-asides," D'Souza wrote.

And then there are all those Nazis. According to a recent edition of Intelligence Report, admirers of the Third Reich have infiltrated the U.S. armed services: "Neo-Nazis 'stretch across all branches of service, they are linking up across the branches once they're inside, and they are hard-core,' Department of Defense gang detective Scott Barfield told the Intelligence Report. 'We've got Aryan Nations graffiti in Baghdad,' he added. 'That's a problem.'"

Accompanying the article, "A Few Bad Men," by David Holthouse, is a painting of a row of helmeted U.S. soldiers in uniform with their arms raised in a Nazi salute. Since America is deeply racist, according to the SPLC, it only follows that its military must be racist as well.

#### Open-Borders Agenda

A September smear of a politician who takes a hard line on immigration illustrates the SPLC's standard operating procedure for dealing with those hostile to its open-borders agenda.

After Rep. Tom Tancredo of Colorado, a Republican who favors tougher immigration policies, addressed a Columbia, S.C., event that its organizer noted was open to all, the SPLC falsely characterized the event as being sponsored by the League of the South. The center considers that obscure group to be a "neo-Confederate," "white nationalist" hate group.

Following Tancredo's speech, a self-serving report titled "Congressman addresses hate group," appeared on the SPLC's website, creating the impression that the event was an official League of the South event. But a Denver Post report from September



13 quoted Garland McCoy, head of an activist group called Americans Have Had Enough, saying his group hosted the event, which he said anyone was free to attend.

The SPLC report also marveled at how Tancredo could give a speech “from behind a podium draped in a Confederate battle flag,” and with a portrait of Robert E. Lee in plain sight. However, Tancredo delivered his speech at the South Carolina State Museum, which has a permanent Confederate Army exhibit. Is it surprising that Confederate paraphernalia was present?

The center has also gone after the Minuteman Project, which seeks to monitor illegal border crossings into the U.S. from Mexico. The Minuteman group has a broad base of support among conservatives and throughout the nation as a whole, but was labeled racist last year by the SPLC’s Intelligence Project. It may take some intellectual toughness to insist that the nation has the right to decide who may or may not cross its borders, but surely it’s not hate.

But Morris Dees doesn’t see it that way. He sees all opposition to immigration as a symptom of hate. When, in 2004, a slate of anti-immigration candidates sought election to the Sierra Club, a prominent environmentalist group, Dees offered himself as an alternative candidate, urging his fellow club members to “vote against the greening of hate.” The club had long been on record as favoring a stable U.S. population in order to reduce alleged strains on the environment. According to Dees’s twisted reasoning, doesn’t this mean the club was already a bastion of hate?

#### Corrosive Effect

A disinterested observer might conclude that Morris Dees and the Southern Poverty Law Center are irrelevant activists left over from the 1960s, hangers-on to memories of past civil rights campaigns. They trudge on, enamored of their own propaganda.

Richard Samp, chief counsel for the Washington Legal Foundation, told Organization Trends that he finds it difficult to take anything the SPLC does nowadays seriously. “There are so many of these [liberal groups] that they have to speak in particularly shrill tones in order to distinguish themselves from the many other groups out there,” Samp said. “I certainly disagree with their saying America is racist. I don’t think they really believe that,” he said.

SPLC's hyping of racism in America is "simply fundraising puffery," Samp said.

Yet it may be too easy to dismiss SPLC. It has mastered the art of inflaming racial passions, and in doing so, it undermines Americans' confidence in the nation's racial progress. SPLC's activism may be too profitable an enterprise for it to give up, but it can have a corrosive effect on our politics. Jim Sleeper, author of *Liberal Racism*, wrote that "there is a race industry that has a moral and financial stake in ginning up these racial bogeymen." Sleeper told columnist Deroy Murdock that the race industry makes "a real effort to play up the bad news and play down the good.... The ground is shifting under our feet, and a lot of these people don't want to let go."

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Mr. Vadum is editor of Organization Trends.

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Mr. KING. And that brings me to another subject here. As I listen to the focus on at least the implication, if not the allegation, of racial bias on the part of law enforcement, especially local jurisdiction, I just began to ask the question that I didn't know the answer to and I asked staff to go back and find it for me.

And it would seem appropriate to me that, if we are going to have nonracially-biased enforcement across this country, local jurisdiction to the Federal jurisdiction, across the spectrum, then the enforcement should reflect, perhaps, roughly the percentage of the nationalities of those who are having the law enforced against them. In other words, I ask the question, if this is focused on Hispanic, which has been the case in this hearing all afternoon, what percentage of illegal immigrants are Hispanic?

And I have a report here that is produced by the Pew Hispanic Center that is dated October 2, 2008. And it breaks this out, and it says that of African descent, 4 percent; European and Canadian, 4 percent; Asian, 12 percent; other Latin American, Mexican, 81 percent. So I think that would reflect that 81 percent of those violators are Hispanic.

And I would ask unanimous consent to introduce the Pew study into the record.

Ms. LOFGREN. Without objection.

Mr. KING. Thank you, Madam Chair.

[The information referred to follows:]



Report

October 2, 2008

## Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow

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The Pew Hispanic Center is a nonpartisan research organization that seeks to improve public understanding of the diverse Hispanic population in the United States and to chronicle Latinos' growing impact on the nation. It does not take positions on policy issues. The center is part of the Pew Research Center, a nonpartisan "fact tank" based in Washington, D.C., and it is funded by The Pew Charitable Trusts, a Philadelphia-based public charity. All of the Center's reports are available at [www.pewhispanic.org](http://www.pewhispanic.org). The staff of the Center is:

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Gretchen Livingston, Senior Researcher	Ana Gonzalez-Barrera, Senior Analyst
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## Executive Summary

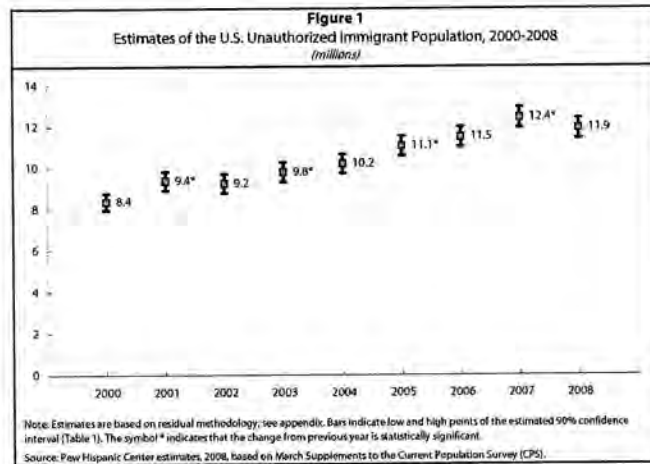
There were 11.9 million unauthorized immigrants living in the United States in March 2008, according to new Pew Hispanic Center estimates. The size of the unauthorized population appears to have declined since 2007, but this finding is inconclusive because of the margin of error in these estimates.

However, it is clear from the estimates that the unauthorized immigrant population grew more slowly in the period from 2005 to 2008 than it did earlier in the decade.

It also is clear that from 2005 to 2008, the inflow of immigrants who are undocumented fell below that of immigrants who are legal permanent residents. That reverses a trend that began a decade ago. The turnaround appears to have occurred in 2007.

The Pew Hispanic Center also estimates that inflows of unauthorized immigrants averaged 800,000 a year from 2000 to 2004, but fell to 500,000 a year from 2005 to 2008 with a decreasing year-to-year trend. By contrast, the inflow of legal permanent residents has been relatively steady this decade.

Although the growth of the unauthorized population has slackened, its size has increased by more than 40% since 2000, when it was 8.4 million. In 2005, the Pew Hispanic Center estimated there were 11.1 million undocumented immigrants in the United States. The most recent estimate, 11.9 million, indicates that unauthorized immigrants make up 4% of the U.S. population.



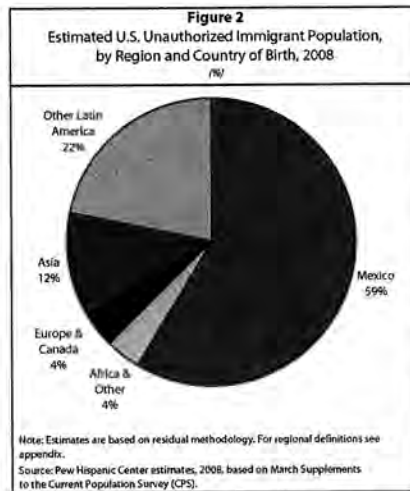
These estimates are based mainly on data from the 2000 Census and the March Current Population Surveys for the years since then. Because the Census Bureau does not ask people their immigration status, these estimates are derived using a widely accepted methodology that essentially subtracts the estimated legal-immigrant population from the total foreign-born population. The residual is treated as a source of data on the unauthorized immigrant population. [For more details, see Methodology appendix]

The estimates are not designed to explain why the net growth rate has declined. There could be a number of possible causes, including a slowdown in U.S. economic growth that has had a disproportionate impact on foreign-born Latino workers, at the same time that economic growth in Mexico and other Latin American countries has been stable. Another factor could be a heightened focus on enforcement of immigration laws, which a recent Pew Hispanic Center survey indicates has generated worry among many Hispanics.

**Other major findings:**

- Undocumented immigrants make up 30% of the nation's foreign-born population of more than 39 million people. More than four-in-ten of the nation's unauthorized immigrants—5.3 million people—have arrived since the decade began.

- The vast majority of undocumented immigrants—four-in-five—come from Latin American countries. In March 2008, 9.6 million unauthorized immigrants from Latin America were living in the United States.
- The number of unauthorized immigrants from Mexico, 7 million, appears to have leveled off since 2007. Mexico remains the birth country of most unauthorized immigrants in the U.S.
- The number of undocumented immigrants from other Latin American nations has fallen since 2007.



### About this Report

The Pew Hispanic Center estimates the undocumented population using the “residual method,” a well-developed and widely accepted technique that is based on official government data. Under this methodology, a demographic estimate of the legal foreign-born population—including naturalized citizens, legal permanent residents, temporary legal residents and refugees—is subtracted from the total foreign-born population. The remainder, or residual, is the source of population estimates and characteristics of unauthorized immigrants.

These unauthorized immigrants consist of residents of the United States who are not U.S. citizens, who do not hold current permanent-resident visas or who have not been granted permission under a set of specific authorized temporary statuses for longer-term residence and work. The vast majority of undocumented immigrants either entered the country without valid documents or they arrived with valid visas but stayed past their visa expiration date or otherwise violated the terms of their admission.

Also included in this group are some people who had entered without valid documents or violated the terms of their visas but later obtained temporary authorization to live and work in the United States. Among them are immigrants from certain countries holding temporary protected status (TPS) or people who have filed for asylum status but whose claims are unresolved. This group may account for as much as 10% of the unauthorized estimate. Many of these “quasi-legal” individuals could revert to unauthorized status.

These Pew Hispanic Center estimates use data mainly from the Current Population Survey, a monthly survey of about 55,000 households conducted jointly by the U.S. Bureau of Labor Statistics and the Census Bureau. It is best known as the source for monthly unemployment statistics. Each March, the CPS sample size and questionnaire are augmented to produce additional data on the foreign-born population and other topics. The Pew Hispanic Center estimates make adjustments to the government data to compensate for undercounting of some groups, and therefore its population totals differ somewhat from the ones the government uses. Estimates for any given year are based on a March reference date.

### A Note on Terminology

The terms “Latino” and “Hispanic” are used interchangeably in this report.

“Foreign-born” refers to an individual who is not a U.S. citizen at birth or, in other words, who is born outside the U.S., Puerto Rico or other U.S. territories and whose parents are not U.S. citizens. The terms “foreign-born” and “immigrant” are used interchangeably.



The terms “unauthorized immigrants” and “undocumented immigrants” are used interchangeably.

#### About the Authors

Jeffrey S. Passel is a senior demographer at the Pew Hispanic Center. He is a nationally known expert on immigration to the United States and on the demography of racial and ethnic groups. In 2005, Dr. Passel was made a fellow of the American Statistical Association, which cited his outstanding contributions to the measurement of population composition and change. He formerly served as principal research associate at the Urban Institute’s Labor, Human Services and Population Center. From 1987 to 1989, he was assistant chief for population estimates and projections in the Population Division of the U.S. Census Bureau.

D’Vera Cohn is a senior writer at the Pew Research Center. She was a reporter at The Washington Post from 1985 to 2006, where she wrote chiefly about demographic topics including race, immigration and families. She was the newspaper’s lead reporter for the 2000 Census.

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## Current Estimates and Trends

As of March 2008, 11.9 million undocumented immigrants were living in the United States. This represents an increase since 2005, when the Pew Hispanic Center estimated there were 11.1 million undocumented immigrants in the country. The number has risen by more than 40% since 2000, when it was estimated at 8.4 million.

The estimate of unauthorized immigrants in 2007 appears to be larger than the estimate for 2008, but this difference is not statistically significant. The estimates are derived from sample surveys and thus are subject to uncertainty from sampling error, as well as other types of error. Each annual estimate of the undocumented population is actually the midpoint of a range of possible values that could be the true number. Although it is sometimes difficult to infer magnitude or direction of any single year-to-year trend, intervals based on estimates of sampling error allow some conclusions to be drawn about changes over time.

As can be seen in Table 1 and Figure 1 the range of values for the undocumented population in 2008 is 11.4 million to 12.4 million. In 2007, the range is 11.9 million to 12.9 million. Although the apparent change between the two years is a decline of 500,000, no conclusion should be drawn about the one-year trend. That is because the apparent change of 500,000 has its own margin of error—a range that is larger than the range for either the 2007 or 2008 estimate. Thus, the true change could be zero or could be larger than 500,000. (These ranges represent approximate 90% confidence intervals, meaning that there is a 90% probability that the interval contains the true value.)

Year	ESTIMATE	LOW	HIGH
2008	11.9	11.4	12.4
2007	<b>12.4</b>	11.9	12.9
2006	11.5	11.0	12.0
2005	<b>11.1</b>	10.6	11.5
2004	10.2	9.7	10.7
2003	<b>9.8</b>	9.3	10.2
2002	9.2	8.8	9.7
2001	<b>9.4</b>	8.9	9.8
2000	8.4	7.9	8.8

Note: Estimates are based on residual methodology. Low and high values represent the bounds of the estimated 90% confidence interval; see appendix. Boldface indicates that the change from previous year is statistically significant.  
Source: Pew Hispanic Center estimates, 2008, based on March Supplements to the Current Population Survey (CPS).

The series of annual estimates in Table 1 and Figure 1 show that the overall undocumented population has increased since 2000. For half the years of this decade, it can be concluded that the unauthorized population grew during the previous year, but for the rest, the apparent change in size of the unauthorized population is not statistically significant. Looking at two-year periods, the

apparent change between 2006 and 2008 is the only time this decade that there was not a statistically significant increase.

### Annual Growth

Although the undocumented population has been rising, its net growth has slowed substantially since 2005, compared with earlier in the decade.

From 2000 to early 2005, the unauthorized immigrant population grew by an annual net average of about 525,000, increasing to 11.1 million from 8.4 million. Using information on date of arrival, the Pew Hispanic Center estimates imply that during those years, an average of 800,000 new undocumented immigrants—both border crossers and visa violators—entered the U.S. annually.

Since 2005, the growth patterns have changed substantially. From 2005 to 2008, annual growth has averaged only 275,000 as the undocumented population grew from 11.1 million to 11.9 million. The estimates of unauthorized immigrants by period of arrival imply that new annual arrivals averaged 500,000 over the three-year period, with a substantially smaller number arriving since 2007.

The undocumented population is not a fixed group of people. Over time, some immigrants enter the unauthorized population and others are subtracted from it—by leaving the country, converting to legal status or dying. The methodology behind these estimates does not produce definitive estimates for each of these components of change.

### Legal and Unauthorized Trends

This decreasing inflow of undocumented immigrants, which occurred during a period when legal immigration has been relatively steady, has had a hand in reshaping the composition of the nation's new foreign-born population. A decade ago, newly arrived unauthorized immigrants began to outnumber newly arrived legal permanent residents. The reverse now appears to be true.

Over the 1998-2004 period, the inflow of undocumented immigrants exceeded arrivals of legal permanent residents. From 2005 to 2008, about 1.6 million new undocumented immigrants arrived (an average of 500,000 a year), compared with 2.1 million legal permanent residents (an average of 650,000 a year). Examination of the

PERIOD	NUMBER	PERCENT
Total	11.9	100%
2005-2008	1.6	13%
2000-2004	3.7	31%
1995-1999	3.1	26%
1990-1994	2.0	16%
1980-1989	1.6	13%

Note: Estimates are based on residual methodology; see appendix. Numbers rounded independently and may not add to total shown. Estimates represent persons in the U.S. in unauthorized status as of March 2008. They do not represent the status at entry or the magnitude of unauthorized immigration during the period.

Source: Pew Hispanic Center estimates, 2008, based on March Supplements to the Current Population Survey (CPS).

annual estimates points to 2007 as the year the turnaround occurred.

The growth of the undocumented population may have slowed, but unauthorized immigrants continue to make up a notable share—30%—of the nation's foreign-born population of more than 39 million people.

#### Arrival Year

The unauthorized immigrant population is dominated by recent arrivals—44% came to the United States in this decade. Of those, 1.6 million, or 13% of all unauthorized immigrants, arrived from 2005 to 2008. The other 3.7 million, or 31% of the undocumented population, came to the country from 2000 to 2004.

A slightly smaller share, 43%, includes longer-term residents who arrived during the 1990s. Of the 5.1 million who arrived during that decade, 3.1 million came from in 1995 to 1999, when immigration rates reached their modern peak. An estimated 1.6 million undocumented immigrants, 13% of the total, remain as undocumented residents since arriving in the 1980s.

#### Mexico

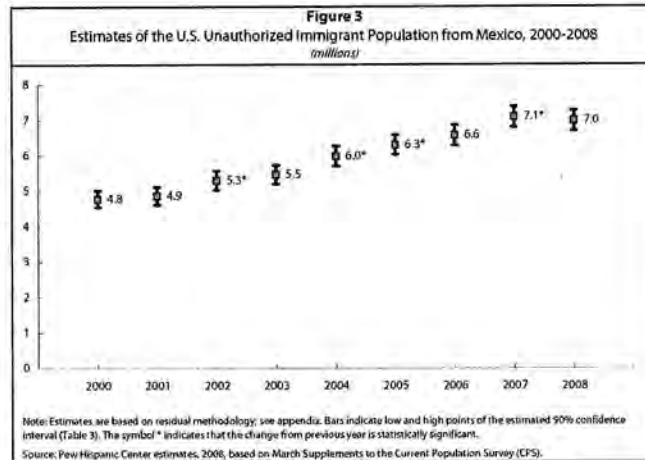
The population of undocumented Mexican immigrants has grown markedly since 2000 but appears to have leveled off since 2007.

There were 4.8 million unauthorized Mexican immigrants living in the United States at the time of the 2000 Census and 7 million in March 2008, according to the Pew Hispanic Center estimates.

Year	ESTIMATE	LOW	HIGH
2008	7.0	6.7	7.3
2007	<b>7.1</b>	6.8	7.4
2006	6.6	6.3	6.9
2005	<b>6.3</b>	6.0	6.6
2004	<b>6.0</b>	5.7	6.3
2003	5.5	5.2	5.7
2002	<b>5.3</b>	5.0	5.6
2001	4.9	4.6	5.1
2000	4.8	4.6	5.0

Note: Estimates are based on residual methodology. Low and high values represent the bounds of the estimated 90% interval; see appendix. Boldface indicates that the change from previous year is statistically significant.

Source: Pew Hispanic Center estimates, 2008, based on March Supplements to the Current Population Survey (CPS).



Inflows from Mexico have varied considerably in the past 15 years, peaking around 2000, dropping dramatically in 2002 and 2003, and increasing somewhat after that. The slowing growth of unauthorized Mexican population in accord with a number of other indicators suggests a lessening of immigration from Mexico since mid-2006.

Undocumented immigrants remain a large majority of new Mexican immigrants arriving in the U.S., with 80% to 85% of Mexicans who have been in the U.S. for less than a decade being unauthorized. Among all foreign-born Mexicans in the country, more than half (56%) are estimated to be unauthorized.

Immigrants from Mexico account for a majority (59%) of all unauthorized immigrants in the United States; no other country makes up even a double-digit share. The Mexican-born share of all undocumented immigrants remained essentially unchanged for more than a decade.

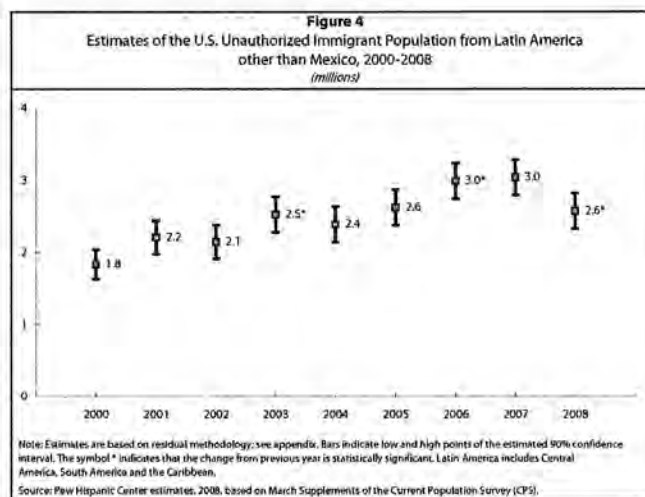
Among U.S. residents of Mexican ancestry, most were born in the United States. Four-in-ten are foreign-born.

#### Other Latin America

The number of unauthorized immigrants in the United States from Latin American countries other than Mexico grew by more than 40% from 2000, when

there were 1.8 million, to 2008, when there were 2.6 million. This population reached 3 million in March 2006, but has declined since then.

The short-term trends earlier in the decade are unclear. Overall, the number of undocumented immigrants from Latin American nations other than Mexico has risen since 2000, but the growth rate is smaller than for undocumented Mexicans and the pattern of year-to-year changes more erratic.



This recent decline is borne out by other Bureau of Labor Statistics data, cited in a [recent annual Pew Hispanic Center report](#), indicating that the number of foreign-born South Americans in the U.S. workforce declined in the first quarter of 2008 compared with 2007.

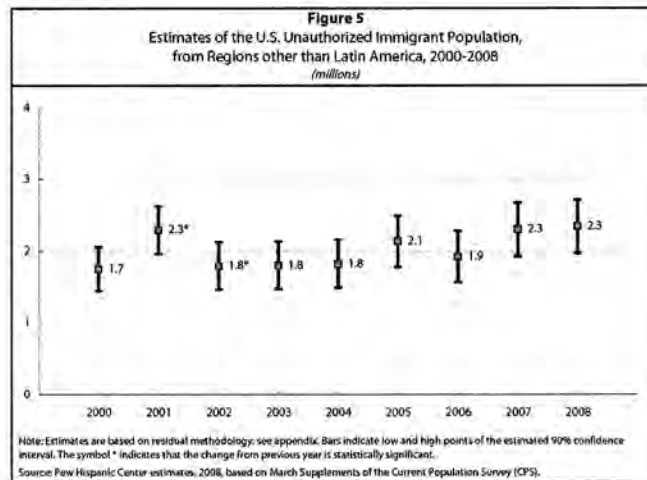
It appears that legal immigration from Latin American countries other than Mexico has been steady through the decade, while undocumented immigration has declined. That means that the composition of the immigration flow from these countries has changed this decade from majority undocumented to majority legal.



### Other Undocumented

The number of undocumented immigrants from nations outside Latin America may have risen somewhat since 2000 and leveled off since 2005, but most year-to-year changes are not statistically significant.

In March 2008, the number of unauthorized immigrants from countries outside Latin America was estimated at 2.3 million—a figure significantly larger than the 1.7 million in 2000. Few of the year-to-year changes over the decade are statistically significant. It is difficult to determine a trend because this unauthorized population is relatively small compared with the legal population, which leads to a large margin of sampling error.



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## Appendix A: Methodology

### Overview of Methods

The estimates of the unauthorized immigrant population presented in this report are derived with a residual methodology that compares the size of the total foreign-born population of the U.S. (legal and undocumented) with an independent, demographic estimate of the legally resident foreign-born population. The difference between the two is the estimated unauthorized population. Variants of the residual method have been used as a basis for measuring the unauthorized immigrant population since 1980 by various analysts, most recently by the Department of Homeland Security (Hoefer et al. 2008). (See Passel 2007 for a review of methods and estimates.) This appendix includes a brief description of the estimation methods and highlights critical assumptions and parameters.

Data on the total foreign-born population for the estimates presented are based on the March Supplements to the Current Population Survey (CPS) for 2001–2008 and on the 2000 Census. The March CPS data have been modified from the official data in several ways to produce a consistent time series that is usable for these estimates and comparisons over time. Two specific modifications are discussed here. The Census Bureau occasionally changes the methods it uses to produce population estimates used as control totals for the CPS. The changes introduced for 2008 had potentially large effects on the foreign-born population, so revised weights were developed for the historical data series to make the annual estimates comparable. The other modification involves allocating to specific countries those immigrants in the CPS who had not been assigned a country of birth or who had been assigned a broad generic code (e.g., born in Central America). The revised weights had a notable impact, especially on the estimate for 2007. The country-allocation changes affect the estimated unauthorized immigrant numbers for countries and regions of birth but have essentially no impact on the U.S. totals.

This report presents annual estimates of the unauthorized population for 2000–2008, but caution should be exercised in interpreting differences from one year to the next as measures of annual change. Sampling error in the survey and nonsampling errors in both the survey and the demographic estimate may be as large as or larger than the measured change. This appendix includes a discussion of estimated sampling variability in the CPS and its potential impact on measuring change in the unauthorized immigrant population. Traditionally, time intervals of at least four to five years have been used (e.g., Passel 2006).

### Residual Methodology

The residual methodology relies on a tautological relationship that the total number of unauthorized migrants residing in the country is equal to the total number of all immigrants less the total number of legal immigrants residing in the country, or:

$$U_{total} = A_{total} - L_{total} \quad (1)$$

where  $U_{total}$  = Unauthorized immigrants, total (counted and uncounted)

$A_{total}$  = All immigrants (Legal and Unauthorized), total

$L_{total}$  = Legal immigrants, total

In the Pew Hispanic Center's application of the residual method, the legal immigrant population consists of two main groups: legal permanent residents (by far the larger) and legal temporary immigrants. The much smaller number of legal temporary immigrants, which includes groups such as foreign students in the U.S. and persons on long-term temporary work visas (H-1B or L-1 visas), is estimated by identifying individual respondents in the CPS whose characteristics align with the visa requirements. This group is then removed from the CPS population ( $A_{total}$  in equation 1) so the remaining comparisons are for permanent immigrants only.

#### Legal Immigrant Populations

The residual estimates are calculated for a number of detailed population groups subdivided by gender, age (16 groups), country or region of birth (35 areas), date of entry to the U.S., and state (California, New York, Texas, Florida, Illinois, New Jersey and the balance of the U.S.). The following components are summed to estimate the legally resident immigrant population:

- a. Persons arriving in the U.S. before 1980—all are assumed to be legal by 2000 or later. The data for this groups are from the March CPS (or 2000 Census), corrected for undercount.
- b. Refugees—counted in the year they arrive in the U.S., not when they obtain green cards. Data are from the Office of Refugee Resettlement (ORR) or the Office of Immigration Statistics (OIS).
- c. Asylum approvals—included as legal when asylum status is approved. These, too, are counted as arriving in the year of physical arrival in the U.S., if known, or otherwise in the year of approval. Data are provided by OIS.

d. Cuban-Haitian and other entrants, Amerasians, and various groups of parolees—treated similarly to asylum approvals and refugees. They are also included as legal when approved, not when they obtain green cards; for many, these dates are the same. Data are from ORR and OIS.

e. Persons acquiring legal status under the Immigration Reform and Control Act of 1986—included as legal when they obtain their green cards, based on the *Yearbooks of Immigration Statistics* published by what was then the Immigration and Naturalization Service (INS). Almost all of these 2.6 million formerly undocumented immigrants obtained green cards between 1989 and the late 1990s. They are assigned to years of arrival (many before 1980) based on survey and other data for this group.

f. New legal permanent residents (or persons getting “green cards”). Information on this group comes from OIS and its predecessor offices in INS. Two groups of green card recipients are treated differently in the estimation process:

(1) “New Arrivals”—i.e., persons getting green cards as they enter the U.S.—are counted in the year they arrive (unless they have already been counted in groups b–e to avoid double counting).

(2) Persons “adjusting” to LPR status—i.e., persons getting green cards who are already in another legal status in the U.S. These people are counted as legal in the year they obtain their green card but are assigned to years of arrival based on date of nonimmigrant visa. Persons adjusting from statuses in groups b–e are excluded to avoid double counting.

#### Other Demographic Components

These legal immigrant population groups are combined using demographic techniques to estimate the legally resident immigrant population for each year and then carried forward one year at a time by adding new immigrants, subtracting deaths and subtracting emigrants. The data elements required for the demographic estimation process are:

a. Mortality rates to estimate deaths. The mortality rates come from official U.S. Life Tables (NCHS) applied to each age-sex-country of birth group.

b. Emigration rates to estimate movement out of the U.S. Age-sex-country-specific rates have been developed using information from Ahmed and Robinson (1994) and Van Hook et al. (2006).

c. Interstate mobility rates to estimate state-to-state movement. These rates are developed from the March CPS, which includes a question on residence one year before the survey.

#### CPS Coverage

Assumptions about coverage of immigrants in the CPS enter into the estimates at two different points. To compute the initial residual, the CPS data on the total foreign-born population are compared with an estimate of legal foreign-born residents. Because some immigrants are missed in the CPS, the estimate of legal immigrants is “deflated” with assumptions about coverage to develop an estimate of legal immigrants actually counted in the CPS. There are no direct measures of immigrant coverage in the CPS, but the Pew Hispanic Center has developed some estimated undercount rates for legal immigrants that vary by age, sex, race, and duration of residence from race-sex-age-specific estimates of undercount in Census 2000 (Hogan 2001; Mule 2002). For 2008, application of these rates results in an overall CPS undercount rate for legally resident immigrants of 2.0% and of 2.6% for legal immigrants who entered after 1980.

This initial residual estimate is actually an estimate of unauthorized immigrants counted in the CPS. To arrive at the overall total, it is necessary to inflate the numbers by the undercount rate of unauthorized immigrants. Again, there is limited information on census undercount of this group. A study of Mexicans in Los Angeles at the time of the 2000 Census found that unauthorized migrants had undercoverage rates that were several times higher than those of legal immigrants and that averaged 10–15% (Marcelli and Ong 2002). The Pew Hispanic Center has developed a set of assumptions consistent with the available information from the census-based studies and with historical demographic data from Mexico. The undercount rates are higher for countries where the population is largely Latino, for young adult males and for recent arrivals. Overall, in 2008, these assumptions resulted in an estimated undercount of 12.5% for unauthorized immigrants in the March CPS. This assumption is slightly higher than the undercount rate of 10% assumed in OIS estimates (Hofer et al., 2008, 2007, 2006); however, the OIS estimates use the Census Bureau’s American Community Survey (ACS), not the CPS.

#### Sampling Error and Interval Estimates

The residual estimate, as computed from equation (1), is subject to sampling error because the CPS component is based on a sample. It is also subject to various nonsampling errors due to the nature of the demographic estimate and the development of the CPS estimate. While the nonsampling errors are difficult to quantify, there are established methods for estimating sampling error, in general. Because the demographic estimate is not sample-based, the sampling error estimate of the undocumented immigrant population is equal to the sampling error for the CPS estimate of the foreign-born population that entered the U.S. since 1980.



The March Supplement to the CPS contains about 80,000 households with roughly 55,000 from the regular March CPS sample and additional households from the previous November as well as some from February and April samples. The survey is not a simple random sample but consists of clusters drawn at different sampling rates to represent states and other sampling strata. As a result, computing sampling errors is not straightforward. The Census Bureau does, however, provide guidance on computing standard errors (U.S. Census Bureau 2008, 2006, for example).

For the estimates shown in this report, the Pew Hispanic Center estimated the standard errors for several different population groupings—including the total foreign-born population and the population subdivided by period of arrival. Several different sets of parameters from the Census Bureau documentation were tested in computing the sampling errors—those for Asian and Hispanic populations, those for measuring income groups, those for employment groups, those for some household members and those for all household members. Each gave slightly different estimates of the standard error for the foreign-born population.

Combining the various estimates produced an approximate standard error of 300,000 for the estimate of unauthorized immigrants in 2008; for Mexico, the standard error is about 175,000; for other Latin America, 150,000; and nations other than Latin America, 225,000. With these standard errors, the 90% confidence interval in 2008 as  $\pm 495,000$  for the total unauthorized immigrant population (Table 1);  $\pm 290,000$  for Mexicans;  $\pm 250,000$  for other Latin Americans; and  $\pm 370,000$  for non-Latin Americans. Note that the standard error for non-Latin American unauthorized immigrants is larger than for either of the Latin American groups even though the estimated undocumented population is smaller. This pattern results from the fact that the relative size of the standard errors is not a function of the relative size of the undocumented population, but of the relative sizes of the total foreign-born population entering after 1980.

The CPS has undergone a number of changes this decade. In addition, the foreign-born population has increased steadily. As a result, the standard errors of the estimates of unauthorized immigrants are smaller for years earlier in the decade than for 2008. In comparing estimates from different years, the sampling error of both years' estimates must be taken into account. Thus, the standard error of the difference of change in undocumented population is roughly 1.4 times the standard error of the estimate for one year. When comparing consecutive years, the overlapping sample design of the CPS must be taken into account (U.S. Census Bureau 2006). In this case, the standard error of the change is about 1.2 times the standard error for the population in a single year. The 90% confidence intervals shown in the report are  $\pm 1.645$  times the standard error of the estimate.

### Weighting and Editing the CPS

#### CPS Weights

The Current Population Survey is weighted to agree with a set of population estimates, called “population controls.” These controls include national estimates by age-sex-race/Hispanic origin, a different set of national totals by age-sex-race and age-sex-Hispanic origin, and two sets of totals for states by age-sex-race (U.S. Census Bureau 2006; Killion 2007).

The population estimates used as control totals for the CPS are supplied each year by the Census Bureau. For most years, the population controls are consistent with those from previous years, but always incorporate new data for the most recent years. Each new series of estimates goes back to 2000 and is labeled with a “vintage” corresponding to the year in which they were introduced. (The March population controls for each year are based on the previous year’s vintage.)

In some years, the changes in the population estimates are larger as a result of new methods and/or data. Such a substantial revision occurred for the “Vintage 2007” estimates when the Census Bureau revised its method for measuring immigration. The revisions lowered the measured level of immigration for every year since 2000. As a result, the vintage 2007 population estimate for March 2008 was about 800,000 less than what it would have been if the vintage 2006 methods had continued; the change reduced the Hispanic population by about 400,000. While the Census Bureau releases the entire series of population estimates, it does not go back in time and revise the previous March CPS supplements.

The vintage 2007 revisions clearly had the potential to affect the measured size of the foreign-born population and thus the Pew Hispanic Center’s measures of undocumented immigration (U.S. Bureau of Labor Statistics 2008). The CPS estimate of the foreign-born population is obtained by summing the individual weights for foreign-born respondents and not directly from the population estimates. But revisions that affect weights of Hispanics and Asians can have a sizable impact on the measured foreign-born population.

Because this report includes the time series of undocumented population estimates for 2000–2008, it is important that the estimates be computed with consistent data. To correct the measures for changes in weighting and estimation methods, we reweighted the March CPS data for 2003–2007 using the vintage 2007 population estimates (U.S. Census Bureau 2008a) according to the weighting specifications used by the Census Bureau (2006 and Killion 2007). For 2003–2006, the impact of the changed population controls was negligible, affecting the estimate of undocumented immigrants by less than 100,000. However, for the March 2007 CPS, the introduction of new controls lowered the estimate by

300,000 over what would it have been using the originally published March CPS weights.

The published estimates and specifications did not permit full reweighting of the March 2000–2002 CPSs because of changes in the collection of race data. We anticipate revising the estimates for these years after vintage 2007 data that use the old race definitions are developed.

#### Country of Birth

The estimates of the unauthorized population shown in this report divide the world into a number of regions. “Latin America” is defined to include Mexico, Central America, Caribbean countries and South America. “Europe” includes Russia and all of the newly independent countries that were part of the former Soviet Union, even though some of the countries are geographically in Asia. This grouping is designed to maintain maximum consistency over time and with the administrative data series used. While all of these countries are separately identified in immigration statistics since their independence, they do not appear in immigration statistics of the 1980s nor are most identified as countries of birth in the CPS. “Asia,” as used in this report, is composed of the Middle Eastern countries of southwest Asia, but not the states that were part of the former Soviet Union. “Africa and Other” consists of all African countries, Oceania, and the small number of respondents not assigned a specific country of birth code.

The published CPS data assign specific countries of birth to almost the entire foreign-born population. However, several hundred thousand (weighted) cases each year are assigned as foreign born, but with their country of birth unknown. In addition, there are a number of “generic” categories used for each region of the world to encompass individuals reporting countries with too few respondents to be identified separately or individuals not giving a specific country response (e.g., Other Europe, Central America, North America). For previously published estimates (e.g., Passel 2006), many individuals with an unknown country of birth were assigned to specific countries or regions on the basis of Hispanic origin (e.g., Mexican origin and unknown country of birth to Mexico), race (e.g., Asian race to Other Asia), and country of birth of mother, father or other close relatives. However, a significant number of respondents remained in the generic categories.

For the estimates presented here, the editing process was extended to assign basically all individuals with an unknown country of birth to a specific country. Those assigned by the previous method were assigned in the same manner; the allocation process was extended to encompass a wider range of relatives and to use reports from nearby households together with the respondent’s race and Hispanic origin. In addition to assigning individuals with an unknown country of birth, the new allocation process was expanded to include some of the generic regional groupings (if all or almost all of the immigrant-sending countries in the

region could be identified). For example, for 2000–2006, the CPS included a category “born in Central America” even though all Central American countries were coded individually. Thus, in the recoded data for 2000–2006, individuals are no longer coded as “born in Central America” but more individuals are assigned to each of the specific countries. In contrast, there is a category labeled “Other African Country” but so few African countries are coded individually that the generic code could not be reliably reassigned.

The groups affected by the reassignment of country of birth differed for 2000–2006 from 2007–2008 because the Census Bureau expanded and changed the country of birth codes beginning with the January 2007 CPS (U.S. Census Bureau 2008b). The groups affected by the reassignment for 2000–2006 were North America, Central America and Unknown Country. For 2007 and later, the revised coding of countries eliminated the North America and Central America codes and expanded the number of specific countries identified. As a result, a broader set of codes be reassigned. These are: Europe not specified, Asia not specified, South America not specified, the Americas; and Unknown Country. While the reassignment of country codes affects the estimates for individual countries and smaller regions, the impact on the total number of undocumented immigrants estimated for each year is negligible and only slightly larger for the three broad groups reported here.

Mr. KING. So I think I make my point here, that law enforcement has to reflect and focus on where the laws are being broken.

And maybe for one more clarification, Professor Harris, I think I listened to Professor Kobach make a clarification, a statement on some of your testimony. And I want to give you an opportunity to respond. And I think it has to do with, on your testimony, page 3.

I am looking at the language, “In direct violation of these rules, the Department of Justice puts tens of thousands of immigration warrants, most of which are civil in nature and do not even pertain to crimes, in NCIC, with the goal of forcing local police to make arrests on these warrants.”

Now, would you care to address that as part of your testimony? Is it your position that Justice does that?

Mr. HARRIS. Congressman King, the NCIC database is governed by a series of Federal statutes and regulations. It is overseen by the FBI. There are very strict rules on what can go in it and what can't. And the objective is to keep the database absolutely clean and pristine of errors and to focus it on crime.

What has happened over the past several years, 5, 6 years—

Mr. KING. But is the answer yes?

Mr. HARRIS. The answer is other than things that are allowed in that database have been going into it, have been put into it, yes.

Mr. KING. Okay, then you stand on the statement that the Department of Justice puts tens of thousands of immigration warrants into NCIC?

Mr. HARRIS. That has been done, yes.

Mr. KING. Thank you.

And I would turn then to Professor Kobach and ask if you would clarify your response on that, please.

Mr. KOBACH. Yes. I would note that Professor Harris didn't give you a specific rule and did not give you any specific—there is no statute, certainly, but there is no specific rule that suggests that people of alien status, as opposed to citizens, cannot be listed in NCIS or that the basis of an immigration violation cannot be included in NCIC.

NCIC is—the rules, by Attorney General order, may be modified as to the protocols of putting people in and out. But I think it would be foolish to argue that someone who is a previously reported felon and presents a danger to a police officer when he is engaged in a traffic stop, that the police officer should be blind to that information. Or that if our system, our immigration court system has spent thousands, maybe hundreds of thousands of dollars at all the levels of appeal trying to deport a person, and then that person is finally deported at the end of the day and they vanish, that we shouldn't try to execute the final removal of that person.

So, you know, it is completely within any regulations that govern NCIC. And the Department of Justice looked at that very carefully before aliens were put into the system.

Mr. KING. Thank you, Professor Kobach.

Just one concluding question here, and then I will yield back my time after the response.

But I just have to comment, Chief Gascón, that it is a bit astonishing to me that you would come here and have your trip paid by entities out there that don't come to the front of your mind when you are asked that question before this Committee. I would think that, in the business that you are in, you would ask the question before you came, as to who might be funding it. And I remain curious about that, and if you would like to further enlighten this Committee, I would sure appreciate it.

Chief GASCÓN. Yeah. And, as I indicated, I will provide you that information. There are multiple groups, and I will get that information to you. It will be a pleasure.

Mr. KING. I thank you, Chief Gascón. I am still a bit speechless at that response, and I would hope that when others come here they will be able to answer that question up front instead of in writing afterwards.

And, as I promised, I thank all the witnesses and yield back the balance of my time.

Ms. LOFGREN. The gentleman's time has expired.

Without objection, I would enter into the record the testimony of William Riley, the acting executive director of the Office of State and Local Coordination for ICE, that was offered to the Homeland Security Committee, which I also serve on, on March 4, indicating that in entire the State of Florida there are 58 officers who have been trained under the program.

[The information referred to follows:]



# U.S. Immigration and Customs Enforcement

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STATEMENT

OF

**WILLIAM F. RILEY**

ACTING EXECUTIVE DIRECTOR  
OFFICE OF STATE AND LOCAL COORDINATION

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

REGARDING A HEARING ON

**“Examining 287(g): The Role of State and  
Local Law Enforcement in Immigration Law”**

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON HOMELAND SECURITY

March 4, 2009 - 2:00 p.m.  
311 Cannon House Office Building  
Washington, D.C.

Chairman Thompson, Ranking Member King and distinguished members of the Committee. Thank you for the opportunity to testify before you today about U.S. Immigration and Customs Enforcement's (ICE) management and oversight of the 287(g) delegation of authority program, which allows State and local law enforcement agencies (LEA) to partner with ICE to enforce our nation's immigration laws.

ICE is the Department of Homeland Security's (DHS) largest investigative agency with responsibility for investigations having a nexus to the border and within the interior of the United States. I am pleased to discuss with you today the partnerships ICE has in place with State and local LEAs through the 287(g) delegation of authority program and the Government Accountability Office's (GAO) recommendations to improve management of the program.

ICE's homeland security mission readily acknowledges the critical role that State and local law enforcement have in our country's broad homeland security strategy. ICE's State and local partners are frequently our nation's first responders. They often encounter foreign-born criminals and immigration violators who threaten national security and public safety during the course of their daily duties. To ensure that foreign nationals cannot exploit any perceived vulnerability, ICE partners with State and local LEAs through a variety of arrangements, including the 287(g) Program, which increases the overall effectiveness of the entire law enforcement community's ability to protect our homeland.

#### **BACKGROUND AND RAPID GROWTH OF THE 287(g) PROGRAM**

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), effective September 30, 1996, added Section 287(g) to the Immigration and Nationality Act (INA), which authorized the Attorney General, now the Secretary of Homeland Security, to designate



State and local law enforcement officers to act as federal immigration officers. Through Memoranda of Agreement (MOA), specially trained State and local law enforcement officers perform immigration enforcement duties only under the supervision of ICE agents and officers.

These agreements allow ICE to utilize State and local officers as force multipliers in both task forces and detention facilities. Agencies participating under the Task Force Officer (TFO) model work under the supervision of the ICE Office of Investigations personnel. These TFOs focus on criminal activity involving gangs, identity and benefit fraud, human and narcotics smuggling and trafficking. TFOs assist ICE with both long-term investigations and large-scale enforcement activities. ICE's enforcement efforts have benefited greatly from the synergy created by the fusion of federal immigration authority with the State and local law enforcement authority vested in these cross-trained officers. For example:

- In Fiscal Year 2008, the Northwest Arkansas Immigration and Criminal Apprehension Task Force (ICAT), a 287(g) task force, participated in the investigation of the Acambaro Mexican Restaurant and Garcia's Distributor, Inc. This investigation that involved harboring of aliens resulted in the execution of six search warrants, four arrest warrants, and a seizure warrant for 15 bank accounts. These warrants led to the arrest of 19 foreign nationals and the seizure of nine vehicles and approximately \$114,000 in U.S. currency. In addition to the seizures, ICE filed verified complaints of forfeiture on 11 real properties in Northwest Arkansas valued at more than \$3.5 million.

Agencies participating in the 287(g) Program's Jail Enforcement Officer (JEO) model partner with ICE in detention facilities under the supervision of the ICE Office of Detention and Removal Operation personnel. Cross-designated officers expand the reach of ICE's

Criminal Alien Program (CAP). The intersection of the CAP and 287(g) programs further ICE's efforts to identify aliens charged with and/or convicted of crimes who are incarcerated within State and local facilities. Furthermore, the program helps to ensure that criminal aliens are not released into the community by assisting with the identification of removable aliens during the booking process and then assisting ICE with the processing of those identified aliens for removal.

The following exemplifies how these partnerships have expanded ICE's presence in State and local jails:

- On September 30, 2008, officers assigned to the Wake County (North Carolina) Sheriff's Office 287(g) Program identified, interviewed and placed detainees on five individuals who were arrested and charged with murder and accessory after the fact to murder. It was determined that all five individuals were illegally present in the United States, and are being held in connection with the murder of a 26 year old individual from Raleigh, North Carolina. The five individuals will be processed for removal proceedings and, upon completion of any criminal sentence served, they will be transferred to ICE for removal.

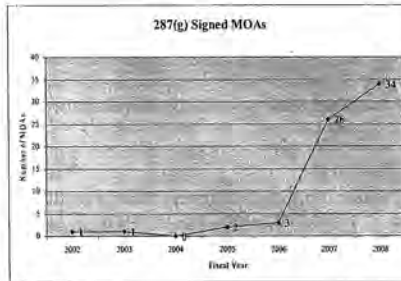
To place the great strides ICE has made with the 287(g) Program in context, it is necessary to examine how the program began. The first 287(g) agreement was executed under the former Immigration and Naturalization Service (INS) in the aftermath of the 9/11 attacks. After Florida law enforcement officials became increasingly concerned about the number of terrorism-related investigations in Florida, many of which involved foreign nationals, Florida officials approached the former INS seeking participation in the 287(g) Program. Thus, the first 287(g) agreement was executed with the Florida Department of Law Enforcement (FDLE)

in 2002, which resulted in the creation of seven Regional Domestic Security Task Forces that were established in the State of Florida. Thereafter, 35 officers assigned to these regional task forces participated in, and graduated from, the 287(g) training program. Since the inception of that agreement, ICE has trained and certified an additional 23 officers under the FDLE MOA.

As I noted earlier, ICE partnered with State and local law enforcement agencies to address the vulnerabilities discovered in the aftermath of the 9/11 attacks. However, our work is not done. To fulfill its homeland security and public safety mission, ICE has carefully expanded the 287(g) Program to increase ICE's ability to identify and remove criminal aliens from the United States.

As a result of community concern associated with illegal migration and the public safety threat posed by criminal aliens, there has been increased interest in the 287(g) Program. A review of the current state of the 287(g) Program reveals that, as of February 2009, a total of 951 law enforcement officers have been trained pursuant to 67 signed MOA's in 23 states.<sup>1</sup> As the below chart illustrates, ICE has seen a dramatic rise in 287(g) Program participation and interest during fiscal years 2007 and 2008.

Fiscal Year	MOAs
2002	1
2003	1
2004	0
2005	2
2006	3
2007	26
2008	34
<b>Total</b>	<b>67</b>



<sup>1</sup> Please see Attachment 1 for a list of all 67 agreements.

As of February 2009, ICE's 287(g) cross-designated partners, operating under 67 MOAs, have encountered over 90,000 aliens who were screened for removability. We have seen positive results from the current 287(g) Program. For example, the 29 287(g) LEA partners selected for review during the GAO audit encountered 43,000 aliens. The work conducted by the same 29 participants during Fiscal Year 2008 resulted in 34,000 aliens being detained by ICE. Of the 34,000 detained, approximately 41 percent were placed in removal proceedings and approximately 44 percent agreed to voluntarily depart the United States.

As ICE has expanded the 287(g) Program, it has become one of the primary tools requested by State and local LEAs as they address their immigration enforcement concerns. While ICE acknowledges the effectiveness of a multi-agency, multi-authority approach to protect public safety, ICE is not always in a position to grant all the requests for participation in the 287(g) Program. Further, careful study of the requirements of each LEA revealed that participation in the 287(g) Program was not always the best fit for every State and local LEA.

Accordingly, we created the ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ICE ACCESS) umbrella program in fall 2007 to assist State and local LEAs that are not enrolled in the 287(g) Program. ICE ACCESS programs allow ICE personnel to collaborate with their local law enforcement peers to address specific local challenges and provide solutions and alternatives tailored to each community's needs. ICE ACCESS facilitates partnerships between ICE and State and local LEAs to target criminal aliens, document and immigration benefit fraud, human trafficking, fugitive aliens, narcotics smuggling and money laundering.

**ICE OVERSIGHT OF THE 287(g) PROGRAM**

The ICE Office of State and Local Coordination (OSLC) was established in December 2007, and is responsible for the management and oversight of the 287(g) Program. OSLC has implemented the following practices and procedures to ensure that ICE is adequately overseeing the program:

- ✓ Prior to attending training, all 287(g) candidates must complete a background questionnaire. The questionnaire requires the submission of fingerprints, a personal history questionnaire, and the candidate's disciplinary history. ICE's Office of Professional Responsibility conducts a background check and determines each officer's suitability to participate in the 287(g) Program.
- ✓ Officers cleared to participate in the 287(g) Program must complete a multi-week training program conducted by the ICE Office of Training and Development. To successfully complete the program, all officers must pass each examination with a minimum score of 70 percent. If an officer fails to attain a 70 percent rating on any examination, the officer is provided a single opportunity to review the curriculum and re-take a similar examination. Only one remediation examination is permitted during the entire course. Failure to achieve a 70 percent on any two examinations results in the automatic disqualification of the candidate.
- ✓ Upon successful completion of the training, officers are granted the authority to carry out immigration enforcement functions. 287(g) designated officers are only permitted to exercise immigration enforcement consistent with the parameters outlined in the Memorandum of Agreement (MOA) executed between ICE and the officer's LEA. Each MOA includes a section that requires that any immigration enforcement activities

- be supervised and directed by ICE supervisory agents and officers. Cross-designated officers are not authorized to perform immigration functions except when working under the supervision of ICE. If a State or local officer violates the MOA, ICE may suspend or terminate an individual officer's participation in the program. Additionally, at any time deemed necessary, ICE may suspend or terminate the MOA with the LEA.
- ✓ To ensure that the LEA and the supervising ICE component operate in compliance with the terms in the MOA, OSLC and Office of Professional Responsibility have developed a vigorous inspection program to audit 287(g) agreements. These inspections are conducted by the Office of Professional Responsibility, which provides OSLC and ICE senior management with an assessment regarding the performance of the MOA.
  - ✓ To ensure cross-designated officers' training remains current, additional training is available to the officers through eight different courses available through ICE's online Virtual University. These courses were developed to ensure that State and local officers are informed of new developments in immigration law and policy.

#### **COMMENTS ON GAO REPORT**

I would like to take this opportunity to discuss ICE's response to the Government Accountability Office (GAO) report, *Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws*. First, let me note that ICE welcomed GAO's review of the 287(g) Program. Although still in its infancy, as ICE has expanded the program, it has not only seen an increase in public interest, but increased scrutiny as well. To ensure the program is operating in the most efficient manner, ICE reviewed the draft copy of the report that contained five recommendations. ICE concurs

with all of the recommendations and, in some areas, had already begun addressing the recommendations before the GAO study was completed.

Before addressing ICE's response to GAO's recommendations, I would like to point out that soon after her confirmation as Secretary of Homeland Security, Secretary Napolitano issued a wide-ranging action directive on immigration and border security. The directive requires specific Department offices and components to work together and with State and local partners to review and assess current plans and policies in this area.

Secretary Napolitano is looking for metrics of success, gaps in service and resources, partnerships with State and local governments and other federal agencies as well as other suggestions for reforms, restructuring and consolidation where needed. Included in that directive is a review of the current 287(g) Program. With that in mind and in response to the GAO recommendations, ICE has begun the process of redrafting the template that is used to form 287(g) agreements. Once redrafted, the template will be submitted to DHS headquarters for comment and approval. Upon being approved, this template will incorporate many of the recommendations made by GAO. For example:

1. The MOAs will include the nature and extent of supervisory activities ICE officers are expected to carry out as part of their responsibilities in overseeing the implementation of the 287(g) Program;
2. Communicating that information to both ICE officers and State and local participating agencies;
3. The MOAs will outline how and under what circumstances 287(g) authority is to be used by State and local law enforcement officers in participating agencies;

4. Also incorporated in each MOA are ICE's detention priorities. These priorities ensure that ICE's finite detention space is used to detain the aliens who pose the greatest risk to the public. Specifically, the following list reflects the categories of aliens that are a priority for detention, with the highest priority being Level 1 criminal aliens. The following priorities will be listed in all MOAs:
  - Level 1 – Individuals who have been convicted of major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping;
  - Level 2 – Individuals who have been convicted of minor drug offenses and/or mainly property offenses such as burglary, larceny, fraud and money laundering; and
  - Level 3 – Individuals who have been convicted of other offenses.
5. "Sunset" dates will be incorporated into all MOAs to ensure regular review and modification as needed; and
6. ICE will also specify the program information or data that each agency is expected to collect regarding their implementation of the 287(g) Program and how this information is to be reported.

Furthermore, all 287(g) partners are required to use the ENFORCE<sup>2</sup> system to ensure that ICE has all relevant data with which to monitor the operation of each 287(g) MOA. However, ICE recognizes that in its current state, ENFORCE has limited capabilities to capture the criminal history of each alien processed.

OSLC is working to create system enhancements to ENFORCE that will allow ICE to classify the types of aliens 287(g) trained officers are encountering. Specifically, ICE will require that the program participants populate mandatory ENFORCE data fields concerning the type of criminal activity the alien has engaged in. Violent crimes, crimes

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<sup>2</sup> ENFORCE is the primary administrative arrest and booking case management system for DHS.



against property, narcotics violations, traffic driving under the influence (DUI) related violations and non-DUI related traffic violations will all be captured. Furthermore, there will be fields within ENFORCE concerning the severity of crimes broken down by felonies, misdemeanors or civil violations. This data will be used by ICE to evaluate whether or not our 287(g) partnerships function in accord using resources with ICE priorities and to ensure that the continuation of an agreement is in the best interest of ICE.

Additionally, pursuant to the 2009 Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, the DHS Office of Inspector General will be reviewing the 287(g) Program to ensure that none of the funds provided to the 287(g) Program are being used where the terms of the 287(g) agreements have been violated.

#### CONCLUSION

In closing, it is critically important to note, as pointed out in GAO's report, many benefits have been realized by the agencies participating in the 287(g) Program. Program participants reported to GAO a reduction in crime, the removal of repeat offenders and other safety benefits. The cost savings associated with crime reduction are not being easily quantified, but there has undoubtedly been a positive impact on many communities. I am proud of the partnerships ICE has formed with 287(g) trained State and local law enforcement officers. These partnerships are essential to ICE carrying out its mission of deterring criminal alien activity and threats to national security and public safety throughout the United States. While ICE has expanded the 287(g) Program rapidly and its internal management controls can be improved, I believe that we have a strong framework in place to effectuate improvements, and I look forward to the challenges that lay ahead.

Again, I thank the Committee for its support of ICE and our critical mission. I would be happy to answer any questions you might have at this time.

ATTACHMENT 1

State	MOA_Name	MOA_Type	Signed_Date
AL	AL State Police	Task Force	9/10/2003
AL	Etowah County Sheriff's Office	Detention	7/8/2008
AR	Benton County Sheriff's Office	Detention/Task Force	9/26/2007
AR	City of Springdale Police Department	Task Force	9/26/2007
AR	Rogers Police Department	Task Force	9/25/2007
AR	Washington County Sheriff's Office AR	Detention/Task Force	9/26/2007
AZ	AZ Department of Corrections	Detention	9/16/2005
AZ	AZ Department of Public Safety	Task Force	4/15/2007
AZ	City of Phoenix Police Department	Task Force	3/10/2008
AZ	Maricopa County Sheriff's Office	Detention/Task Force	2/7/2007
AZ	Pima County Sheriff's Office	Detention/Task Force	3/10/2008
AZ	Pinal County Sheriff's Office	Detention/Task Force	3/10/2008
AZ	Yavapai County Sheriff's Office	Detention/Task Force	3/10/2008
CA	Los Angeles County Sheriff's Office	Detention	2/1/2005
CA	Orange County Sheriff's Office	Detention	11/2/2006
CA	Riverside County Sheriff's Office	Detention	4/28/2006
CA	San Bernardino County Sheriff's Office	Detention	10/19/2005
CO	CO Department of Public Safety	Task Force	3/29/2007
CO	El Paso County Sheriff's Office	Detention	5/17/2007
FL	Bay County Sheriff's Office	Task Force	6/15/2008
FL	Brevard County Sheriff's Office	Detention	8/13/2008
FL	Collier County Sheriff's Office	Detention/Task Force	8/6/2007
FL	FL Department of Law Enforcement	Task Force	7/2/2002
FL	Jacksonville Sheriff's Office	Detention	7/8/2008
FL	Manatee County Sheriff's Office	Detention	7/8/2008
GA	Cobb County Sheriff's Office	Detention	2/13/2007
GA	GA Department of Public Safety	Task Force	7/27/2007
GA	Hall County Sheriff's Office	Detention/Task Force	2/29/2008
GA	Whitfield County Sheriff's Office	Detention	2/4/2008
MA	Barnstable County Sheriff's Office	Detention	8/25/2007
MA	Framingham Police Department	Task Force	8/14/2007
MA	MA Department of Corrections	Detention	3/26/2007
MD	Frederick County Sheriff's Office	Detention/Task Force	2/6/2008
MN	MN Department of Public Safety	Task Force	9/22/2008
MO	MO State Highway Patrol	Task Force	6/25/2008
NC	Alamance County Sheriff's Office	Detention	1/10/2007
NC	Cabarrus County Sheriff's Office	Detention	8/2/2007
NC	Cumberland County Sheriff's Office	Detention	6/25/2008
NC	Durham Police Department	Task Force	2/1/2008
NC	Gaston County Sheriff's Office	Detention	2/22/2007
NC	Henderson County Sheriff's Office	Detention	6/25/2008
NC	Mecklenburg County Sheriff's Office	Detention	2/27/2006
NC	Wake County Sheriff's Office	Detention	6/25/2008
NH	Hudson City Police Department	Task Force	5/5/2007
NJ	Hudson County Department of Corrections	Detention	8/11/2008
NM	NM Department of Corrections	Detention	9/17/2007
NV	Las Vegas Metropolitan Police Dept	Detention	9/8/2008
OH	Butler County Sheriff's Office	Detention/Task Force	2/5/2008
OK	Tulsa County Sheriff's Office	Detention/Task Force	8/6/2007

SC	Beaufort County Sheriff's Office	Task Force	6/25/2008
SC	York County Sheriff's Office	Detention	10/16/2007
TN	Davidson County Sheriff's Office	Detention	2/21/2007
TN	TN Department of Safety	Task Force	6/25/2008
TX	Carrollton Police Department	Detention	8/12/2008
TX	Farmers Branch Police Dept.	Task Force	7/8/2008
TX	Harris County Sheriff's Office	Detention	7/20/2008
UT	Washington County Sheriff's Office UT	Detention	9/22/2008
UT	Weber County Sheriff's Office	Detention	9/22/2008
VA	City of Manassas Police Department	Task Force	3/5/2008
VA	Herndon Police Department	Task Force	3/21/2007
VA	Loucoum County Sheriff's Office	Task Force	6/25/2008
VA	Manassas Park Police Department	Task Force	3/10/2008
VA	Prince William County Police Department	Task Force	2/26/2008
VA	Prince William County Sheriff's Office	Task Force	2/26/2008
VA	Prince William-Manassas Adult Detention Center	Detention	7/9/2007
VA	Rockingham County Sheriff's Office	Detention/Task Force	4/25/2007
VA	Shenandoah County Sheriff's Office	Detention/Task Force	5/10/2007

Ms. LOFGREN. And also, without objection, I am entering into the record the executive summary of the Justice Strategies report, indicating that 80 percent of these 287 agreements are in the South. [The information referred to follows:]



## EXECUTIVE SUMMARY

Over five percent of the US population is deportable, including twelve million undocumented residents and legal permanent residents with past offenses. While programs to permanently or temporarily legalize status can shrink the numbers in the shadows, they cannot erase an ever-present deportable population. Meanwhile, more than fifteen percent of US families include at least one parent who is a noncitizen and one child a citizen. Deportable people—who by law must be expelled from our borders—are in fact integrated into American families, businesses, and communities. This paradox complicates a basic question: Who should enforce our nation's immigration laws?

A tiny statute passed under the administration of Bill Clinton and implemented by George W. Bush provides one answer to that question. 287(g) refers to a law, written into the 1996 comprehensive immigration reforms, which for the first time in US history created a formal mechanism for federal executives to extend to local community-based agencies the extraordinary arrest and incarceration powers originally carved out for immigration police stationed at the borders. This *devolution*—shifting immigration enforcement from federal to local hands—brings the border to the interior of our nation.

Born in 2003, Immigration and Customs Enforcement (ICE) is one of three immigration agencies within the Department of Homeland Security. The Bush administration identified devolution of immigration law enforcement as a primary strategy to build capacity and established the 287(g) program as its premiere project. The program recruits state and local police, as well as correctional staff in jails and prisons to perform civil immigration arrests and detentions on behalf of the federal government.

The devolution of civil immigration enforcement to criminal justice agencies adds new questions to an old debate: Does immigration enforcement serve

a public safety mandate? Who should pay for the federal deportation mandate? Are civil immigration and criminal law enforcement compatible enterprises? Is ICE competent to oversee the transfer of extraordinary civil immigration powers to local authorities?

"Local Democracy on ICE" examines the 287(g) program specifically, as well as ICE devolution generally. We conducted an extensive literature review and interviews with diverse sources including elected leaders, court officials, security experts, reform advocates, and activists. The following findings contribute to a public safety discussion grounded in facts.

### The 287(g) Program has failed.

***The 287(g) program has harmed, not served, our public safety.***

ICE marketed the 287(g) program as a public safety measure to get "criminal illegal aliens" off our streets. But civil immigration powers are extraneous to that mission. Criminal law provides sufficient authority for state and local police to arrest anyone, including a noncitizen, suspected of a crime. The arrest powers delegated under the 287(g) program become useful precisely when an arrestee is *not* a "criminal illegal alien." When an officer lacks reasonable suspicion of a crime, civil immigration powers still allow for arrest and incarceration.

ICE powers take the handcuffs off law enforcement, at the same time distracting police from their core public safety mission. Immigrants make a poor target for anti-crime campaigns. Studies consistently show that immigrants have a lower rate of crime than American-born citizens, and commit fewer violent crimes. Legally, the 287(g) program is equivalent to requiring police to check the tax returns of every person stopped for a speeding ticket.

From the outset, the 287(g) program drew widespread criticism. The Major Cities Chiefs Association and other community policing proponents feared the program would make immigrant victims of crime afraid to call 911.

## EXECUTIVE SUMMARY

Legal scholars questioned the wisdom of allowing constitutional questions raised by devolution to be trampled by executive force. Civil rights were a key concern. Numerous racial profiling lawsuits against 287(g) deputized agencies are now pending.

**Race, not crime, has propelled 287(g) program growth.** In the start-up phase of the program, ICE did not prioritize regions heavily impacted by "criminal illegal alien" activity. FBI and census data indicate that sixty-one percent of ICE-deputized localities had violent and property crime indices lower than the national average. Meanwhile eighty-seven percent had a rate of Latino population growth higher than the national average. ICE signed nearly eighty percent of its 287(g) agreements with agencies in the US South. While it is true that crime rates in that region are higher than in others, ICE's focus in the South is disproportionate and confounds a balanced approach to public safety.

**ICE has recruited any and all law enforcement agencies to do its bidding, hastily devolving deportation powers into ill-equipped local hands.** Partners include street police and traffic cops, corrections officers in state prisons and local jails. By August 2008, more than 840 officers in twenty states were deputized, and 70,000 immigrants detained. County sheriffs make up sixty-two percent of ICE partners. In Butler County, Ohio, ICE extended deportation authority to the sheriff *after* he sought re-election on a nationally publicized anti-immigrant platform. ICE granted the largest and most powerful 287(g) contract to Sheriff Joe Arpaio of Maricopa County in Arizona after mismanaged jails cost his county over \$43 million in death and abuse lawsuits; and after he trespassed into neighboring jurisdictions to unlawfully dump immigrants at the border for deportation.

Traffic violators and day laborers are the program's central targets. ICE asserts that the 287(g) program is not designed to crack down on overcrowded apartments, day laborer activities, or traffic offenses. Yet ICE has deputized the Missouri State Highway Patrol, an agency whose core mandate is to enforce the traffic laws. Sheriff Arpaio summarizes the

program's real added value, "When we stop a car for probable cause, we take the other passengers too." His 287(g) "crime suppression sweeps" have targeted day laborers and drivers of color, including US citizens. In Gaston, North Carolina, ninety-five percent of state charges filed against 287(g) arrestees were for misdemeanors—60 percent were for traffic violations that were not DWIs. In Berry Hill, Tennessee, a police officer arrested—rather than issued a routine ticket to—a driver in her last days of pregnancy. In jail, an ICE-deputized corrections officer placed a civil immigration detainer on her, subject her to indefinite incarceration pending ICE action. She went into labor while shackled to a jail hospital bed.

**287(g) sets up states and localities to bail out the federal government.**

**The 287(g) program is unfunded, by statute.** The 1996 law prohibits the feds from reimbursing a state or local agency for the cost of civil arrests and incarceration. ICE may have misrepresented this fact. A sheriff at the 2007 conference of the National Association of Sheriffs alleges that ICE representatives said the feds pay up to \$90 per day for each 287(g) arrestee. In 2006 Congress gave the 287(g) program its first budget line of \$5 million, and continued that level of funding through fiscal year 2008. Monies were intended for ICE personnel and infrastructure expenses only. Yet through 2008, ICE overspent by at least \$50 million in program costs.

**ICE fact sheets incorrectly tout the 287(g) program as a net money saver.** The program purportedly saved Arizona \$9 million by accelerating the removal of immigrants from the prison system. But this truncated economics does not count the \$30 million in state monies appropriated from 2007 through 2009 to fund partnerships with ICE. With a \$2 billion budget deficit, among the largest for any state in the nation, Arizona has yet to fully itemize the costs of immigration enforcement. And despite infusions of state cash, Maricopa County accrued a \$1.3 million budget deficit in the program's first three months.

**Under 287(g), state and local governments essentially sign a blank check to bolster ICE's failed business of immigration enforcement.**

Unrelated Homeland Security grants may be fanning the rumor that 287(g) is a money generator. After Alabama signed a 287(g) agreement, the city of Hoover absorbed more than \$400,000 in homeland security grants to buy a new fire truck and open a "Department of Homeland Security and Immigration." While Hoover found gold in the Homeland Security hills, Virginia's Prince William County lost a small fortune. When the county board of supervisors approved 287(g) participation, it appropriated an extra \$1.4 million of local tax revenue to fund year one. The actual cost amounted to \$6.4 million with a newly projected five-year cost of \$26 million. The board had to raise property taxes by five percent and slash parts of the police and fire rescue budgets to further the mission of 287(g).

**Fiscally responsible leaders have rejected the program.** In Morris County, New Jersey, a Democratic mayor sought a 287(g) contract. But a technical requirement—provision of local jail beds to house arrestees—served to disrupt his unilateral action. The county jail's Republican sheriff investigated the ICE partnership. He found that a neighboring county lost \$250,000 in unanticipated security and litigation costs while participating in ICE's devolved detention program. After learning that ICE does not protect individual deputized local officers from legal liability, he rejected the 287(g) bid. Law enforcement agencies nationwide have said no to the 287(g) program because it serves neither public good nor organizational interest.

**The devolution program is destined to fail.**

**Civil and criminal law enforcement are incompatible enterprises.**

The 287(g) program rests on a faulty assumption that the civil immigration mandate can be seamlessly absorbed into the crime-control mission shared by criminal justice agencies. Like the universally feared tax audits of the Internal

Revenue Service, the deportation authority wielded by ICE falls within civil law. But unlike the IRS, ICE is the only federal agency with the power to perform mass "civil" incarceration. Counter-intuitively, civil immigration law provides greater search, arrest, and incarceration powers than criminal law. The Constitution's protections against arrest without probable cause, indefinite detention, trial without counsel, double jeopardy, and self-incrimination, as well as the statute of limitations, do not apply equally (or in some cases at all) in the civil immigration context.

**While the line between civil and criminal law is a moving target, 287(g) is defining the parameters by executive force.** At the 2008 Police Foundation conference, the executive director of ICE's Office of State and Local Coordination stunned the audience when he explained to them the value of civil immigration powers, "We can make a person disappear." Nationwide, the 287(g) program has promoted vigilante immigration enforcement and normalized the widely refuted idea that local law enforcement has the inherent authority to enforce immigration laws. In Arizona localities that have not yet joined the 287(g) program are now detaining suspected immigrants for ICE, without criminal charges. In a reversal of longstanding policy, the Miami Police Department now claims that it has the inherent authority to arrest anyone suspected of the federal immigration offense of crossing the border illegally.

**The "Arizona Experiment" illustrates how incompatible civil immigration and criminal law enforcement really are.** The *Wall Street Journal* has called Arizona the nation's leading laboratory in locally driven immigration enforcement. Arizona's first 287(g) program, brokered by state and federal executives, accelerated a massive crackdown on immigration violators. In 2005, one year before state legislatures around the country began to replicate federal immigration offenses in their own penal codes, Arizona blazed the trail becoming the first state in US history to enact its own international human trafficking statute. The novel law's enforcement resulted in the prosecution of nearly 500 victims, but not a single trafficking boss.

## EXECUTIVE SUMMARY

**In Arizona the civil immigration mandate swiftly corrupted the mission of the criminal justice system.** Another state law overwhelmed the bail system by amending the Constitution to strip undocumented immigrants of the right to bail. Arizona's criminal process morphed into a hybrid immigration proceeding. In the face of two masters, judicial officers who were neutral arbiters on criminal charges became prosecutors on immigration charges. They were even required to accept uncorroborated allegations about immigration status by police as sole proof of deportability. Prosecutors no longer have to prove that an immigrant poses a risk of flight or threat to society to impose pretrial detention. Allegation of a civil immigration violation makes proof irrelevant.

**ICE is incompetent to manage devolution programs.**

**ICE suffers from mission conflict.** Since its inception, ICE's budget has grown more than 200 percent to more than \$5.4 billion. While ICE is responsible for interior immigration enforcement, it is also the largest investigative arm of the Department of Homeland Security. But ICE has forsaken intelligence in favor of brute force. In the ten-year strategic plan of ICE's Detention and Removal Office, entitled *Endgame*, the agency sets out its aim to "remove all removable aliens"—a goal utterly disconnected from economic realities and measurable public safety impacts. *Endgame* also notes that unique differences between civil and criminal detention rules threaten the integrity of ICE detention operations.

**ICE has failed to supervise its 287(g) contracts, in violation of federal law.** By statute, ICE is responsible to "supervise and direct" all 287(g) activity. As one 287(g) contract explains, "Participating LEA personnel are not authorized to perform immigration officer functions, except when working under the supervision of an ICE officer." Across the board participating localities report that the primary direction given by ICE is training on how to check for immigration status through electronic media. While federal immigration officers typically receive five months of initial training,

287(g) deputized officers receive lessons compressed into a five-week crash course. ICE personnel do not lead or directly oversee 287(g) arrests. ICE has accepted vague paperwork from deputized agencies in lieu of real accounting. Faced with criticism that he has not followed requirements of his ICE contract, Sheriff Arpaio responded, "Do you think I'm going to report to the federal government? I don't report to them."

**ICE continues to fail the residents of Maricopa County.** After Phoenix Mayor Phil Gordon asked ICE to audit Maricopa County for abusing the 287(g) program to target "people with broken tail lights," ICE agents reported that their internal investigation confirmed everything was fine. ICE did not intervene when Sheriff Arpaio permitted volunteers untrained in immigration enforcement to support his 287(g) sweeps. These sweeps have targeted day laborers and drivers of color. The conservative Goldwater Institute criticizes Maricopa County for rampant violation of the 287(g) contract. Janet Napolitano, former governor of Arizona and now secretary of Homeland Security, rescinded \$600,000 in state grants to Maricopa County when she saw the 287(g) sweeps spiral out of control. Elected leaders have called for a Department of Justice investigation of Sheriff Arpaio. But no agency has held ICE accountable for its repeated failure to terminate the nation's largest and most publicly criticized 287(g) contract.

**ICE has failed at management of its largest devolution program: civil immigration detention.** The question of whether immigration enforcement should be devolved from federal to local hands cannot be separated from the question of whether ICE is competent to oversee this legally and organizationally complex process. In its short life, ICE has already been the focus of eight internal Homeland Security audits. Mismanagement of the civil detention system, ICE's largest devolution program, is the most frequent theme. One audit notes, "ICE is not well positioned to oversee the growing detention caseload." Over eighty people have died in "civil" custody, yet ICE lobbies for more resources to detain noncitizens who have



not been deemed either a *risk of flight* or threat to society.

### Our Recommendations

Our broken immigration system must be fixed, not burdened with avoidable dead weight. To redress the harms that the 287(g) program has already inflicted on public safety and local democracy, we recommend:

**The Obama Administration should terminate the 287(g) program.** Day laborers and drivers of color make poor law enforcement targets. The 287(g) program fails to strike the correct balance between safety and rights. The program also amounts to a local and state bailout of the failed federal immigration enforcement business.

**The U.S. Government Accountability Office should investigate the 287(g) program.** ICE asserts that it has already conducted an internal investigation of all 287(g) contracts and has found no errors. Documented abuses from Maricopa County, Arizona to Prince William County, Virginia, tell another story. The GAO, as a neutral party, must determine how the program has impacted public safety; and how much local, state, and federal tax monies have been used for its implementation.

**The Justice Department should investigate the 287(g) program for violation of the executive order banning racial profiling.** Widespread "crime suppression sweeps" in Maricopa County and documented cases of racial profiling throughout the country warrant an investigation of the program's compliance with the US Constitution, particularly the equal protection clause of the Fourteenth Amendment and the Fourth Amendment ban on arrest without probable cause. The Department of Homeland Security should adopt the ban on racial profiling set by the Department of Justice.

**Congress should require a racial impact analysis before authorizing new immigration law enforcement programs.** In the 21<sup>st</sup> century, non-citizens in the U.S. are increasingly people of color. Immigration law enforcement efforts, while not

intentionally based on race, have a disproportionate impact on people of color, including US citizens.

**Congress should create mandatory, meaningful reporting requirements for monitoring all ICE operations.** Facing a global fiscal crisis, the United States cannot afford wasteful spending. The ICE budget, which has grown more than 200 percent since the agency's inception in 2003, is not above public scrutiny. Congress should require ICE to systematically document and disclose detailed data related to the implementation and impact of *all* its programs.

Mr. KING. Madam Chair, could I ask a short deference, please?  
Ms. LOFGREN. I would yield for a question.

Mr. KING. I thank you.

What I really have is a statement that I intended to introduce. And I wonder if I could introduce my statement into the record, unanimous consent, on—

Ms. LOFGREN. Without objection.

Mr. KING. Thank you.

[The prepared statement of Mr. King follows:]

PREPARED STATEMENT OF THE HONORABLE STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Before we begin our discussion here today, I'd like to set out the underlying federal law that governs state and local law enforcement.

The use of race or national origin in law enforcement is only strictly prohibited when race or national origin is the sole criteria for the law enforcement action, based on an invidious purpose. As the Supreme Court made clear in the 1996 case of *Bush v. Vera*, mere "racial disproportions in the level of [law enforcement activity] for a particular crime may be unobjectionable if they merely reflect racial disproportions in the commission of that crime."

To give an example, the Supreme Court has upheld a program in which vehicles passing through a permanent checkpoint 66 miles from the Mexican border were visually screened by Border Patrol agents for occupants who appeared to be of Mexican national origin. In that case, *United States v. Martinez-Fuerte*, the Court held that it was constitutional for the border patrol—after routinely stopping or slowing automobiles at a permanent checkpoint—to refer motorists selectively to a secondary inspection area for questions about citizenship and immigration status. The Court held that there was no constitutional violation even if such referrals were made largely on basis of apparent Mexican ancestry.

The Supreme Court later made clear, in the 1981 case of *Haig v. Agee*, that such holdings are appropriate given that "It is obvious and unarguable that no governmental interest is more compelling than the security of the Nation."

Even beyond the context of border security, law enforcement has broad discretion to reasonably rely on the factors of race or national origin, as long as such criteria are not the sole criteria that invidiously motivates action by law enforcement.

Indeed, under the Department of Justice's own official guidelines on the use of race by law enforcement, it is made clear that:

in conducting an ongoing investigation into a specific criminal organization whose membership has been identified as being overwhelmingly of one ethnicity, law enforcement should not be expected to disregard such facts in pursuing investigative leads into the organization's activities.

The Department of Justice guidelines further state that:

Federal authorities may also use reliable, locally relevant information linking persons of a certain race or ethnicity to a particular incident, unlawful scheme, or ongoing criminal enterprise [including a gang]—even absent a description of any particular individual suspect.

Of course, law enforcement at its discretion can impose on itself restrictions beyond what is prohibited by constitutional law precedents. But those decisions should be made by state and local law enforcement working to protect citizens in local jurisdictions—not by Members of Congress thousands of miles away in Washington, D.C.

So what are the effects of these policies? I would suggest that when used correctly by law enforcement officials, the effect is safer communities. And safer communities are also created when state and local law enforcement officials help to enforce federal immigration law.

That is made even more clear when we look at examples in which state or local law enforcement has failed to do so. For instance, four of the 9/11 hijackers had documented contact with state or local law enforcement officers after entering the United States. All four were pulled over for traffic infractions at one point in the months before September 2001. Unfortunately none were reported to federal immigration officials despite their violations of federal immigration laws. We all know the devastating results of the hijackers' malicious activities.

And Operation Community Shield is an on-going example of the benefits of coordination among federal, state and local law enforcement entities. It is a law enforcement program in which federal state and local officials work together to conduct criminal investigations and other law enforcement operations against violent criminal alien street gangs.

According to ICE, since Operation Community Shield's inception, 17,655 street gang members and associates, from over 700 different gangs have been arrested and are no longer on America's streets. One hundred-seven of those arrested were gang leaders and more than 2,555 of those arrested had violent criminal histories.

By virtue of their sheer numbers, the over 740,000 state and local law enforcement personnel, come into contact with many more people on any given day, than do federal law enforcement officials. This contact can result, and has resulted, in the arrest of illegal immigrants who would otherwise be free to commit future

crimes. Remember no crime by illegal immigrants would ever occur if they were removed from the United States before they could strike. These are truly “senseless” crimes.

Sadly, the state and local law enforcement officers who came into contact with Alfredo Ramos prior to March 30, 2007, were prohibited by their jurisdictions from coordinating with federal immigration officials. I say sadly, since on that day, Ramos killed 16 year old Tessa Tranchant and her 17 year old friend Alison Kunhardt. We will hear shortly about the devastating effects of lack of law enforcement coordination from Tessa’s father who is here today. Tessa, Alison, their families and the other victims of criminal aliens are the ones whose country failed to protect them. They are the true victims.

If I have to choose between political correctness and ensuring the safety of the American people, I will chose the American people in a heartbeat.

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Ms. LOFGREN. This hearing is about at an end. And I would like to thank all of the witnesses who appeared and all of the individuals who have watched. I think that we have learned, at least I feel that I have learned, some things today.

And I do not believe that this is the end of our inquiry into this matter. We do know that the Secretary of Homeland Security has initiated a review of this program. And I think, based on the testimony today, that is highly appropriate.

So, at this point, I will—you know, a lot of people don’t realize you are here on your own time. We do appreciate your service to the Congress and to the country through your testimony.

And this hearing is now adjourned.

[Whereupon, at 3:24 p.m., the Subcommittees were adjourned.]



# APPENDIX

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## MATERIAL SUBMITTED FOR THE HEARING RECORD



THE UNIVERSITY  
of NORTH CAROLINA  
at CHAPEL HILL

CLINICAL PROGRAMS

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June 2, 2009

Andres Jimenez  
Subcommittee on Immigration, Citizenship,  
Border Security and International Law  
517 Cannon House Office Building  
Washington, DC 20515

Dear Mr. Jimenez,

Per Chairwoman Zoe Lofgren's request dated May 19, 2009, please find attached my responses to additional questions from members of the Subcommittee to supplement the information I provided at the April 2, 2009 hearing.

Thank you for your attention.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah M. Weissman".

Deborah M. Weissman  
Reef C. Ivey II Distinguished Professor of Law and Director of Clinical Programs  
University of North Carolina School of Law

**Responses to questions presented by Chairwoman Zoe Lofgren**

**1. Correlation between a jurisdiction's history of racial strife and its use of 287(g).**

Immigration laws and policy are inextricably related to issues of race, national origin, and ethnicity. Until the civil rights era of the 1960s, U.S. immigration statutes explicitly sought to preserve the racial and ethnic composition of the United States as it existed in the 1890's when immigration flows mainly originated from Northern and Western Europe. In order to consider the relationship between a 287(g) jurisdiction's history of racial strife with its problems in the undertaking of the program, it must first be acknowledged that racism and racist practices are both socially constructed and historically contingent. Current racial prejudices in the U.S. South, for example, manifest differently from those which were expressed in the post-Reconstruction South.

Law enforcement organizations, nonprofits organizations, and civic leaders have expressed concerns that the South has become the new battlefield for immigration enforcement.<sup>1</sup> In April 2009, the Police Foundation, a national, nonpartisan, nonprofit organization established in 1970 dedicated to supporting innovation and improvement in policing issued its report on the role of local police in federal immigration enforcement matters. The report noted that racial tension and racist dynamics have been influential factors in local law enforcement agencies' decisions as to whether and how to undertake 287(g) programs.<sup>2</sup> The report highlights the

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<sup>1</sup> Anita Khashu, The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties, Report of the Police Foundation, April 2009 (hereinafter Police Foundation Report). Southern States -- Immigration's New Battlefield, [http://news.newamericamedia.org/news/view\\_article.html?article\\_id=b2d00dcf68061446b673f55963acf6a8](http://news.newamericamedia.org/news/view_article.html?article_id=b2d00dcf68061446b673f55963acf6a8)

<sup>2</sup> Police Foundation Report, *supra* note 1 at Appendix A, Focus Group Summary, 46,

disproportionate number of 287(g) programs in the South; North Carolina and Virginia have the greatest numbers of such programs. Because of this statistical anomaly, another study conducted by Justice Strategies has concluded that “race, not crime, has propelled 287(g) program growth.”<sup>3</sup> Findings of yet another study ( as reported by the Police Foundation) suggest that the political culture of the region is the key factor that explains the focus of 287(g) in the South.<sup>4</sup>

In his keynote address to the Police Foundation, Phil Gordon, the mayor of Phoenix, Arizona, addressed the issue of racism and local immigration enforcement. Mayor Gordon noted problematic protests and demonstrations by both supporters and detractors of 287(g). With regard to local law enforcement of immigration issues, he called upon “the Congress of the United States to face the two-headed monster of hate and racism it has created and turned loose.”<sup>5</sup> To emphasize the extreme nature of racism implicated in the 287(g) program, during his speech, Mayor Gordon held up a sign from a demonstration in Phoenix and read it out loud:

*“Hooray for the slaughtering of the illegals. Boo to the Beaners!!”*  
And then it’s got a swastika at the bottom.”<sup>6</sup>

In a series of focus groups organized by the Police Foundation in its study of 287(g), participants offered their view“ the current anti-immigrant environment [is] ... a continuation of a

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<sup>3</sup> Aarti Shahani and Judith Greene, *Local Democracy on ICE, Why State and Local Government Have No Business in Federal Immigration Law Enforcement 2*, (Feb. 2009).

<sup>4</sup> Police Foundation Report, Appendix F, Local Enforcement of Immigration Laws: Evolution of the 287(g) Program and Its Potential Impacts on Local Communities at 160

<sup>5</sup> *Id.* Appendix J, Keynote Address, 189, 193.

<sup>6</sup> *Id.*

historical pattern of racism against African Americans.<sup>7</sup> Similar concerns have been expressed by civic leaders from North Carolina, South Carolina, Florida, Alabama, Virginia, Tennessee, and Georgia who met in Atlanta, Georgia in July 2007 to share their fears that southern states, with their histories of racial strife, are at the center of 287(g) enforcement efforts.

In its report about the threats and abuses that Latinos have suffered in the South, the Southern Poverty Law Center (SPLC) also notes that the South is the region of the country with the fastest growing population of Latinos.<sup>8</sup> The study finds that “[l]ike African Americans during the height of Jim Crow, many Latinos in the South live in constant fear of being unfairly targeted by the police as they go about their daily lives.”<sup>9</sup> Latinos, whether documented or unauthorized, experience racism and discrimination. Over one-third of Latinos living in the South report suffering racism including physical abuse and threats of violence in their daily life.<sup>10</sup> Housing discrimination is rampant.<sup>11</sup> The SPLC report found that more than half of the Latino respondents noted problems with racism and discrimination when looking for housing and approximately three quarters of respondents offered the same opinion with regard to discrimination on the job.

Forty-seven percent of the study’s respondents reported knowing someone who had been treated unfairly by the police.<sup>12</sup> Police checkpoints in predominately Latino communities were

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<sup>7</sup> *Id.* Appendix A, at 44

<sup>8</sup> *Under Siege: Life for Low-Income Latinos in the South*, Southern Poverty Law Center 4 (April 2009) (hereinafter *Under Siege*).

<sup>9</sup> *Id.* at 16.

<sup>10</sup> *Id.* at 32.

<sup>11</sup> *Id.* at 32-35.

<sup>12</sup> *Id.* at 16.



frequently reported as a source of concern.<sup>13</sup> The SPLC report noted that most Southern states and localities do not require the collection of racial profiling data which might otherwise prevent racial profiling practices.<sup>14</sup> Where such data is available, it demonstrates disproportionate law enforcement actions that target drivers with Latino surnames, such as seizing and impounding vehicles as a result of roadblocks.<sup>15</sup>

The SPLC report found that 287(g) agreements have lead to serious abuse in the South. It documents concerns of this sort in Nashville when in November 2008, the Davidson County Sheriff attended and spoke at a meeting of the white nationalist Middle Tennessee Council of Conservative Citizens, an organization descended from the pro-segregation White Citizens' Councils of the civil rights era and classified as a hate group by the SPLC.<sup>16</sup>

In North Carolina, hostile reactions to immigrant newcomers have been well-documented. During the 1990s, researchers began to take notice of the fast rate of growth of the Latino population in North Carolina. Investigators who have studied the impact of shifting demographics reported significant hostility toward this population. While the response to the increased numbers of immigrants has varied and has at time been welcoming and constructive, researchers have uncovered nativist and racist reactions that deny and deprive Latino residents of their human and legal rights in ways that can be measured both formally and informally. For example, a Carolina Poll, conducted by the University of North Carolina at Chapel Hill School of

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<sup>13</sup> *Id.* at 16-17.

<sup>14</sup> *Id.* at 19.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 20, 23.

Journalism, uncovered anxieties and distrust of Latino newcomers and public discomfort with changing demographics whether newcomers are documented or undocumented.<sup>17</sup> The study noted that residents in the state were much more likely to hold negative attitudes about the influx of Latinos into their neighborhoods than the rising increase in the number of "northerners" to the state. Moreover, in counties in the Piedmont area of North Carolina, for example, in which Alamance County is located, the demonstrated hostility was at its highest in the state.

Researchers noted with alarm how openly such hostile views were expressed. One report, published in 1999 when the state economy was particularly strong, predicted with grave concern that Hispanics/Latinos would suffer an intense backlash should there be a downturn in the economy. Another study in North Carolina demonstrated that Latinos are the fastest growing target of housing discrimination notwithstanding federal and state constitutional and statutory prohibitions against such treatment.<sup>18</sup>

Similarly, hate groups have been involved in advocating for 287(g) in North Carolina. As noted in previous written and oral testimony to this committee, some North Carolina law enforcement officials have made overtly racist comments about Latinos. In particular, the Sheriff of Alamance County, Terry Johnson, made hateful assertions about Mexicans to a reporter for the Raleigh News and Observer.<sup>19</sup> Similarly, Johnson County Sheriff Steve Bizzell, who was

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<sup>17</sup> See James H. Johnson, Jr. et al., *A Profile of Hispanic Newcomers to North Carolina*, Popular Gov't, Fall 1999, 2, 9-11. See Letter to the Editor, *Just Too Many Folks*, News & Observer (Raleigh, N.C.), Jan. 24, 2000, at 10A; Patsy McCormick, *Must We Accept Excessive Immigration?*, News & Observer (Raleigh, N.C.), Feb. 26, 2000, at 19A; Ron Woodard, Letter to the Editor, *Uphold Immigration Law*, News & Observer (Raleigh, N.C.), Apr. 23, 2000, at 10A.

<sup>18</sup> Anita R. Brown-Graham, *Housing Discrimination Against Hispanics in Private Rental Markets*, Popular Gov't, Fall 1999, at 45, 46.

<sup>19</sup> In an interview with the Raleigh News & Observer, Alamance County Sheriff Terry

president of the North Carolina Sheriffs Association from July 2007 until he was named the association's chairman in July 2008 has vocalized his hostility toward immigrants.<sup>20</sup>

Alamance County was highlighted in the UNC Report on 287(g) in North Carolina because of the racist comments made by its Sheriff and because of evidence of racial profiling in the implementation of 287(g).<sup>21</sup> Some examples of racial tension and the county's recent history with hate groups that affect anti-immigration initiatives include the following:

May of 2006, an Alamance County court interpreter resigned after allegations were made regarding his connection to a white supremacy organization. The interpreter was accused of posting racist statements on the Web site of a white supremacist magazine called American Renaissance. According to guidelines issued by the state Administrative Office of the Courts,

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Johnson complained that more Latino criminals were arriving to the area. He made brazenly racist claims about Mexicans, stating, "[t]heir values are a lot different -- their morals -- than what we have here," Johnson said. 'In Mexico, there's nothing wrong with having sex with a 12-, 13-year-old girl ... They do a lot of drinking down in Mexico.'" He linked the Latino presence with growing crime rates notwithstanding the data that contradicts this assertion. Kristen Collins, *Sheriffs Help Feds Deport Illegal Aliens*, News & Observer, (Raleigh, NC) Apr. 22, 2007. Rubén G. Rumbaut and Walter A. Ewing, *The Myth of Immigrant Criminality and the Paradox of Assimilation:: Incarceration Rates among Native and Foreign-Born Men*, "The Immigration Policy Center (Spring 2007) available at [http://www.aif.org/ipc/special\\_report/sr\\_feb07\\_resources.shtml](http://www.aif.org/ipc/special_report/sr_feb07_resources.shtml). Lindsay Haddix, *Immigration and Crime in North Carolina: Beyond the Rhetoric*, Dept. of City and Reg. Planning, UNC Chapel Hill, Master's Project, Spring 2008.

<sup>20</sup> Sheriff Bizzell stated that Mexicans are "breeding like rabbits," and that they "'rape, rob and murder' American citizens" and stated that his goal is to reduce if not eliminate the immigrant population of Johnston County. Kristin Collins, *Tolerance Wears Thin*, News & Observer, Sept. 4, 2008, available at <http://www.newsobserver.com/news/immigration/story/1209646.html>.

<sup>21</sup> See UNC Immigration and Human Rights Clinic and ACLU North Carolina Legal Foundation, *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina*, (hereinafter UNC Report). <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>.

interpreters are considered officers of the court. The complaint also included affidavits of Latinos who claimed they were mistreated by the interpreter.<sup>22</sup>

As reported by the Southern Poverty Law Center, William Gheen who had been a legislative assistant to North Carolina Sen. Hugh Webster (R-Alamance County) left his position in April 2005 to form an organization called Americans for Legal Immigration PAC, described as a nativist group commonly known as ALI-PAC. The SPLC writes, “[o]n the ALI-PAC website, Gheen is less subtle about linking Mexican immigrants with infectious disease. ‘Call me old fashioned, but people should be able to shop at Wal-Mart without worrying about catching tuberculosis’ [Gheen] wrote.”<sup>23</sup>

Alamance County has been the site of organized Klan activity as recently as 1977, when the Klu Klux Klan marched through Burlington, the largest city in the county. As Hannah Gill, Assistant Director of the Institute for the Study of the Americas has noted, “growing up in Alamance County in the 1980s, people spoke of the Ossipee Ski Lodge near Western Alamance High as a Klan meeting place.”<sup>24</sup>

The book “Centennial History of Alamance County: 1849 - 1949” by Walter Whitaker tells a history of the KKK in Alamance. The following excerpt describes Klan organization:

There were three divisions of the Klan, known as the Invisible Empire, the White Brotherhood, and the Constitutional Union Guard, and each of them had chapters in Alamance. Jacob A. Long headed the ten camps of the White Brotherhood and

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<sup>22</sup> Keren Rivas, *Ex-court Worker Accused of Racism: Interpreter Says He Did Not Post Comments on Web*, Times-News (Burlington, NC), May 19, 2006.

<sup>23</sup> David Hothouse, *Where Swine Flu Lurks, Propagandists Rush In*, April 28, 2009, at <http://www.splcenter.org/blog/index.php?s=bashers> Intelligence Report, *The Nativists*, Spring 2008, at <http://www.splcenter.org/intel/intelreport/article.jsp?pid=1524>

<sup>24</sup> Interview with Hannah Gill, June 1, 2009.

the Empire in this county, and James A.J. Patterson was chief of the Guard. Each camp of the Brotherhood had its own chief as well; these included Jacob A. Long, Jasper N. Wood, John T. Trollinger, Albert Murray, George Anthony, David Mebane, William Stockard, John Durham, James Bradsher, and Job Faucette. Leaders of the five clans of the Constitutional Union Guard in the county were James A.J. Patterson, Eli Euliss, John T. Fogleman, Jasper N. Wood, Jacob Long, and George Anthony. (Hamilton, J.G., *Reconstruction in N.C.* These names and events are found in official records of the impeachment trial of governor W.W. Holden.) There were said to have been 600 to 700 members of the three clans in the county.

More recently,

Specific examples related to 287(g)'s slippery slope that document the ways in which Latinos who are U.S. citizens have been affected were submitted in earlier written testimony. Three are repeated here because they are particularly responsive to Chairwoman Zofgren's question related to a 287(g) jurisdiction's history of racial strife and its use of 287(g)

**Paul Cuadros, assistant professor in the School of Journalism and Mass Communication at UNC, U.S. Citizen.**

In a column in the Chapel Hill News entitled *Profiling Just Got Easier*, Paul Cuadros described his experience with profiling in Chatham County where the issue of whether to sign onto 287(g) has been the subject of a contentious community dispute.<sup>25</sup> As noted in previous written testimony, recently hate groups were invited to join in the battles over whether Chatham should sign on to 287(g). A group that calls itself NC FIRE which, according to its website, seeks to 'educate American citizens who turn a blind eye to the many costly and destructive aspects of illegal immigration,' including the '8 Ways Illegals Make You Sick,'" distributed a flyer urging recipients to "Fight Back Against Chatham County" and encouraged members of such groups as

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<sup>25</sup> Paul Cuadros, *Profiling Just Got Easier*, Chapel Hill News, Feb. 15, 2009, <http://www.chapelhillnews.com/front/story/41670.html>

the N.C. Minuteman Patriots and the Minuteman Civil Defense Corps to attend.<sup>26</sup> This was not the first time hate groups have been implicated in Chatham county's response to increasing rates of Latino immigrants. In 2000, white supremacist David Duke spoke at a Ku Klux Klan rally in Chatham County advertised as protest against Hispanics.<sup>27</sup>

Cuadros describes being followed by a police car for at least a mile, through four turns as he was on his way to a soccer game for an offense he and his friend Francisco described as "Driving while brown." He says;

"There are many in Orange and Chatham who think that profiling doesn't happen now. They are wrong. I cannot tell how many times over the past several years I have gone through license checkpoints in Siler City driving a soccer kid home from a game. The checkpoints would be set up right in front of his neighborhood, which is predominantly Latino.

When you're stopped by the police, you go through a mental checklist to find what it is you did wrong to get pulled over. I wasn't driving fast; the courthouse circle prevents that. And I didn't miss any stop signs or lights, again the circle. I hadn't had a ticket in three years, my license was just renewed and my registration, plates and vehicle test were up to date.

After asking for my license and registration and keeping me and Francisco waiting for what seemed an unusually long time to check my information, the young cop walked up and leaned down to tell me why he had stopped me. He said my license plate monthly sticker had faded. The year was fine, new in fact, but the month was hard to see. He just wanted to let me know that. I knew exactly what he wanted me to know."

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<sup>26</sup> Taylor Sisk, *Conservative Group, ICE Supporters Clash in Chatham*, The Carrboro Citizen, Mar. 5, 2009, available at <http://www.carrborocitizen.com/main/2009/03/05/conservative-group-ice-supporters-clash-in-chatham/#more-5083>.

<sup>27</sup> Siler City Residents Pray For Peace In Anti-Immigration Rally, Feb. 17, 2000. [www.wral.com/news/local/story/139624/](http://www.wral.com/news/local/story/139624/)

**"A" U.S. citizen.**<sup>28</sup>

A, a Puerto Rican U.S. citizen, was driving to the flea market in Johnston County (Sheriff Bizzell's county). There were four passengers in the car: her boyfriend, her mother, her sister, her brother-in-law. Local law enforcement pulled her over and told her that he was "just doing a check because there were too many people in the car." He asked for A's license, which she provided, and then asked all of the passengers in the car for their licenses. All obliged. The officer then asked all of the passengers, including A, whether they had any warrants for their arrests. They did not. A's father is a minister. The family was distressed by this incident of racial profiling and called the ACLU for that reason.

**Ricardo Velasquez, U.S. citizen**

Ricardo Velasquez is a lawyer in Durham, NC (a 287(g) city) who was pulled over by the Durham police on his way home. After handing over his license and registration, he was told to roll down his window further upon which he asked whether he was under arrest or free to go. As an attorney who knew his rights, he opened his window wider at the demand of the officer, and was then put under arrest, accused of being under the influence of alcohol or some other substance. After taking the alcohol breath test, he blew a point zero-zero, indicating that he had nothing in his system. Nonetheless, he was arrested and charged with driving while impaired and resisting an officer. Although the charges were dismissed, Velasquez questions the incident as another incident of racial profiling of Latinos.<sup>29</sup>

2. How does the 287(g) program affect immigrant victims of domestic abuse who need

<sup>28</sup> Facts based on a phone intake by the ACLU-NC.

<sup>29</sup> Anne Blythe, *Durham Lawyer Fights Charge*, News & Observer, Jun. 19, 2008, <http://www.newsobserver.com/news/story/1113156.html>

police protection from their abusers?

A review of the circumstances for immigrant women who are victims of gender-based crimes demonstrates that 287(g) is at cross-purposes with other statutory provisions of the Immigration and Naturalization Act. In 1994, Congress passed the Violence Against Women Act (VAWA) which included two avenues of relief for battered immigrants: the self-petitioning process, and VAWA Suspension of Deportation, now VAWA Cancellation of Removal.<sup>30</sup> Then, in two subsequent legislative initiatives, Congress further strengthened the Violence Against Women Act in the Battered Immigrant Protection Act of 2000 (VAWA 2000) and again in VAWA 2005. Congress added protections for victims of severe forms of trafficking and created the U-visa for immigrant crime victims, including victims of domestic violence and sexual assault crimes.

Congress' intent through these statutes has been to encourage immigrants to report crime and to cooperate with law enforcement, and to assist immigrant victims of gender-based violence to obtain protection from physical and emotional harm.<sup>31</sup> In order to accomplish any of these goals, local law enforcement must engage with and obtain the trust of battered immigrant women.

The Government Accountability Office Report on 287(g) as well as other reports that have been issued by police organizations, academic centers and nonprofit groups all share in common the concern that Latinos living in 287(g) communities are fearful of and apprehensive about the

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<sup>30</sup> Pub. L. No. 103-322, INA § 204(a)(1)(A)(iii), (iv) and (B)(ii)(iii), INA § 240A (b)(2). Illegal Immigration Reform and Responsibility Act of 1996 (IIRAIRA), Pub. Law 104-208, 110 Stat. 3009 (INA § 204A(b)(2)).

<sup>31</sup> 8 U.S.C.A. § 1101.



police as a result of the program.<sup>32</sup> This fear of local police creates significant obstacles for battered women and their children who rely on local law enforcement for safety from physical harm and threats. They are terrified to report the crimes they have suffered or witnessed for fear that they will become targets of investigation themselves. In one study in Nashville, over seventy percent of Latinos interviewed said that they are more reluctant to contact police because of 287(g). Similarly in Charlotte, two thirds of respondents reported that 287(g) affected their willingness to report a crime.<sup>33</sup> Similar results were reported in the 287(g) report detailing effects of the program in North Carolina. Both documented and undocumented Latinas expressed this fear.<sup>34</sup>

287(g) not only discourages battered women from calling the police and cooperating with law enforcement in order to obtain protection for themselves and their children, the program also interferes with their efforts to obtain the medical, counseling, and services they need in order to cope with the effects of victimization they have suffered. The University of North Carolina School of Law's Immigration/Human Rights Clinic serves battered women and children as well as other immigrants who are victims of sexual assault. Clients suffer serious physical and emotional harm as a result of these crimes. We know anecdotally that these crime victims are fearful of

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<sup>32</sup> See generally, GAO, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws* (Jan. 2009), Shahani and Greene, *supra* note 3, *Local Democracy on Ice: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement*, *supra*, UNC Report, *supra* note 21; *Under Siege*, *supra* note 8; The Police Foundation Report, *supra* note 4. Association of Chiefs of Police, *Police Chiefs' Guide to Immigration Issues*, July 2007, at 21, (hereinafter Association of Chiefs of Police Report) available at <http://www.theiacp.org/documents/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf>.

<sup>33</sup> *Under Siege*, *supra* note 8 at 27.

<sup>34</sup> *Id.*

driving to medical or therapy appointments for themselves or their children because of the threat of being pulled over by law enforcement based on their appearance alone. We have learned that they are fearful of going to public offices and agencies to collect documents and information as necessary for the preparation of their case. Witnesses who could corroborate the crime and its consequences are often reluctant to come forward if they are undocumented. These circumstances render crime victims more vulnerable and disadvantage law enforcement agencies that are in pursuit of perpetrators.

The SPLC report highlights the consequences of 287(g) to gender-based crime victims. One case, described in the report, involves a thirteen year old girl who was sexually assaulted. Her family members were undocumented, fearful, and concerned as to how to best proceed and thus sought the assistance of the SPLC for advice to how to go forward with the case. The SPLC met with the prosecutor who informed them that although he would prosecute the case, if he discovered that the rape victim was undocumented, he would feel obligated to contact ICE. As a consequence, the rapist was not prosecuted.<sup>35</sup> As one immigrant organizer observed with regard to police relations and obtaining protection for crime victims, "ICE is killing us little by little....People are now afraid to leave their homes and go in the street."<sup>36</sup> These circumstances are exacerbated by the fact that undocumented immigrants are now at greater risk of victimization because of their known vulnerability, isolation, and because of the climate of nativist hostility that often exists in 287(g) programs in the South.

In addition to domestic violence and sexual assault, Latinas have also reported an increase

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<sup>35</sup> *Id.* at 27.

<sup>36</sup> *Id.*

in sexual harassment and discrimination in the workplace. The SPLC study found that seventy-seven percent of Latinas identified sexual harassment as a major problem on the job.<sup>37</sup> Their employers silence them with threats to report them for immigration status violations. As noted in earlier testimony provided to this subcommittee, these problems have been attributed to the climate created by 287(g) in Alamance County as indicated by the following anecdote:

**E\_\_, U.S. citizen.**<sup>38</sup>

E, trembling and then openly weeping, told of her trauma and fright at her place of employment in Alamance County. She explained that she was a naturalized citizen and had been working for some time in an office near Elon. She described her employer's actions over a course of time that began after 287(g) was entered into and told of how she was being significantly mistreated and discriminated against at work. She explained that when she brought her complaints and concerns to her employer, he told her that she was crazy to think that she would have any recourse and because she was an immigrant, she should stop complaining. He referred to the passage of 287(g) as an indication of her lesser status.<sup>39</sup>

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<sup>37</sup> *Id.* at 28.

<sup>38</sup> The story was told to the author at the conclusion of a presentation at the Conference, "Why We Can't Wait: Reversing the Retreat on Civil Rights" of the National Campaign to Restore Human Rights in Durham, NC on Oct. 19, 2007.

<sup>39</sup> Hannah Gill tells a similar story of a woman who was an immigrant from El Salvador and who describes how after the implementation of 287(g), working conditions at a textile factory in Burlington worsened. Gill, *supra* note .

**Responses to Questions of Ranking Member Steve King.**

1. Is a human life worth at least \$17 million?

Of course, it is impossible to put a monetary value on human life.

Myths and claims about the criminal dangerousness of immigrants have been debunked.

Sociologist Rubén G. Rumbaut found that, in 2000, the 3.5 percent incarceration rate for native-born men age 18-39 was five times *higher* than the rate for immigrant men (0.7 percent).<sup>40</sup>

Studies also found that undocumented immigration is not associated with higher crime rates.

Border cities and other cities with large immigrant populations have experienced decreasing crime rates, and crime is lowest in the states with the most immigrants.<sup>41</sup>

There have been grave concerns expressed that 287(g) endangers the lives and well-being of immigrants in the United States. For example, the Police Foundation Report describes the senseless murder of an Ecuadorian man in Patchogue, New York by a group of teenagers looking for Latino immigrants to beat up.<sup>42</sup> This particular murder is an indication of increasing hostility toward immigrants fueled by a public official who has been accused of “parrot[ing] extremist talking points” that are “utterly false” in an effort to mobilize anti-immigrant sentiment.<sup>43</sup> The Minutemen Project on the border is additional evidence of dangerous vigilantism and threats of violence toward immigrants.<sup>44</sup> NGOs have reported a dangerous rise in anti-immigration groups

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<sup>40</sup> Immigration Policy Center, *Immigrants and Crime: Setting the Record Straight*, (March 2008).

<sup>41</sup> *Id.*

<sup>42</sup> Police Foundation Report, *supra* note 4 at 10

<sup>43</sup> *The High Cost of Harsh Words*, NY Times, Nov. 14, 2008 at A32.

<sup>44</sup> Susy Buchanan and David Holthouse, *Extremists Advocate Murder of Immigrants*,

with direct links to hate groups.

Other costs associated with 287(g) cannot be overlooked, particularly those that undermine constitutional principles and U.S. norms that are jeopardized when programs that encourage racial profiling operate without accountability or oversight. This was put eloquently by Mayor Gordon in his key note speech to the Police Foundation:

And how do you assign a cost to that? How can you put a price tag on the very promise of America? Cemeteries here and around the world are filled with men and women who traded their lives for our rights and freedoms—the same rights we see perched at the top of that famously dangerous slippery slope.<sup>45</sup>

2. Familiarity with the dismissal of lawsuit filed against the Department of Homeland Security alleging violations of Fourth, Fifth, and Sixth amendment rights in connection with Smith and Co. immigration enforcement operation.

*Barrera v. U.S. Dep't of Homeland Security*, No. 07-3879 (D. Minn. Mar. 27, 2009) was dismissed largely on grounds of qualified immunity. There are a number of other lawsuits pending related to violations of legal protections arising out of workplace raids, home raids, and detention of immigrants, many of whom are arrested under the 287(g) program. In *Reyes v. Alcantar* No. 07-02271 (N.D. Cal. Sept. 16, 2008), the government has agreed to pay a sum of money as settlement in a case involving a home raid. A class action lawsuit that challenges ICE raids, *Arias v. ICE*, No. 07-01959 (D. Minn. filed Apr. 19, 2007), appeal docketed sub nom. *Munoz v. Myers*, No. 08-2528 (8th Cir. argued Mar. 10, 2009) is pending. In March of this year, Jim Slaughter, U.S. Customs K-9 Officer at San Luis, Arizona, who with his wife endured a botched ICE home raid for a "fugitive" filed suit against ICE. Seven ICE agents showed up at his door, and when he opened it to talk to them they stormed in and demanded that and his wife stand

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*Politicians* Mar. 30, 2006, available at <http://www.splcenter.org/intel/news/item.jsp?aid=49>.

<sup>45</sup> Police Foundation Report, *supra* note 4 at 191.

in the middle of their living room while the agents searched the house. Slaughter, an ex-Marine, and U.S. customs officer is suing each agent for \$500,000 in damages.<sup>46</sup> This is just an abbreviated list of cases that have been filed and are yet to be resolved for violations occurring in the implementation of 287(g). Other suits seek redress for U.S. citizens who have been wrongfully deported, for violations of constitutional protections, as well as Freedom of Information Act cases which seek to ensure oversight and accountability for the program..

In addition to civil suits, there have been a number of decisions favorable to immigrants by Immigration Judges and the Board of Immigration Appeals suppressing evidence of immigration status because of egregious violations committed against immigrants by law enforcement officers and ICE in various raids and other immigration enforcement efforts.

At least one petition alleging violations of regional and international human rights agreements has been filed in the Inter-American Commission on Human Rights in relation to overzealous and racially motivated immigration enforcement initiatives.

The U.S. Department of Justice has initiated an investigation of the Maricopa County Sheriff's Office after months of complaints that the Sheriff's department is discriminating in their enforcement of immigration laws.

3. The lack of complaints filed under 287(g).

At least one complaint that we are familiar with has been filed for violations arising out of the 287(g) in Alamance County, North Carolina. It is of concern that no information was reported to the GAO about this complaint. It may be an indication that there are other complaints that have been filed around the country of which Congress and this subcommittee is not aware.

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<sup>46</sup> *Slaughter v. DHS*, complaint in the U.S. District Court for the District of Arizona, filed February 13, 2009.

However, it is perfectly understandable that few complaints have been filed. There has been no transparency or communication about the complaint process. As noted in the report submitted to this subcommittee on 287(g) in North Carolina, local law enforcement agencies have failed to disseminate information about the complaint process nor have they made any complaint forms readily available to the public. Furthermore, fear and anxiety has gripped the immigrant community which may be reluctant to approach law enforcement agencies to file a complaint.

4. When studying the program, what positive effects of 287(g) did you find?

Our study of 287(g) in North Carolina did not uncover any benefits or positive effects. The individuals we interviewed and the data we examined all pointed to a breakdown in community-police relations, racial profiling and an increase racial and ethnic tensions, and due process violations. We also determined, as did the GAO, that the program suffered from lack of accountability and transparency.

The Police Foundation Report issued in April 2009 did make some findings regarding benefits to the program; however, concluded that “[t]he costs of participating in the U.S. Immigration and Customs Enforcement’s (ICE) 287(g) program outweigh the benefits.”<sup>47</sup>

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<sup>47</sup> Police Foundation Report, *supra* note 4, benefits described on pages 21-23; costs are described at 23-30; costs outweigh benefits at 30-33.

**Questions for the Record**

**Chairwoman Zoe Lofgren**

**Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law**

**Joint Hearing on the Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws**

**Thursday, April 2, 2009**

**Questions for Professor David Harris**

- 1) During the hearing, entry of immigration data into the National Crime Information Center (NCIC) database was discussed. Does entry of immigration information into the NCIC database comply with the law governing NCIC database? How has the NCIC database been used in immigration enforcement?**

**ANSWER:**

The NCIC database is one of the most widely used law enforcement information tools in the United States. It was first conceived of as a compilation of identification records for the FBI in the 1920s and 1930s, and was brought under the modern statute now governing it in 1966, 28 U.S.C. §534. This statute strictly limits what type of information the government can add to NCIC, and the restrictions in §534 therefore control what may appear in the database. The reason for this is that police officers query NCIC millions of times every day, to gather information on drivers they stop, persons that they encounter in the course of their investigative duties, or persons they stop and frisk on a street. For example, when a police officer stops a driver for a traffic violation, the officer checks NCIC for information on the driver; if the driver has an outstanding warrant, the officer will make an arrest. Limiting NCIC data to timely and accurate criminal offending information is therefore vitally important to the performance of police officers' duties, and to their personal safety. Officers must know the dangers they face when they encounter a citizen, and NCIC helps them do that.

The limitation of NCIC to criminal information only has continued since 1966, with only a few narrow and explicit exceptions created since for civil records. In 1982, Congress allowed law enforcement agencies to add two categories of civil records to NCIC: records for missing persons and unidentified deceased individuals. Missing Children Act of 1982, §§ 2, 3 (a), Pub. L. No. 97-292 (codified at 28 U.S.C. §534 (a) (2), (3)). In 1994, Congress authorized the entry of protection orders issued by civil courts in domestic violence and stalking cases into NCIC, as part of the Violence Against Women Act, § 40601 (a), Pub. L. No. 103-322 (codified at 28 U.S.C. §534 (f)). Third, in 1996, Congress authorized the entry of records of previously



deported felons into NCIC under the Antiterrorism and Effective Death Penalty Act, Sec. 439, Pub. L. No. 104-132 (codified at 28 U.S.C. §1252c(b)). These amendments show that when Congress wanted to allow civil information into NCIC, it did so explicitly, by statute. The failure to do so for any other purpose means that these exceptions should be construed narrowly, and certainly no other exceptions should be assumed. The Congress has considered proposals to authorize the entry of other immigration records into NCIC, but it has never passed any of them. See, e.g., H.R. 842, 110<sup>th</sup> Cong. (1<sup>st</sup> Sess., 2007); H.R. 3938, 109<sup>th</sup> Cong. (1<sup>st</sup> Sess. 2005). Thus the conclusion seems inescapable that only criminal information, and the very narrow categories of civil information described in the statutes Congress has passed, may be entered into NCIC.

Nevertheless, beginning in 2002, the Department of Justice began putting administrative warrants involving immigration issues into NCIC. *These warrants are not criminal in nature; they do not allege violations of criminal statutes.* They are issued not by a judge independent of the agency requesting the warrant, but by an agency clerk. Neither probable cause nor evidence sworn under oath is required for issuance of these warrants. They allege only civil violations of immigration law. The entry of these administrative warrants into NCIC violates the statutes governing NCIC, as well as applicable internal regulations. The only federal court to rule on the question has reached the same conclusion. *Doe v. ICE*, 2006 WL 1294440, at \*1 (S.D.N.Y., May 10, 2006) (holding that the government has “no statutory authority for entering non-criminal immigration information into the NCIC database”).

These civil violations involve “absconders,” persons alleged to have outstanding orders for removal. There are also a smaller number of administrative warrants for violators of the National Security Entry-Exit Registration System (NSEERS). These infractions are civil, not criminal. The Department of Justice put these warrants in the NCIC system by establishing within it an Immigration Violators File (IVF). When a name is queried in NCIC that appears in the IVF, a “hit” appears, instructing the officer to contact the Law Enforcement Support Center, a division of the Department of Homeland Security (DHS), to attain confirmation. Once the “hit” is confirmed, DHS tells the officer to arrest the subject until DHS can take custody. These arrested persons usually do not face state or federal criminal charges. Rather, they have been arrested by local police on civil warrants – something explicitly beyond the power of most state and local agencies.

The administrative warrants for absconder and NSEERS violations cannot be considered criminal in nature. The only way that these warrants might be considered criminal is if DHS alleged that the absconders *willfully* failed to depart after entry of a removal order, 8 U.S.C. §1253 (a) (1). For NSEERS violations, DHS would have to allege that these persons *willfully* failed to comply with registration requirements, 8 U.S.C. §1306. If DHS did allege willful violations and made use of the criminal justice process to obtain warrants, DHS could put the

resulting criminal warrants into NCIC. (It is unlikely that they could do this, because a large number of absconder and NSEERS warrants result from persons not receiving notice of their obligations or alleged violations. Thus no court would consider these violations willful, under any accepted definition of the term.) DHS has not alleged willful violations, and instead has simply put administrative civil immigration warrants into a database meant explicitly for crimes, and then instructed police departments to make arrest on this basis.

Therefore placing administrative immigration warrants into NCIC violates the law governing the NCIC database, and puts police in the position of making arrests for civil, not criminal, offenses.

**2) Do local police have authority to enforce federal, civil immigration law?**

**ANSWER:**

State and local police have only limited authority to enforce civil immigration laws, and then only when subject to federal training, supervision, and direction. Any other local enforcement of immigration law violates federal law.

Congress possesses full and undivided power over immigration. See, e.g., *De Canas v. Bica*, 424 U.S. 351, 354 (1976) (“Power to regulate immigration is unquestionably exclusively a federal power”). Accordingly, Congress has barred state and local police from enforcing federal immigration law, especially civil provisions of immigration law. See *Gonzales v. Peoria*, 722 F.2d 468, 474-75 (9<sup>th</sup> Cir. 1983) (“assum[ing] that the civil provisions” of immigration law preempt local arrest authority). Congress has explicitly authorized direct civil enforcement of only two provisions of immigration law, both criminal. They are 8 U.S.C. §1324 (c), which authorizes arrests for smuggling, transporting, or harboring illegal immigrants, and 8 U.S.C. §1252c (a), authorizing arrest of an alien illegally present in the U.S. who has “previously been convicted of a felony and ordered deported.” These are the only exceptions to the general rule that enforcement of immigration falls within the federal, not state or local, police power.

Two other federal statutes confirm the view that state and local police have no existing power to enforce immigration law. These two statutes allow special deputization of local law enforcement officers to assist the federal government. Under 8 U.S.C. §1103(a)(10), the Attorney General may deputize state and local officers to enforce immigration laws during “an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border”). Second, under 8 U.S.C. sec. §1357 (g), the Attorney General may execute a “written agreement” with states or local governments under which police may perform the “function[s] of

an immigration officer” under federal supervision and with mandatory training. If no mass migration emergency exists, the first of these provisions does not come into play. As for the second provision, this justifies local enforcement of immigration activity only with the required written agreement under section §1357 (g). Except under these two explicit provisions, federal law preempts civil immigration enforcement by state or local police. Other than that, local agencies simply have no authority to perform this work.

- 3) During the hearing, you heard the experience of Mr. Julio Mora, a U.S. citizen born and raised in Arizona who testified that Maricopa County Sheriff’s Deputies pulled him and his father (a lawful permanent resident) off the road, handcuffed them without explanation, then detained them for over three hours until they can prove their citizenship and immigration status. Also, both Mr. Mora and his father also had to ask repeatedly for permission to use the bathroom. Do you believe that what happened to Mr. Mora and his father was legal?**

**ANSWER:**

No. The U.S. Supreme Court itself has provided an answer. In *Terry v. Ohio*, 392 U.S. 1 (1968), the Court granted to police the power to temporarily detain persons, when officers have reasonable, fact-based suspicion that the suspect is involved in criminal conduct. Further, the Court said that police may frisk detained suspects (i.e., pat down the outer clothing) when they have reasonable suspicion that the suspects are armed and dangerous. In the course of the *Terry* opinion, the Court responded to the government’s argument that a stop and frisk – a temporary detention, accompanied by a cursory search of the person’s outer clothing – was a mere “petty indignity.” “[I]t is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a ‘petty indignity,’” the Court said. “It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be taken lightly.”

If this is true of a temporary detention and a cursory search, certainly a detention in handcuffs lasting three hours, during which Mr. Mora’s father, an older man with serious health issues, was denied permission to urinate, and when finally given permission to relieve himself was only allowed to do this in front of others, goes well beyond any reasonable definition of the word reasonable exercise of police power.

While federal immigration agents or police empowered to enforce immigration law could detain temporarily upon reasonable suspicion of a limited number of immigration violations, a

three-hour detention of a citizen and a lawful permanent resident, in handcuffs, exceeds this any such police power.

- 4) Can you tell us why people may not file complaints against state or local police who abuse its authority to enforce immigration law under an agreement with the Department of Homeland Security under section 287 (g) of the Immigration and Nationality Act? Do you believe that a lack of complaints filed means that no violations of the section 287 (g) agreements have taken place?**

**ANSWER:**

There are two related reasons why these enforcement activities would generate no complaints. First, some number of those persons subject to enforcement activity about which they might complain find themselves in the process of deportation. They would therefore have little opportunity, if any, to file complaints, if their deportations take place. Moreover, since they would have other concerns while still in the system awaiting deportation – namely, addressing the issue of deportation – complaints about their treatment during apprehension would likely take a back seat. Second, even among persons not being deported, complaints will not be filed for the same central reason that enforcement of immigration law by local police is not a good idea in the first place: immigration enforcement activity breeds fear and mistrust of the police in the community among persons with legal status as well as among those without it. When people fear or distrust the police, they fear even more filing a complaint against the police, since many believe that doing so could lead to deportation or other enforcement action.

- 5) Are you aware of any lawsuits that have been filed against any state or local police as a result of its actions to enforce immigration laws under section 287 (g) of the Immigration and Nationality Act?**

**ANSWER:**

Several lawsuits have been filed in Arizona regarding the treatment of persons by local law enforcement officers enforcing immigration laws. One of them is based on actions by Maricopa County Sheriff's Department Deputies under section 287 (g): Ortega Melendrez v. Arpaio, et al., No. CV 2007-2513 PHX MHM, U.S. District Court for the District of Arizona, Phoenix venue. The case challenges the use of racial profiling in the execution of Sheriff Arpaio's Maricopa County Sheriff's Office 287(g) agreement with ICE. Class certification is pending. The defense

motion to force Judge Mary H. Murguia to recuse herself has been submitted and is awaiting adjudication.

Two other suits in Arizona challenge immigration related enforcement practices (though not under section 287 (g)). They are:

- a) Lopez-Valenzuela v. Maricopa County, et al., and was filed in U.S. District Court under Cause No. CV 08-0660 PHX SRB. This case challenges the constitutionality of denying bond to the undocumented. Proposition 100, passed in 2006, denies bail to undocumented immigrants accused of the vast majority of felonies, not just violent ones.
- b) Somos America v. Maricopa County Board of Supervisors, et al., No. CV 06-2816 PHX RCB, currently on appeal to the 9th Circuit under Court of Appeals docket no. 08-55195. The action challenges the use of Arizona's anti-alien smuggling statute to prosecute undocumented immigrants under the state's "conspiracy" provisions.

**Questions for Officer Williams**

**Community Policing**

- **It is vital that every local police or sheriff's department have a strong relationship with the community. Victims of a crime and witnesses should be able to come forward and talk to the police freely without fear of being arrested or deported, and I am concerned that participation in 287(g) program may negatively impact this important relationship.**
  - **Do you believe that undocumented aliens in your community, who are victims of or witness to a crime, are reluctant to come forward because they fear detention or deportation?**
  - **Have you participated in any outreach efforts specifically designed to inform the community about your 287(g) authorities?**
  - **Please discuss the type of relationship you have with the community, including immigrants, and what steps you have taken to ensure a strong relationship.**
  - **Do you view immigration enforcement as a federal responsibility?**
  - **Are the costs unreimbursed costs associated with 287(g) a concern for law enforcement agencies?**
  - **Is there something else ICE, DHS, or the federal government in general could do to assist law enforcement agencies that are dealing with the negative effects of illegal immigration?**

**Responses to Representative Sheila Jackson-Lee**

**From Hubert Williams, President of the Police Foundation**

Yes, undocumented aliens who are victims of or witness to crimes are reluctant to come forward because the fear detention or deportation.

Yes, I have participated in outreach efforts specifically designed to inform the community about 287(g) authorities.

I have held focus groups in four cities, as well as a national conference in Washington, D.C. Police chiefs and immigrants came together at these events to improve understanding, communications, and relationships.

Yes, I view immigration enforcement as a federal responsibility.

Yes, the costs, unreimbursed, associated with 287(g) are a concern for law enforcement agencies.

Yes, ICE, DHS, and the federal government in general could do more to assist law enforcement agencies that are dealing with the negative effects of illegal immigration.

**Questions for the Record from Ranking Member Steve King for  
Witnesses at the Joint Hearing on the Public Safety and Civil Rights  
Implications of State and Local Enforcement of  
Federal Immigration Laws  
April 2, 2009**

**For Hubert Williams:**

1. How many "police executives, policy makers, elected officials, scholars, and community representatives" were part of the conference on "Striking a Balance Between Immigration Enforcement and Civil Liberties?" And out of those, how many were supportive state and local law enforcement of federal immigration laws or 287(g) specifically?

Please provide this Committee with a list of those people?



**Responses to Ranking Member Steve King**

**From Hubert Williams, President of the Police Foundation**

Two hundred police executives, policy makers, elected officials, scholars, and community representatives were part of the conference on "The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties."

The other information requested is in our report, which has already been sent to Ranking Member King. An electronic version is available on our website, at <http://policefoundation.org>.

Professor Kris W. Kobach

Responses to Additional Questions from Rep. Sheila Jackson-Lee

1. Recently there have been stories on television... Are you aware of any pending lawsuits that are related to the 287(g) program and the nature of those law suits?

Answer: I am not an employee of the federal government at this time. Therefore, I do not have data on the number of complaints that have been received by the federal government. The same is true regarding any pending lawsuits related to the 287(g) program. However, I am aware of one lawsuit that has been reported in the print media and is currently pending in federal district court. The case is entitled *Melendres v. Arpaio*, No. CV-07-2513-PHX-MHM, and is pending in the U.S. District Court for the District of Arizona. As of July 20, 2009, there has not been any final order in the case, to my knowledge.

2. What steps is ICE taking to help local law enforcement agencies to determine whether a different ACCESS program would better meet their needs?

Answer: I am not an employee of ICE at this time. Therefore I do not have information regarding current ICE protocols in response to local government requests for participation in the 287(g) program, versus other ACCESS programs.



Responses by Professor Kris W. Kobach to Questions from Ranking Member Steve King  
Joint Hearing on the Public Safety and Civil Rights Implications of State and Local  
Enforcement of Federal Immigration Laws  
April 2, 2009

1. You heard the testimony of first panel witness Julio Mora, who was detained by law enforcement officials as they were executing a warrant for felony identity theft suspects at a business in Maricopa County, Arizona. Can you please explain why detentions of law-abiding U.S. citizens may occur during law enforcement actions?

Answer: It is not uncommon for worksite enforcement actions to involve the temporary detention of individuals who are U.S. citizens or who are aliens authorized for employment in the United States. However, such detentions are typically of a very short duration. The reason is a simple one: when ICE arrives at a business or worksite, aliens who are unauthorized for employment in the United States try to flee and evade law enforcement. It is therefore necessary to close the doors of the business and sort through the employees on site before people can be allowed to leave. ICE has developed procedures to minimize any inconvenience or delay to U.S. citizens, allowing them to be "cleared" as rapidly as possible so that they may leave the location if they so choose.

I am not aware of any court that has found such temporary detentions to constitute a violation of anyone's constitutional rights. Recently, the U.S. District Court for the District of Minnesota dismissed such a challenge in the case of *Barrera v. United States Dep't of Homeland Sec.*, 2009 U.S. Dist. LEXIS 25852 (D. Minn. Mar. 27, 2009) ("Agents executing a warrant are entitled to take measures to ensure a safe and efficient search, including detention of persons present at the site of the search.") In that case, the judge dismissed all of the constitutional claims raised by the plaintiffs, concluding that the government's search warrant had established sufficient basis to question individuals about their citizenship and temporarily detain them at the site.

2. It's been reported that in AZ there is a significant amount of self-deportation occurring. How do we know this is happening and what indicators are there showing this?

Answer: There are four indicators that a significant amount of self-deportation from Arizona has occurred since the beginning of 2008. (1) Starting in early 2008, newspapers in the state of Arizona began reporting that illegal aliens were self-deporting in very large numbers. Apartment complexes in Phoenix and Tucson confirmed that thousands of alien tenants had vacated their apartments. (2) The overburdened Arizona public school system saw its costs drop dramatically with the departure of illegal alien households; a \$48.6 million surplus suddenly appeared in FY 2008. (3) The neighboring Mexican state of Sonora reported that many Mexican citizens were returning to Mexico through Sonora. In January 2008, Sonora sent a delegation of nine state legislators to Arizona to meet with Arizona legislators regarding the enforcement of Arizona's new state law prohibiting the employment of unauthorized aliens and requiring employers to use E-Verify. They complained that Sonora could not handle the burden that the influx of returning Mexican

citizens was imposing on Sonoran schools and housing. (4) The Center for Immigration Studies reported in 2008 that Census Bureau statistics confirmed that a net reduction in the number of illegal aliens in the United States had occurred, and that this reduction had been taking place *before* the economic recession began. Importantly, the percentage reduction in the number of illegal aliens in Arizona was significantly greater than in most other states.

3. The constitutionality of some of the AZ laws concerning illegal immigration, enforced by the Maricopa County Sheriff's Office and other AZ law enforcement agencies, have been challenged in court. What is the status of each of those challenges?

Answer: Thus far, all of Arizona's laws concerning illegal immigration and their enforcement have withstood legal challenges. The most notable four cases that have reached a conclusion are as follows. (1) Arizona's Proposition 200 benefits provisions were sustained by the Ninth Circuit U.S. Court of Appeals in *Friendly House v. Napolitano*, 419 F.3d 930 (9<sup>th</sup> Cir. 2005)(decided on jurisdictional grounds). (2) The enforcement of Arizona's anti-smuggling statute was upheld by the Superior Court of Maricopa County in the case of *Arizona v. Salazar*, CR2006-005932-003 DT (2006). That decision was not appealed. (3) Arizona's Proposition 200 voter registration provisions were sustained in *Gonzales v. Arizona*, 485 F.3d 1041 (9<sup>th</sup> Cir. 2007). (4) Arizona's law prohibiting the employment of unauthorized aliens and requiring employers to use E-Verify was sustained by the Ninth Circuit U.S. Court of Appeals in *Chicanos Por La Causa v. Napolitano*, 544 F.3d 976 (2008).





Police Department

April 22, 2009

**VIA ELECTRONIC COMMUNICATION  
ONLY AND U.S. MAIL**

Mr. Andres Jimenez, Staff Member  
Honorable John Conyers, Jr.  
United States House of Representative

Mr. Jimenez,

On April 2, 2009, Police Chief George Gascón, Mesa, Arizona Police Department, appeared before the Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties and the Subcommittee on Immigration, Citizenship, Refugee, Border Security, and International Law (Committee), Joint Hearing on the "Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws".

At the time of his testimony, the Committee requested the following, which are being forwarded as attachments to this electronic communication:

1. October 16, 2008, City of Mesa (City) security camera footage, Mesa City Plaza, 20 East Main Street, Mesa, Arizona, Maricopa County Sheriff's Department Deputies 1:30 a.m. entry.
2. October 16, 2008, City security camera footage, Mesa Municipal Library, 64 East 1<sup>st</sup> Street, Mesa, Arizona, Maricopa County Sheriff's Department Deputies 1:30 a.m. entry.
3. February 2009 through May 2009 number of bookings and percentage of undocumented foreign nationals arrested and booked into the Mesa Holding Facility. The Mesa Police Department was not tracking this information previous thereto.
4. Arizona Republic, Reporter Michael Kiefer, Criminality of the Immigrant Population, County-Wide and State-Wide based on statistics provided by Maricopa County Sheriff's Department, the Arizona Department of Corrections, and the 2005 U.S. Census.

130 North Robson Street  
Mesa, Arizona 85201-6697  
480.644.2211 Tel

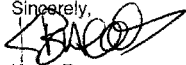
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\*The security camera footage from October 16, 2008 referenced in item 2 above is on file with the Subcommittees.

5. April 10, 2009, press release concerning Chief Gascón's travel expenses to Washington, D.C. for April 2, 2009 appearance before the Committee.
6. White Paper, The Issuance of City Badges to MCC Employees by the Mesa Police Department's Municipal Security Office.

You may contact me at (480) 644-3737 or [kevin.baggs@mesaaz.gov](mailto:kevin.baggs@mesaaz.gov) if you need any further assistance.

Sincerely,



Kevin Baggs  
Sergeant  
Adjutant to Chief of Police

130 North Robson Street  
Mesa, Arizona 85201-6697  
480.644.2211 Tel

**UNDOCUMENTED FOREIGN NATIONALS BOOKED INTO THE MESA HOLDING FACILITY  
FEBRUARY 2008 TO MARCH 2009**

2008													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
BOOKED		457	1171	917	945	560	1179	1158	1395	1065	879	1128	10575
UNDOCUMENTED		31	72	98	121	104	24	116	115	95	84	85	945
PERCENTAGE		6.64%	6.15%	10.69%	12.80%	10.83%	2.04%	9.93%	10.50%	8.91%	9.56%	7.54%	8.61%

2009													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
BOOKED	1065	691	1027										2818
UNDOCUMENTED	73	86	69										155
PERCENTAGE	7.04%	8.68%	6.72%										7.68%



**Mesa Police Department  
Media Relations Office**

*For Release: 4.10.2009  
Contact: Sergeant Ed Wessing  
Public Information Officer  
pd-info@mesaaz.gov  
480.644.3994 Tel.*

# News Release

## Statement from Mesa Police Chief George Gascón

Last Thursday, I was asked to testify before a joint hearing by the House Judiciary Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

The hearing focused on the public safety and civil rights implications of state and local enforcement of federal immigration laws.

First, I take any request from the Congress of the United States for testimony on law enforcement issues very seriously. I consider the opportunity to inform Congress on issues such as policing and the care taken to protect civil rights both an honor and a civic duty.

My testimony before the subcommittees is a matter of public record. A copy of my submitted testimony is attached. It is consistent with my previously publicly stated position on this subject.

The request for my presence at the Capitol came from Congressman John Conyers, Chairman of the House Committee on the Judiciary. Originally, it was relayed through the office of County Supervisor Mary Rose Wilcox. Neither I, nor the City of Mesa, handled any of the logistics involving airfare or hotel for the one day trip.

Since my testimony, questions have been raised about how the travel expense was paid for. When I asked who was assuming the costs of travel, I was told that it was being paid by a group of non-profit organizations concerned with immigration reform and civil rights. Subsequently, I was informed that the cost was covered by Respect Respeto, a local non-profit.

Those of you who know me understand that I consider transparency and openness to be core values in running any police organization. I also believe that when it comes to ethical standards, appearances can be just as important as substantive issues. I regret the hint of concern raised by some regarding this situation. To ensure transparency and to avoid having this issue become a distraction to serving the people of Mesa, I have informed County Supervisor Wilcox that I will pay the full cost of the trip from my personal funds. I have also informed City Manager Chris Brady that I will take personal leave days off to account for my time away from the City, even though I was testifying at the request of Congress and in my capacity as a professional law enforcement officer. The Federal Government must ultimately help solve the immigration issue and relieve state and local jurisdictions of the burden. My testimony was part of that discussion.

I believe that informing our nation's lawmakers on the issues of policing, our high regard for the constitution and our fidelity to the protection of the civil rights of all we serve, are issues of such importance that it would be a disservice to cloud that discussion with distractions. We must continue to focus on making our community more safe and secure for the people of Mesa. My track record in that regard is strong. Since my appointment in 2006, we have reduced serious crime by 34.3 percent. I want to make sure our focus remains on those important tasks.





Edward  
Wessing/police/mesaaz  
04/08/2009 12:59 PM

To: "Kevin Baggs" <kevin.baggs@mesaaz.gov>, "George Gascon" <george.gascon@mesaaz.gov>  
cc  
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Subject: Fw: email info

Here are the articles

From: "Kiefer, Michael" [mailto:michael.kiefer@arizonarepublic.com]  
Sent: 04/08/2009 03:16 PM AST  
To: Edward Wessing  
Subject: RE: email info

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### Thomas: 19% of county's felons are illegal immigrants

#### Michael Kiefer, The Arizona Republic

County Attorney Andrew **Thomas** on Thursday released a study indicating that **illegal** immigrants comprised nearly 19 percent of those sentenced for felonies in Maricopa County in 2007, even though **illegal** immigrants only make up an estimated 9 percent of the county's population.

The numbers, which were generated by the County Attorney's Office, reinforce popular beliefs about **illegal** immigration and crime but contradict the findings of some sociologists and journalists.

The Republic reported earlier this year, for example, that only 10 percent of bookings into Maricopa County jails in the last six months of 2007 were subject to holds by the federal Immigration and Customs Enforcement Agency. That percentage was based on numbers provided by the Maricopa County Sheriff's Office -- numbers that the office later tried to refute.

Similarly, a study released last week that was conducted by researchers at Arizona State University on behalf of the Maricopa County Board of Supervisors indicated that only 10 percent of the county jail inmate population in 2007 were undocumented immigrants, 2 percent were legal immigrants and 88 percent were U.S. citizens.

But the study released by **Thomas** on Thursday, which focuses on persons who are actually convicted, says that 18.7 percent of convicted felons in Maricopa County last year were undocumented immigrants.

In the past, **Thomas'** office has balked at providing numbers of **illegal** immigrants prosecuted for crimes other than those related to the state's human-smuggling statutes, and the county attorney denied that the release of the study was politically timed.

**Thomas** faces Democrat Tim Nelson and Libertarian Michael Kielsky in the Nov. 4 election.

"I understand there is great passion related to the **illegal**-immigration debate," **Thomas** said. "And I am not trying to incite anything or pour gasoline on the flames, but the public has a legitimate right to know whether there is a link between crime and **illegal** immigration."

It has been a difficult link to quantify because law-enforcement agencies have been loath to document such trends.

Until the passage of Proposition 100, the law that denies bond to **illegal** immigrants accused of serious crimes and until sheriff's deputies became certified to conduct investigations into citizenship, it was nearly impossible to do so.

According to **Thomas'** findings, in 2007, **illegal** immigrants accounted for:

- \* 12.8 percent of aggravated-assault convictions.
- \* 33.5 percent of drug convictions.
- \* 35.8 percent of kidnappings.
- \* 13 percent of robberies.
- \* 20.3 percent of felony DUIs.
- \* 20.7 percent of crimes with weapons.
- \* 10.6 percent of murders and manslaughters.

The percentages were higher for crimes generally associated with **illegal** immigrants, such as:

- \* 96 percent of smuggling cases.
- \* 44.4 percent of forgeries and frauds.
- \* 85.3 percent of false-ID convictions.

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### **Crime rate for migrants in line with population**

**Michael Kiefer, The Arizona Republic**

Despite public perception and stepped-up enforcement of immigration laws in recent months in Maricopa County, undocumented immigrants are not charged with a disproportionate number of crimes in Maricopa County.

According to the Sheriff's Office, only 10 percent of the people booked into county jails are subject to ICE holds, meaning that they will be turned over to the federal Immigration and Customs Enforcement agency when their cases are resolved.

The number corresponds closely to the estimated percentage of **illegal** immigrants thought to live in Maricopa County.

That suggests that **illegal** immigrants are not charged with crimes any more or less than any other segment of the population. The latest jail figures, which were released after a public-records request, come as the Sheriff's Office has intensified its efforts to enforce immigration laws.

The Sheriff's Office made an agreement with ICE last spring that allows specially trained sheriff's deputies and detention officers to evaluate the immigration status of people they arrest. From that time to the end of 2007, 7,700 out of 76,000 people booked into Maricopa County jails, or just over 10 percent, had ICE holds.

A November 2007 report by the Center for Immigration Studies, a Washington, D.C.-based think tank that favors immigration control, estimated there are 579,000 undocumented immigrants in Arizona, or 9 percent of the state's population. The concentration of undocumented immigrants is thought to be higher in metropolitan Phoenix.

Politicians, including Maricopa County Attorney Andrew **Thomas**, have tried to make a connection between crime and **illegal** immigration.

At a November news conference, **Thomas** said, "We continue to see the link between our crime rate in the Valley and **illegal** immigrants. We continue to have a serious violent-crime problem in Arizona, which is directly related to our border situation."

On Friday, **Thomas** informed The Republic that he had discussed the question sufficiently in the past and then grudgingly issued a statement.

"The link between crime and **illegal** immigration is well known and was recognized by the 78 percent of Arizonans who voted for Proposition 100 in 2006," it read.

Sheriff Joe Arpaio, who says he is the only one who enforces immigration laws, did not respond. His public-information officers said late Friday that the office had not reviewed the statistics provided by a chief deputy, who helps oversee the jails.

'Inconvenient truth'

But the statistics do not bear out that "well-known link."

Mesa Police Chief George Gascon has been criticized for publicly saying that immigrants do not commit a disproportionate number of crimes.

"Unfortunately, it seems to be an inconvenient truth, because there are so many people making this the central point of a political campaign and a central point of their own political agendas," he said.

"The fact continues to remain that undocumented people here in this country do not commit crimes at any greater rate than any other segment of the population."  
 Gascon was quick to add that **illegal** immigration is indeed a major issue for Arizona and the U.S., but that it does not overlap with the state's crime problems as neatly as some would like to think.  
 "Unquestionably we have an **illegal** immigration problem, and unquestionably it needs to be fixed," Gascon said. "The problem is when you try to apply the wrong fix. When you start using your resources and applying them based on faulty assumptions or misinformation, then you're going to be wasting resources and you're also going to lead people to believe that you're fixing something when the reality is that you're not fixing anything."

Numbers unchanged

Last April, The Republic analyzed available data from the Arizona Department of Corrections and Maricopa County jails and determined that 10 percent to 11 percent of the inmates were undocumented immigrants. But the information available from the jail was not based on federal immigration databases.

At the time, Arpaio was just entering his agreement with ICE, which gave his deputies access to those databases, and he vowed to keep accurate numbers for the future.

According to sheriff's Deputy Chief Jack MacIntyre, who provided the 2007 numbers, the program was up and running by late May, and by year's end had identified 7,762 ICE holds. From June 1 to Dec. 31, there were a total of 76,203 people booked into the jails.

"There would probably be fewer ICE holds if it weren't for laws tailor-made for the undocumented," said defense attorney Antonio Bustamante, referring to the state's recently passed human-smuggling laws and laws making it a felony to possess counterfeit or forged identification cards. There are hundreds of undocumented immigrants held in jail without bond as they await trial on those charges. The Sheriff's Office also keeps track of the average daily population for ICE holds, which for 2007 was 17 percent of the jail population. The higher number can be largely attributed to Proposition 100, the law that denies bond to undocumented immigrants who are charged with Class 4 or lower felonies. Although U.S. citizens and foreigners who are in the country legally are released on bail, the undocumented immigrants aren't, and their numbers accrue.

On Feb. 12, the Sheriff's Office also released statistics regarding the number of people it said it interviewed -- 40,000 -- and ascertained that 25 percent were here illegally.

On further inquiry, The Republic learned that the sheriff's specialized immigration control unit interviewed 43,895 people over the past 10 months; 9,556, or 21.8 percent, were deemed **illegal**, according to spokeswoman Lisa Allen.

|

Bookings and **illegal** immigrants

Total bookings June 1- Dec. 31, 2007: 76,203.

ICE holds late May-Dec. 31, 2007: 7,762.

Source: Maricopa County Sheriff's Office

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## **IDs unequal across the board**

**Michael Kiefer, The Arizona Republic**

If you're an underage drinker caught trying to get into a bar with a fake driver's license, you might get charged with a misdemeanor -- if you get charged at all.

But if you're an **illegal immigrant** who presents a questionable Mexican driver's license to a Phoenix police officer, you'll likely get charged with a felony forgery, held in jail without bond, convicted and deported -- sometimes even when the document is real.

Defense attorneys want to know why there appears to be a different standard applied to non-U.S. citizens when the 14th Amendment of the U.S. Constitution guarantees equal protection under the law, regardless of immigration status.

Few law-enforcement or prosecutorial agencies would address the issue of the two-tier system, and it

is next to impossible to gauge how widespread the practice is. But the effects are clear: Many Mexican nationals arrested end up pleading guilty to a felony and agreeing to leave the country rather than spend more time in jail. And the price they pay is high, effectively forfeiting the right ever to re-enter the country legally or become naturalized U.S. citizens.

Maricopa County Attorney Andrew Thomas, who has championed tough sanctions against illegal immigrants, acknowledges that charging and convicting them of felonies is an effective de facto deportation tool, especially since illegal immigrants charged with felonies are held without bail under Proposition 100.

However there is no clear-cut line to define what constitutes charging someone with a misdemeanor vs. a felony for a fake driver's license. The decision is made at the discretion of prosecutors. The felony charge hinges on the intent to commit fraud, but prosecutors and defense attorneys alike admit that it's difficult to prove what fraud is being committed.

"What's the fraud?" asked Lisa Posada, a defense attorney in private practice who has handled several of these cases.

She, like many defense attorneys, notes that most of the Mexicans arrested present documents that bear their true names, photos and dates of birth -- even if the documents themselves may be illegitimate.

"How come a college girl in Tempe with a fake ID gets charged with a misdemeanor, and a Mexican with a fake ID gets charged with Class-4 felony, when there's a statute on point saying it's a misdemeanor?" Posada asked.

Posada has had both types of clients. But the Mexicans, she said, usually enter into plea agreements and are removed from the country.

"A lot of them plead guilty because they just want to get out of jail," Posada said.

And in those cases, what constituted the fraud, or even whether the licenses were truly falsified, are never determined.

Immigration tool

Whether intended or not, charging Mexican nationals with felony forgery instead of misdemeanor possession of a counterfeit driver's license allows officials to take advantage of Proposition 100, the law that passed overwhelmingly in 2006.

Proposition 100 was billed as a way to deny bond to illegal immigrants accused of "serious crimes." But the term "serious crimes" has no legal meaning, so the Legislature stepped in and defined them as Class 1-4 felonies, encompassing everything from murder and rape down to shoplifting. "Serious" now includes burglars, perjurers, and those who conspire to commit human smuggling, the charge in place for all people caught with coyotes. Forgery with intent to commit fraud is a Class-4 felony.

Coupled with the 2006 human smuggling law, the new Employer Sanctions Law, and the Maricopa County Sheriff's agreement with federal immigration authorities allowing deputies to verify immigration status of arrestees, Proposition 100 has become an effective tool to combat illegal immigration.

Thomas, who had a hand in passing those laws, admits as much.

"These laws, working in concert, are providing a hackstop, at least here in Maricopa County," Thomas said in an interview last fall. Except for those who are accused of truly dangerous crimes, most of the individuals are offered plea agreements to low-level felonies and probation if they agree to leave the country. Most defendants take the pleas rather than wait in jail. So they are then deported with a felony conviction, a disincentive to return, because a subsequent arrest can put them in federal prison for up to 20 years.

"The policy of requiring a felony conviction for any plea agreement is an important one," Thomas said. "That conviction will harm their ability to immigrate here legally and become a citizen."

"In a sense, it is this office's attempt to enforce a no-amnesty program. It's hard for somebody with a felony conviction to receive amnesty down the road for citizenship purposes, so it serves that additional purpose. All the better, as far as I'm concerned."

Officials mum on practice

There is no way of determining how many forgery cases were pleaded out because the Maricopa County Attorney's Office will not say how many have been prosecuted. Spokesman Barnett Lotstein says that the Arizona public-records laws do not require the office to search such information. And Thomas would not specifically address the driver's license cases.

But last year, Phoenix police alone arrested nearly 2,500 people and booked them for forgery with intent to commit fraud; most were related to foreign driver's licenses or other identification cards. The arrests were made after officers compared licenses with photographs in a commercially published

book also used by bar bouncers to weed out fake IDs. The court testimony of those officers has recently come under fire. Not every Valley police agency resorts to the serious felony charges when people they stop, usually during traffic stops, produce Mexican driver's licenses. Mesa police do not file the charge; other law-enforcement agencies, such as Phoenix police, do. Phoenix Public Safety Manager Jack Harris, who has said he does not support his officers' conducting routine immigration enforcement, did not want to talk about Mexican driver's licenses, either. In an official statement, Harris said, "Phoenix police policy states it is not the department's intent to arrest anyone for the purpose of deportation. It is my preference that anyone who is arrested, found guilty and is then sentenced for any crime will serve their sentence prior to any other action. The prosecution of those suspects arrested on felony charges is the responsibility of the Maricopa County Attorney's Office and it is their decision on how to proceed with each individual case. "When Phoenix police officers encounter persons who produce or possess a fraudulently produced instrument such as a driver's license or identification card those persons will be arrested for the most appropriate and serious violation, which in these cases would be a felony."

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## DATA TRACKING CRIME, MIGRANT STATUS LACKING

**By Michael Kiefer, The Arizona Republic**

Undocumented immigrants are causing a crime wave in Arizona. True or false? Last year, a national poll indicated that a third of all Americans and 46 percent of Phoenix residents believe that immigrants significantly increase the crime rate. The perception is that, yes, they are; the truth is, no one is keeping track. And the only statistics available that single out the immigration status of defendants and criminals -- prison and jail populations, and felonies prosecuted in the county -- suggest that undocumented immigrants commit crimes at a rate virtually proportionate to their numbers in the general population. There is no question that undocumented immigrants are flooding across the border and that Phoenix's Spanish-speaking population is growing. Illegal immigration is the No. 1 issue for Phoenix residents, according to a 2006 Pew Research Center poll. The immigration crisis is very real, but it inspires a lot of hyperbole. And a lot of media coverage: On Feb. 2, an undocumented immigrant in west Phoenix was charged with stabbing and seriously injuring a man who had just finished a military tour in Iraq. On Feb. 18, a man on a bicycle was run down by an undocumented immigrant in north Phoenix, police say. On Feb. 25, an undocumented immigrant was charged with raping a 6-year-old girl in south Phoenix. In March, a man accused of kidnapping and assaulting his girlfriend was deported to Mexico right before he could be indicted, but police say he returned to Arizona 11 days later and stabbed his female cousin to death. Court officials, prosecutors and legislators are quarreling over how to enforce voter-approved Proposition 100, which denies bail to undocumented immigrants accused of serious crimes. The truth is, as serious as they are, put in a larger news context, many of the crimes would never make it to TV news or see newsprint if they had been committed by legal citizens. But the hype has reached fever pitch, and radio talk show hosts work themselves into a frenzy on the topic. They're not alone. One widely circulated e-mail cited the Los Angeles Times as saying that 95 percent of murder warrants and 75 percent of people on the most-wanted list in Los Angeles were undocumented immigrants. "I saw that e-mail, and it's wrong," said Mesa Police Chief George Gascon, a former assistant police chief in that city. "By and large, criminality of Hispanics in LA is very proportionate to their size in the population," Gascon said. The same is true for Mesa, he said, where slightly more than half of all violent crimes are committed by Anglos and one-third by Hispanics, roughly proportionate to the population. Data lacking Valley police departments don't keep track of the numbers of crimes committed by immigrants, legal or illegal, because they consider immigration to be a federal responsibility. And the federal Immigration and Customs Enforcement agency mostly concentrates on human- and drug-smuggling operations without comparing its notes with law enforcement in general. The courts don't keep track, either. "We don't know the full dimensions of the problem for what I have called the conspiracy of silence of police forces and other actors in the criminal justice system," Maricopa County Attorney Andrew Thomas said. "A lot of people in positions of authority do not want to know the immigration status of criminals." Thomas ran for office on a platform of curtailing illegal immigration. Records kept by his office count undocumented immigrants in 10 percent of all felony cases filed. The numbers of undocumented immigrants in the

Maricopa County jails and the Arizona Department of Corrections prisons are also roughly proportional to the population as a whole.

In early March, the Washington, D.C.-based Immigration Policy Center released a study claiming that Mexicans born in Mexico were seven times less likely to be incarcerated than Mexican-Americans.

And aside from their illegal presence, there is no evidence that undocumented immigrants in Arizona commit crimes at a significantly higher rate than any other segment of society.

Last year, the Washington, D.C.-based Pew Research Center polled residents of Phoenix, Las Vegas, Washington, D.C., Raleigh-Durham, N.C., and Chicago on what they saw as their most serious problems. Only Phoenix identified immigration as its biggest challenge, with nearly half the Phoenix respondents saying they felt that immigrants increase crime rates.

The crime rate is stubbornly high here, Thomas said, pointing out that Arizona leads the nation in auto theft and identity theft. "The vast majority of people who are complaining about immigration are doing so for good-faith reasons." Gascon admitted that many seasoned police officers also believe that Hispanics commit a majority of crimes even if the arrest records don't bear that out.

"I think it has to do with human nature," Gascon said. "You have a new group coming in, and it's threatening to others. It has happened with other groups before and will undoubtedly occur at another time."

#### Battling perceptions

KFNX-AH (1100) Talk Radio show host Charles Goyette has heard the complaints from callers to his show over the years.

"Anybody that's taken phone calls on the radio about these issues will tell you, here's the archetypal story: 'In the 1990s or the 1980s I was doing my trade in home building and I was a craftsman and I was making \$18 an hour. And now I'm happy to make eight.' These are the people who will be most outspoken," he said.

But that may also be a misperception.

The Pew poll indicated that about half of Americans also thought that immigrants were taking jobs -- slightly fewer thought so in Phoenix -- but the Arizona Chamber of Commerce disputes the notion.

"We are at full employment," said the chamber's Jessica Pacheco. "That means that if you want a job you can get one." But the perceptions and misperceptions linger. "You hear over and over again, people who live in neighborhoods in town that have been stable for 25, 30 years, while they've raised their kids. And now they find they're in deteriorating neighborhoods," Goyette said. Immigration activists tell a different story. "The perception is based on attitudes instead of facts," said Elias Bermudez, president of Immigrants without Borders, an organization that advocates fair immigration reform. Immigrants, he said, are too afraid of being removed from the country if they get arrested.

"Undocumented people, because of the fact that they're undocumented, are less likely to commit a crime, because if they get caught, they're going to end up being deported," Bermudez said.

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## MIGRANT CRIME NUMBERS PROPORTIONATE TO POPULATION

**By Michael Kiefer, The Arizona Republic**

No one knows the size of the undocumented-immigrant population in Arizona, and the distinctions between immigrants and illegal immigrants, particularly of Mexican origin, are blurred in many counts.

The 2005 U.S. Census update estimates that 450,000 Arizona residents -- 8 percent -- hold Mexican citizenship, regardless of their immigration status. In Maricopa County, Mexican nationals comprise 9 percent of the population.

The Pew Hispanic Center in Washington, D.C., estimates the state's undocumented population at about the same size. And though all Mexican nationals are not undocumented, and all undocumented immigrants are not Mexicans, there is much overlap between those groups, both of which are thought to be undercounted.

The few records available regarding crime among Mexican nationals and undocumented immigrants also blur the distinctions. But they suggest that neither Mexican nationals nor undocumented immigrants are over-represented in felony prosecutions or incarcerated disproportionately. Undocumented immigrants were involved in 10 percent of felony cases tried by the Maricopa County Attorney's Office last year, while Mexican nationals accounted for 11 percent of all bookings in Maricopa County jails in 2006.

A tally of Arizona State prison inmates in early March found that 11 percent of them were Mexican nationals and 10.5 percent had "ICE detainees," meaning they were to be turned over to federal Immigration and Customs Enforcement officials upon release.

Those numbers tell only part of the story. They don't reflect the number of misdemeanors committed by immigrants or undocumented immigrants, or the unreported crimes committed against an undocumented immigrant who is afraid to call police.

"It's important to get statistics and get the true story out and not just shoot from the hip," said Maricopa County Sheriff Joe Arpaio.

Arpaio has 160 deputies and detention officers undergoing training from ICE to teach them to identify and arrest undocumented immigrants. The first group has completed training and is using its new knowledge to detain and identify undocumented immigrants. The statistics will help prosecutors answer questions regarding immigration status demanded by a new state law denying bond to undocumented immigrants suspected of committing serious crimes.

**From:** Edward.Wessing@mesaaz.gov [mailto:Edward.Wessing@mesaaz.gov]  
**Sent:** Wednesday, April 08, 2009 12:06 PM  
**To:** Kiefer, Michael  
**Subject:** email info

Here it is, thanks for your help.

Ed

*Sgt. Ed Wessing #11465*



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## WHITE PAPER

The Issuance of City Badges to MCC Employees by the  
Mesa Police Department's Municipal Security Office



## I. INTRODUCTION:

On October 16, 2008 at 1:30 a.m., sixty members of the Maricopa County Sheriff's Department (MCSO) served a night-time search warrant at the Mesa City Plaza and library buildings.<sup>1</sup> The warrant related to an MCSO investigation regarding whether the employees of MCC Acquisition Company, LLC (MCC), Mesa's janitorial contractor, had used fake<sup>2</sup> identification to obtain Mesa City ID badges (City badges).

On October 21, 2008, as part of the search warrant return,<sup>3</sup> Mesa received a copy of the affidavit sworn by MCSO Detective Monroe in support of the warrant.<sup>4</sup> The affidavit provided Mesa with the first detailed information regarding the MCSO's investigation.

The affidavit states that the investigation was based on a tip from former Mesa employee Chuck Wilson.<sup>5</sup> Wilson had been employed as a Security System Technician in the Municipal Security Office (MSO) of the Mesa Police Department (MPD).<sup>6</sup>

As outlined in Table I, pp. 9-11 of this report, the information in the affidavit attributed to Wilson is inaccurate. Mesa does not have documents from MCSO that reflect what Wilson told Monroe, so Mesa does not know the source of the inaccuracies.

Since the information relied on by MCSO was inaccurate, Mesa was compelled to do its own investigation to determine whether employees of the MPD were issuing City badges to MCC employees knowing that the identification presented was fake. The purpose of this report is to outline the information obtained in the investigation and to provide background and context that clarifies the issues.

## II. MUNICIPAL SECURITY BADGING OFFICE

MSO is a civilian unit within the MPD Support Services Division which is supervised by a Lieutenant. From February 2006 to November 2007 Craig Walter was the supervisor. Wade Pew was assigned to MSO effective November 2007, but was on leave until approximately February 5, 2008.<sup>7</sup>

One of MSO's functions is to administer and monitor the electronic access control system utilized in city buildings. MSO employees Debi Maxwell, Senior Program Assistant, and Charlene Gutierrez, Administrative Support Assistant, are responsible for issuing City

<sup>1</sup> Appendix, pp. 85-87.

<sup>2</sup> In this report "fake identification" includes documents that are false, fraudulent or forged, without distinction.

<sup>3</sup> Within three court days of the execution of the warrant, the officer must return the warrant to the magistrate accompanied by an inventory of the items taken in the warrant. A.R.S. §13-3918, §13-3921. After the return, the affidavit that supported the search warrant is available to the public.

<sup>4</sup> Appendix, pp. 91-97.

<sup>5</sup> Appendix, pp. 93.

<sup>6</sup> Interview of Charlene Gutierrez (Gutierrez), lines 287-288.

<sup>7</sup> Interview of Wade Pew (Pew), lines 66-76.

badges and access cards to Mesa employees and contractors authorized to work in City buildings. No other MSO employees are responsible for issuing badges.<sup>8</sup>

The authorization provided by the City badge and access card determines what buildings an employee or contractor is permitted to work in. Mesa characterizes its buildings as "secure" and "unsecure" and its employees and contractor workers as cleared to work in either a secure or unsecured building. In order to work in a secured building, an employee or contract worker is required to pass a complete MPD background check, pursuant to the Municipal Security Background Clearance Policy for Contractors.<sup>9</sup> Employees or contractors who worked in unsecured buildings do not undergo this check.

Prior to August 1, 2007, a Mesa employee or contract worker did not have to show any form of identification to MSO when being issued a City badge.<sup>10</sup> Due to concerns related to MCC employees' use of City badges and access cards (see section IV), MCC was notified in July 2007 that new "all-in-one" cards would be issued to MCC employees.<sup>11</sup> All MCC employees were required to report to MSO in person, turn in their old City badge, have a new photo taken and provide the following documentation:

- Government issued driver license, identification card or passport showing name and address;
- Current INS Resident Alien card, if applicable, and;
- Social security card

There was a coordinated effort between MSO and MCC to update the list of MCC employees and provide Mesa with the required documents before August 1, 2007.<sup>12</sup>

City badges and access card are deactivated based on several parameters including the contract expiration date which is included on the front of the City Badge. When applicable, the INS expiration date of a particular employee is physically printed on the back of the City badge, and the card is deactivated on that date.<sup>13</sup> The access cards are also manually deactivated for cause, such as a lost or stolen card or terminated employee.

### III. MCC CONTRACT

From August 2005 to until August 2008, MCC was the contractor that cleaned all Mesa's buildings, secured and unsecured. In anticipation of the MCC contract expiring on July 31, 2008, the janitorial contract went out to bid. Effective August 1, 2008, the low bidder took over the cleaning functions in the secured buildings.<sup>14</sup> After August 1, 2008, MCC

<sup>8</sup> Interview of Debi Maxwell (Maxwell), lines 112-120; Gutierrez, lines 743-745.

<sup>9</sup> Appendix, pp. 100-101.

<sup>10</sup> Maxwell, 653-668.

<sup>11</sup> Appendix, p. 9-13.

<sup>12</sup> Appendix, p. 12.

<sup>13</sup> Appendix, p. 13.

<sup>14</sup> Prior to August 1, 2008, the MPD facilities were the only official "secured" City of Mesa sites. On that date, City Plaza, City Court, Communications, South Center Campus, Utilities, Fire Administration and the ITD building were added to the secured site list. Appendix, p. 35-37.

did not clean secured buildings and MCC employees were not authorized to be in secured buildings.<sup>15</sup> Any MCC employees who wanted to work for the new contractor under the secured contract needed to be hired by that company and undergo the required background check.<sup>16</sup>

The Mesa Facilities Management unit was responsible for the management of the MCC contract, which was terminated on November 7, 2008.<sup>17</sup>

#### IV. PERFORMANCE CONCERNS WITH MCC AND MESA'S RESPONSE

Mesa had concerns with MCC's performance as a contractor on several levels. There were meetings, e-mails and cooperative efforts to resolve these concerns. There is no indication, however, that at any time prior to May 20, 2008, Mesa had information that an MCC employee used or attempted to use fake documents to obtain a City badge or access to Mesa facilities. Instead, the concerns raised include:<sup>18</sup>

- MCC employees separating City badges and City access cards so that non-secured MCC employees could clean in secured buildings;
- Lost badges;
- A delay in the return of badges and access cards when an MCC employee was terminated;
- MCC employees bringing unauthorized people to work to help clean;
- MCC employees bringing their children to work;
- MCC employees going through trash or looking at documents in a secured building;
- Minor cleaning performance issues;
- After August 2007, prospective employees not bringing the required identification to municipal security when picking up a City badge.

MPD took several steps to address the problem of MCC employees using each others' access cards and allowing unauthorized individuals accompany them in the building. First, in order to prevent MCC employees from separating the City badge from the access card, MPD changed identification cards to an "all-in-one" card where the access card was physically part of the photo identification.<sup>19</sup> Old City badges and access cards were deactivated. All MCC employees authorized to work in a City building were required to pick up their new "all-in-one" badges in person at the MSO and provide the following documents, which were copied by MSO staff for the City files: a government-issued identification, an INS card, if applicable, and a social security card.<sup>20</sup>

<sup>15</sup> No MCC employees were located at the Mesa City Plaza when MCSO served the warrant on October 16, 2008 because MCC stopped cleaning that building as of August 1, 2008. Appendix, p. 35.

<sup>16</sup> Appendix, p. 106.

<sup>17</sup> Appendix, p. 48.

<sup>18</sup> Appendix, pp. 1-8; 31.

<sup>19</sup> Appendix, pp. 115-117.

<sup>20</sup> Appendix, pp. 110-113; 117-117.

Next, MPD conducted "Operation Clean Sweep" in May and June of 2007.<sup>21</sup> Under this program, whenever the security communications console would indicate that an MCC employee had swiped an access card, a municipal security officer would respond and check that the individuals who were on site were authorized to be in the building and had a valid City badge and access card. In the first operation, Municipal Security located individuals who did not have their City badge, who had the badge or access cards of another employee, or who had brought unauthorized individuals with them to work. In the second, one violation was noted. In all instances there was cooperation and follow-up with MCC regarding the results of the stings. When appropriate, Facilities issued a Liquidated Damages Letter to MCC as authorized by the contract.<sup>22</sup>

It is evident that with the communication among Facilities, MCC and MSO, and the supervision by Facilities, if either MSO or Facilities had any information that MCC employees had attempted to or had provided false or fraudulent identification to obtain City badges, that information would have been documented and addressed.

#### V. FIRST REJECTED IDENTIFICATION: March 4, 2008

As discussed above, in 2007, Mesa was having concerns with MCC related to the use of City badges and access cards. According to Lieutenant Pew, the employees he supervised who were responsible for badging (Debi Maxwell and Charlene Gutierrez) were frustrated because even though Mesa started requiring MCC employees to show several forms of identification before the badge would be issued, Zoila Fruland (Zoila), an on-site MCC supervisor, was still bringing the MCC employees in to get a badge without having the required documents.<sup>23</sup> In those instances, Maxwell or Gutierrez would have the employees fill out the appropriate City paperwork and take a picture for the City badge but would not issue the badge. Instead, they would explain what documentation was required and tell the prospective MCC employee that they could not have the badge until they had provided the required documentation. In some instances, the MCC employee would not return and, after a reasonable time had passed, MSO personnel would delete the photograph from the City system and shred the paperwork.<sup>24</sup>

In both of her interviews, Maxwell stated that if someone presented her with an identification and she did not accept it, she would copy the documents, show them to her lieutenant and keep it in her desk.<sup>25</sup> In her first interview, without the benefit of reviewing any relevant documents, Maxwell recalled that this occurred on four or so occasions over the last three years.<sup>26</sup> In both interviews she insisted that whenever this occurred she talked to her lieutenant, copied the documents and kept them at her desk.<sup>27</sup>

<sup>21</sup> Appendix, pp. 4 and 8.

<sup>22</sup> Appendix, pp. 48-81.

<sup>23</sup> Pew, lines 216-292.

<sup>24</sup> Maxwell, lines 1718-1778.

<sup>25</sup> Maxwell, lines 1355-1369; 1458 - 1466.

<sup>26</sup> Maxwell, lines 2514-2528; Maxwell I, lines 95-115.

<sup>27</sup> Maxwell, lines 1458-1466; Maxwell I, lines 183-188.

In her second interview, Maxwell reviewed the files from her desk (there were two),<sup>28</sup> emails and other documents that set a time line for when MSO started looking at identifications. The review, Maxwell was unequivocal about the following:

- Maxwell admits that she was incorrect about the timing of events;<sup>29</sup>
- From August 1, 2007 to March 4, 2008, MSO badging personnel never encountered a situation where an MCC employee had presented identification that appeared to them to be fake;<sup>30</sup>
- The first time that Debi Maxwell declined to accept identification from an MCC employee was March 4, 2008, when Zoila and a woman presenting a birth certificate bearing the name Judy Alcantar Quinones (Judy), came to MSO to get a City badge for Judy. Maxwell turned her away because she did not have photo identification. Later in the day "Judy" and Zoila returned to MSO with an Arizona Identification Card. The card spelled "Judy" as "Yudy" and had both an issue and expiration date of March 4, 2009.<sup>31</sup> The identification clearly stated on the back, "...this identification is not issued by any government agency." Since the document clearly stated that it was not a government-issued identification, it did not meet MSO's requirements. Debi Maxwell showed the identification to Lieutenant Pew, emphasizing the language on the back indicating that it was not government-issued. Pew told Maxwell not to issue the City badge.<sup>32</sup>
- Maxwell indicated that she mistakenly thought that the incident with "Judy" was in March 2007, which is why she thought the concerns were going on for so long and that she had discussed them with her previous lieutenant. After reviewing the documents she is confident the "Judy" incident is the only instance that she was involved in, that she discussed it with Lieutenant Pew and that she had not discuss this (or a similar matter) with Lieutenant Walter.<sup>33</sup>

#### VI. THE INCIDENT THAT GENERATED THE TIP TO MCSO

As detailed in Table I, pp. 9-11 of this report the information contained in Monroe's affidavit that is attributed to Chuck Wilson is inaccurate. Specifically, most of this information relates to an incident that occurred at MSO on May 20, 2008.<sup>34</sup> Wilson's

<sup>28</sup> Ms. Maxwell had one set of documents dated March 17, 2008 at her desk that she believes was given to her by Charlene Gutierrez. She cannot recall what the issue was with the identification. Ms. Gutierrez said that was entirely possible, but she does not recall the documents or turning the woman away. Maxwell, lines 1641-1642; Gutierrez, lines 653-664.

<sup>29</sup> Maxwell, lines 1355-1369; 2514-2528.

<sup>30</sup> Maxwell, lines 1447-1456.

<sup>31</sup> While the expiration date seems like it could be an issue, it could also be a mistake. MSO even issued a City badge on one documented occasion with a typographical error in the expiration date. Appendix, p. 115; Maxwell, lines 140-168.

<sup>32</sup> Maxwell, lines 1350 - 1362; 1530-1669.

<sup>33</sup> Appendix, pp. 20-23; Maxwell, lines 1350 - 1362; 1522-1528; 1663-1682.

<sup>34</sup> Appendix, pp. 93-95.

role in the event, the sequences of the events and the events themselves are reported inaccurately.

The best description of the incident is Charlene Gutierrez' e-mail written to Mary Croft, Mesa Senior Facilities Contract Monitor, on the day it occurred, which states:<sup>35</sup>

On Tuesday, May 20, 2008 Zoila Fruland brought two individuals in for a city identification. When asked for a valid ID, neither had one. I explained I would not be able to issue a city ID until they could provide this. Both individuals came in again with Zoila later that afternoon with Arizona identifications. After looking over the identifications, I turned Mara Lopez away because the identification did not have a signature therefore making it invalid. At this time I did issue Maricela Aquilar-Vazquez a city identification and access card. Again later in the afternoon Zoila, Mara and Maricela returned with another Arizona Identification card for Mara. Upon looking at this ID, it had an issue date of 12/30/06. I asked Zoila when she was issued this ID and she said this afternoon. I explained that I could not accept this ID either because of the issue date. All individuals left our office at this time. We the (sic) verified with Motor Vehicle and Mara's identification was invalid. The number of Mara identification is registered to another individual. Maricela's identification number was identified by Motor Vehicle as a "generic" number not issued to anyone. I will be out tomorrow but Lt. Pew has asked that you come in to see him as soon as possible.

As a result of the information from MVD, Maricela's city badge and access card were immediately deactivated and Facilities notified MCC and Zoila that this had occurred.<sup>36</sup> In addition, as requested in the e-mail, Pew met with employees from Facilities to discuss how to handle the matter with MCC. The Facilities staff invited Pew to attend the next meeting they had with MCC (which was already scheduled for May 21, 2008) so that he could directly communicate his concerns to MCC.<sup>37</sup> Facilities Maintenance Director Dennis Ray also attended this meeting, and followed up with MCC in a June 4, 2008 e-mail emphasizing that the contract required that, "the Contractor shall insure (sic) that all employees have a legal right to live and work in the United States."<sup>38</sup>

While it may have been more appropriate to also document the events of May 20<sup>th</sup> in a criminal report, both MSO and Facilities dealt with it in a meeting with MCC as they had with so many other issues. That decision was not made, however, with any history of MCC employees providing fake identification to MSO to obtain badges. As far as Pew or the Facilities staff knew, the May 20, 2008 incident was the first time this had occurred.

<sup>35</sup> Appendix, p. 47.

<sup>36</sup> Appendix, pp. 45-46.

<sup>37</sup> Appendix, pp. 118-123.

<sup>38</sup> Appendix, p. 104.

## VII. JUNE 3, 2008 VISIT FROM MCSO

On June 3, 2008, MCSO detectives, including Monroe, came to the MSO to pick up documents that they had requested from Chuck Wilson.<sup>39</sup> Lieutenant Pew asked the deputies whether there was anything that he could do to help them. The deputies told Lieutenant Pew that they were doing an investigation based on information provided by Chuck Wilson alleging that MCC was employing undocumented workers and that they were providing false identification to MSO in order to obtain a City badge. The deputies told Pew that they had run some of the information provided by Wilson through the ICE computer, and the results indicated "that numerous of the ID's appear to be fraudulent, with the names and assigned ID card numbers not matching." MCSO did not provide Pew with the names of the MCC employees that were the focus of the investigation.<sup>40</sup> Pew gave the deputies his contact information, and told them to contact him if they needed anything further.<sup>41</sup> Lieutenant Pew called Assistant Chief Dvorak, briefed him on the situation and followed up with a detailed e-mail.<sup>42</sup>

Dvorak recalled discussing information regarding MCSO's visit with Chief Gascón on the afternoon of June 3, 2008.<sup>43</sup> The other individuals present remember the meeting, but recall that it focused primarily on Chuck Wilson and why he was still at work as of June 3, 2008. In August 2007, the Chief had given direction for Wilson to be administratively suspended pending the outcome of IA investigation.<sup>44</sup> The Chief was concerned that Wilson was still at work in June, despite the severity of the misconduct, which involved Wilson and a subordinate creating a fake hotmail account in the name of another MSO employee and sending an harassing e-mail to females assigned to MSO.

In the context of this meeting, it was not communicated to Chief Gascón that MCSO had already confirmed that some of the identifications MCC employees used to obtain City badges were fake.

Recognizing that the information related to the responsibilities of another City department, Chief Gascón briefed City Manager Chris Brady on June 4, 2008 based on the partial information he had received. As a result, Mr. Brady instructed Deputy City Manager Bryan Raines to have his Facilities staff ensure that MCC was following the terms of its contract. Mr. Raines learned from Dennis Ray, Director of Facilities Maintenance, that a meeting with MCC had already occurred on May 21, 2008. After his conversation with Raines on June 4, 2008, Dennis Ray sent a confirmatory e-mail to MCC, reiterating the contract terms that had been discussed at the May 21<sup>st</sup> meeting.<sup>45</sup>

<sup>39</sup> Appendix, p. 94-95.

<sup>40</sup> Pew, lines 1118-1229; Appendix, p. 43-44.

<sup>41</sup> Pew, lines 1437-1445.

<sup>42</sup> Appendix, pp. 43-44.

<sup>43</sup> Interview with Assistant Chief Dvorak (Dvorak), lines 405-434.

<sup>44</sup> Dvorak, lines 551-642.

<sup>45</sup> Appendix, p. 104.

#### VIII. FURTHER CONTACT WITH MCSO

After his initial conversation on June 3, 2008 (where he offered to provide future assistance), Pew never heard from the MCSO about the investigation.<sup>46</sup> Prior to the service of the warrants on October 16, 2008, MCSO had no contact with the upper-management of Mesa or the MPD regarding the investigation, its ultimate conclusions, or how the evidence developed related to any particular MCC employee working in a City facility.

MCSO Detective Monroe did, however, continue to correspond with Chuck Wilson.<sup>47</sup> In addition to two e-mails which clearly identified a list of numbers related to MCC employees that MCSO alleges came back fraudulent,<sup>48</sup> Monroe also sent a June 5, 2008 e-mail requesting Wilson to provide additional files.

After not being able to reach Wilson on June 9, 2008,<sup>49</sup> Monroe started to send e-mails to Adam Barnes, another MSO Security Systems Technician that she had met through Wilson. From August 15<sup>th</sup> - 19<sup>th</sup> there was an exchange of e-mail wherein Monroe asked Barnes about the cleaning crews' procedures, uniforms, schedules, access cards, etc. Barnes agreed to run the access card data and provide information about where certain MCC employees are and when. When Barnes sent the schedules to Monroe, he wrote that he wanted to keep the "operation covert". He also mentioned that the cleaning people sometimes brought their family with them to work. Monroe responded to Barnes, "I am all about the 'covert ops,' you know what would be cool, if these guys are letting their families in, we could get the family members as well."<sup>50</sup>

#### IX. PROACTIVE STEPS FOR THE FUTURE

The Employer Sanctions Laws and E-verify are designed to require employers to determine whether a worker is authorized to work in the United States. The laws do not permit a secondary employer like Mesa to conduct E-verify on contractors' employees. There are, however, steps that Mesa can take to make the system more effective.

Mesa is in the process of finalizing new procedures that will reduce the likelihood that a person not authorized to work in the United States is working with Mesa as a contract employee. The new procedure includes, in part:

- Contract provisions laying out the expectations of the contractor with severe sanctions that are more easily imposed
- A requirement that each contractor complete a Verification Form specifically listing the employees working for the company (or for the company's contractors)

<sup>46</sup> Pew, lines 1437-1445.

<sup>47</sup> Appendix, pp. 38-42.

<sup>48</sup> No other MSO employee saw these e-mails. Pew, lines 850-856; 2018-2040; Maxwell, lines 2087-2113; Gutierrez, pp. 57-61.

<sup>49</sup> This was the date of Wilson's Disciplinary Review Board hearing on his pending IA complaint.

<sup>50</sup> Appendix, pp. 105-112.



and attesting that the contractor has applied with all Federal and State laws related to verification of employment eligibility

- Whenever a contractor requests that a new employee be issued a City facilities access card, the Verification Form must be updated
- Before MSO issues an access badge to the employee of a contractor, MPD will verify that MPD has a Verification Form from the contractor and inspect the United States or State issued government identification of the employee
- The new policy also has an audit component through random reviews

The janitorial contractor has already submitted the Verification Form.

Mesa will continue to exercise due diligence to reduce the likelihood that someone who is not legally permitted to work in the United States is not working for the City of Mesa or its contractors.

COMPARISON OF FACTS DEVELOPED IN MPD INVESTIGATION AND LANGUAGE IN MONROE'S SW AFFIDAVIT	
<p><i>On 5/21/08 your Affiant conducted a telephonic interview with Chuck Wilson in reference to his telephone message. Chuck told your Affiant he has been in charge of issuing badges for contract workers or City of Mesa employees with the Municipal Security for City of Mesa when approximately two years ago he noticed and notified his supervisor that employees with MCC Acquisition Company, LLC were presenting false/ forged documents to receive a City of Mesa contract worker badge, which allowed access to City of Mesa buildings.</i></p>	
<ul style="list-style-type: none"> <li>✓ Chuck Wilson was not involved in issuing City Badges</li> <li>✓ Wilson was a Security Systems Technician</li> <li>✓ He was never "in charge" of issuing badges</li> <li>✓ Wilson never issued a badge and had no role in deciding if one would issue</li> <li>✓ Only Maxwell and Gutierrez issued badges</li> <li>✓ Except for one occasion, Wilson did not look at the identification presented for badging</li> <li>✓ MSO only started checking identification in August 2007, 9 months before Wilson's tip</li> </ul>	
<p>SOURCES: Maxwell, lines 112-120; 548-595; Gutierrez, lines 104-567; 283-289; 738-808; 1104-1110; 1154-1194. Appendix, pp. 9-13; 115-117</p>	
<p><i>On 5-20-2008, Zoila Fruland, a MCC acquisition company, LLC field supervisor, approached Chuck to have a City of Mesa contractor worker badge issued to Mara Silvia Lopez Sanchez, who was also present.</i></p>	
<ul style="list-style-type: none"> <li>✓ Wilson was not involved in this event</li> <li>✓ Zoila approached Gutierrez because she knew she issued the badges</li> <li>✓ On this occasion, Zoila approached Gutierrez about the badges for both Mara and Maricela (who is never named in the search warrant affidavit)</li> </ul>	
<p>SOURCES: Gutierrez, lines 743-745; 792-808; 1154-1194. Appendix, pp. 88-97</p>	
<p><i>Mara presented an Arizona Identification card which Chuck looked at and could see was fake because the picture on the ID was not centered and was raised, instead of being smooth like the actual Arizona ID cards and driver licenses.</i></p>	
<ul style="list-style-type: none"> <li>✓ Wilson was a bystander to these activities</li> <li>✓ Zoila gave the card to Gutierrez</li> <li>✓ Gutierrez did not think the ID was authentic because the name on the signature line was typed, not signed</li> <li>✓ She wanted to confirm that the ID was usually signed, but did not want to take her purse out in front of the three women to compare it to her own</li> <li>✓ Gutierrez took the document to the copy machine to copy it, and showed it to Wilson and Barnes and asked about the signature</li> <li>✓ Barnes compared it to his own identification and said his was signed</li> <li>✓ Gutierrez told Zoila that she would not accept the identification because it was not signed</li> </ul>	
<p>SOURCES: Maxwell, lines 267-346; 809-831; 852-860; Gutierrez, lines, 479-482; 799-831; 1104-1110; 1154-1194; Appendix, p. 47.</p>	

<p><i>Chuck then contacted his supervisor, Lt. Wade Pew and advised him of what had occurred with the ID's, as well as reiterating that this was not the first time he has seen the fake documents.</i></p> <ul style="list-style-type: none"> <li>✓ Lt. Pew received his information from Gutierrez, not Wilson.</li> <li>✓ Lt. Pew does not recall any conversations with Wilson about fake documents</li> <li>✓ There is no indication that Wilson would have had the opportunity to evaluate any documents provided to Maxwell or Gutierrez as part of the City badge issuing process</li> </ul>	
<p>SOURCES: Gutierrez, lines 747-752; 1104-1110. Pew, lines 275-28; 1471-1502.</p>	
<p><i>Chuck was told by Lt. Pew that he would contact MCC Acquisition Company, LLC and let them deal with the employees.</i></p> <ul style="list-style-type: none"> <li>✓ MCSO in its press release of October 16, 2008 claimed that the affidavit stated Pew said, "This isn't Mesa Police's problem. It's the cleaning company's issue."</li> <li>✓ As evident from Pew's e-mail, he set an immediate meeting with Facilities staff</li> <li>✓ Pew specifically asked Wilson to deactivate Maricela's badge because Maxwell and Gutierrez were not at work</li> <li>✓ Wilson personally deactivated Maricela's badge on the day after it is issued</li> <li>✓ Lt Pew talked to Facilities, met with MCC and recalled speaking with Commander Peters about what had happened on May 20, 2008, all within one day of the event</li> </ul>	
<p>SOURCES: Appendix, pp. 113-114; 45-47; 118-123.</p>	
<p><i>Chuck told your Affiant that there were several contract workers from MCC Acquisition Company, LLC that had been issued badges from City of Mesa, that had presented documents to Chuck, which were fake or forged. Chuck told your Affiant that he would receive e-mail from MCC Zoila Fruland was the field supervisor that brought the MCC Acquisition employees in to have a badge issued and Zoila was also the translator between the employee and Chuck or Adam.</i></p> <ul style="list-style-type: none"> <li>✓ MCC e-mails requesting that MCC employees be issued City badges came from Stacey Smith at MCC, not Zoila, and were directed to Debi Maxwell</li> <li>✓ Only Maxwell and Gutierrez were authorized to issue City badges</li> <li>✓ Both Maxwell and Gutierrez deny ever issuing a City badge to someone knowing that the persons identification documents were fake</li> </ul>	
<p>SOURCES: Maxwell, lines 112-120; 548-598; 2502-2508 Gutierrez, lines 569-575; 772-790; 1112-1128; 1447-1456.</p>	

<p><i>Chuck had another Municipal Security Employee, Adam Barnes, contact Arizona motor vehicle department to see if the number issued on the ID was valid, at which time MVD told Adam that the number was an in-house number and never issued.</i></p>	
<ul style="list-style-type: none"> <li>✓ MVD was not contacted until Zoila, Mara and Maricela had left</li> <li>✓ It was Maricela's number, not Mara's that was an unassigned in-house number at MVD</li> </ul>	
<p>SOURCES: Appendix, p. 47.</p>	
<p><i>Adam relayed the information to Chuck, who explained to Zoila that he could not accept the ID because the ID was invalid.</i></p>	
<ul style="list-style-type: none"> <li>✓ Wilson was not involved in this event</li> <li>✓ The MVD information was not available while Zoila was at the MSO office</li> <li>✓ It was Gutierrez who told Zoila that she could not accept the ID because the name at the bottom was typed when it should have been signed</li> <li>✓ Wilson had no role in determining whether a badge would issue</li> </ul>	
<p>SOURCES: Gutierrez, lines 852-873; 1104-1110. Appendix, p. 47.</p>	
<p><i>Zoila then translated to Mara, at which time both employees left the building.</i></p>	
<ul style="list-style-type: none"> <li>✓ Zoila did not translate the MVD information to Mara because they were not there when the information was obtained</li> <li>✓ There were three individuals (Zoila, Mara and Maricela) and they left the building after Gutierrez rejected the first identification because the name on the signature line was typed</li> </ul>	
<p>SOURCES: Gutierrez, lines 858-860; 862-873; 1003-1021. Appendix, p. 47.</p>	
<p><i>Approximately two hours later, Zoila and Mara returned with another Arizona ID card, with a number of D01204931. Chuck looked at the card and asked where the ID came from, at which time Zoila told Chuck that Mara had just been issued a new ID in Phoenix.</i></p>	
<ul style="list-style-type: none"> <li>✓ Wilson was not involved in this event</li> <li>✓ Mara did return with another ID which she gave to Gutierrez</li> <li>✓ Gutierrez informed Zoila that the ID would not be accepted after consultation with Lieutenant Pew</li> <li>✓ Wilson had no role in determining whether a City badge should issue</li> </ul>	
<p>SOURCES: Gutierrez, lines 296-299; 479-482; 882-903; 1104-1110.</p>	
<p><i>Adam contacted MVD in reference to the number and found that the ID number was issued to a male subject by the name of James Lee Richardson, with a date of birth 12-11-1963 and lives in Wichita, KS. Chuck told Zoila that he would not be issuing a badge to Mara because the ID did not belong to her.</i></p>	
<ul style="list-style-type: none"> <li>✓ Wilson was not involved in this event</li> <li>✓ Adam did obtain this information from MVD, but it was after Zoila and the women had left</li> <li>✓ Gutierrez, not Wilson, told Zoila that she would not issue a city badge because the issue date on the ID was 12/30/2006, despite the representation that Mara had just received it from MVD.</li> <li>✓ Before refusing to issue the City badge Gutierrez showed it to Pew who had been briefed by Gutierrez on the events</li> <li>✓ Pew told Gutierrez not to issue the City badge</li> </ul>	
<p>SOURCES: Gutierrez, lines 296-299; 479-482; 882-903; 1104-1110.</p>	

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*FAIR is a nonprofit public interest organization working to end illegal immigration and to set levels of legal immigration that are consistent with the national interest.*



April 7, 2009

The Honorable John Conyers, Chairman  
 House Committee on the Judiciary  
 2138 Rayburn House Office Building  
 Washington, DC 20515

The Honorable Zoe Lofgren, Chairman  
 House Subcommittee on Immigration, Citizenship,  
 Refugees, Border Security, & International Law  
 102 Cannon House Office Building  
 Washington, D.C. 20515

Dear Mr. and Madam Chairmen:

At a subcommittee hearing last Thursday on state-local law enforcement agreements, Chairman Lofgren read a letter dated April 1, 2009 and signed by two organizations opposed to meaningful immigration law enforcement: the Southern Poverty Law Center in Alabama (SPLC) and the Center for New Community from Illinois (CNC). The letter contains false, slanderous and misleading statements and, in its entirety, can only be described as base and outrageous.

The fact that Chairman Lofgren would choose to read portions of this letter surprised me. I have always viewed Chairman Lofgren as a first rate professional, committed to truthfulness, accuracy and fair dealing. I believe you were ill-served by your staff's decision to hand you a letter completely filled with inaccuracies and libel. The immigration subcommittee needs fair-minded leadership – a willingness to entertain and hear witnesses from all sides of this issue – if it is to build a complete record for the Congress.

Chairman Lofgren indicated at the hearing that despite this letter, she was going to allow Mr. Kobach to testify anyway. This suggests she actually *entertained* the possibility of *banning* a minority witness on the basis of this absurd letter. This is troublesome, to say the least. To provide you both with a more thorough understanding of my objections to the letter, and the manipulation of said letter in last week's subcommittee hearing, I have listed the following points:



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Page 2  
 Letter to Honorable John Conyers and Honorable Zoe Lofgren  
 April 7, 2009

- 1) The letter contained nothing more than a series of base and unsubstantiated smears generally directed at the organization I represent, the Federation for American Immigration Reform (or FAIR), not at Mr. Kris Kobach. To the extent the letter contained facts, they are in *error*. Mr. Kobach was certainly not in a position to rebut allegations of the alleged facts when he would have no personal knowledge.
- 2) You are both well acquainted with FAIR, which is now 30 years old. It is shocking that you would adopt invidious allegations and smears from organizations with so little public standing as the SPLC. Notwithstanding Representatives Lofgren and Nadler's platitudes for the SPLC at the hearing, it is well-known that the SPLC engages in what the IRS refers to as prohibited "propaganda" in presenting what the SPLC calls "fair comment." The manner in which these are delivered is done in such a biased and distorted way that no reasonable person can formulate a fact-based assessment of the information. Perhaps the SPLC played a useful role in policy formulation at some point in the past; since 2001 however, it has descended into the role of ranting attack machine specializing in making false claims.
- 3) The letter you introduced makes the shocking claim that "in 2004, FAIR donated \$10,000 to Kris Kobach's congressional campaign in Kansas." Of course this is *false for several reasons*.
  - a. First, FAIR would have violated the tax law. FAIR is a 501(c)(3) organization and is thus prohibited from participating in any political campaign for political office, including making such contributions. Nor did FAIR endorse Mr. Kobach at any time – indeed we have never endorsed any political candidate. Nor has our affiliated (c)(4), the FAIR Congressional Task Force.
  - b. Second, federal campaign law prohibits all corporations generally, which includes FAIR, from making contributions or expenditures to influence a federal election.
  - c. Third, the amount of the campaign contribution cited by the SPLC exceeds the campaign finance limits in existence at the time the SPLC alleges that contribution was made.

Surely any Member of Congress, by nature well-versed in election law, would immediately recognize this claim for what it is – patently false.
- 4) The SPLC/CNC letter inaccurately cited a June 8, 2004 article in the *Kansas City Star* as the source of a quote regarding Mr. Kobach and FAIR. *In truth, those words never appeared anywhere in that article.* The fact is these organizations either failed to fact check or intentionally misrepresented the contents of the letter that they submitted to Members of the United States Congress, and this should call into question the accuracy of each and every claim made in that letter and by the organization as a whole.

Page 3  
 Letter to Honorable John Conyers and Honorable Zoe Lofgren  
 April 7, 2009

- 5) The SPLC/CNC also cited the same June 8, 2004 article from the *Kansas City Star* as the source of a quote explaining why Mr. Kobach lost a November 2, 2004 Congressional race – a race *that had not yet taken place and would not take place for another 6 months*. In fact, the article cited by the SPLC and the CNC was published in June, *two months before* Mr. Kobach even won the August 3, 2004 primary. This kind of carelessness and reckless disregard for the accuracy of their statements should undermine the credibility of the SPLC and the CNC both before your Committee and the United States Congress as a whole.
- 6) The letter made the claim that "FAIR has hired as key officials men who also joined white supremacist groups." FAIR has had hundreds of employees over its life span; I am unaware of *any* such instance. The SPLC has never proved it, and it is a base smear against hundreds of good, fine and innocent people.
- 7) Other points are merely smears and misstatements and ludicrous assertions that can only be described as paranoid rants. Today, the SPLC traffics in unsavory bigotry and stereotypes and has been roundly criticized by reputable investigators and journalists for using these stereotypes for fundraising and manipulation. FAIR has prepared a considerable amount of material explaining why the SPLC is not to be considered a credible source. I would welcome the chance to discuss this in more detail to help you see why.

Given such glaring inaccuracies in the letter, it is my belief that the letter read by Representative Lofgren was used in an unfair attempt to impugn the reputation of a *highly* qualified witness, Mr. Kris Kobach, apparently based on his relationship to FAIR and the Immigration Reform Law Institute (IRLI). The letter contains few facts, and those mentioned are wrong. Others represent subjective characterizations that can only be regarded as base smears. At a time when public frustration over the failure of the federal government to enforce the law is reaching a fever pitch, the increasing polarization fostered – in my view – by those who seek to negate and discredit the rule of law is sadly counterproductive.

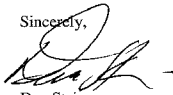
While we may disagree on many aspects of immigration policy, I had hoped that there would be a continued dialogue and the maintenance of some civility in this discussion. This was an unfortunate incident, wholly inappropriate for a long list of reasons, and I would like to meet with you both at your earliest convenience to discuss it.

FAIR has appeared before Congress over 100 times in the past 30 years. I would challenge you both to find a shred of evidence in any of our testimony that would support the ludicrous characterizations you have apparently adopted. Moreover, over the years I have provided your committee and subcommittee with full information regarding FAIR and its relationship with the Pioneer Fund; that information is in your files and the matter should have been settled years ago.

Page 4  
Letter to Honorable John Conyers and Honorable Zoe Lofgren  
April 7, 2009

For all of these reasons I am requesting that you immediately expunge any and all reference to the April 1, 2009 letter authored by the SPLC and the CNC from the record of last week's proceedings. I remain available to meet with you at your earliest convenience to discuss this matter in detail. Thank you for your prompt reply.

Sincerely,



Dan Stein  
President

cc: The Honorable Jerrold Nadler  
The Honorable Lamar Smith  
The Honorable Steve King  
The Honorable James Sensenbrenner, Jr.  
Mr. Kris Kobach





April 8, 2009

The Honorable John Conyers  
Chairman, House Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Conyers:

It has come to our attention that the letter written by the Center for New Community and the Southern Poverty Law Center and dated April 1, 2009 contained two errors that we wish to correct immediately. The letter was written with regard to Kris Kobach's participation in the Joint Hearing on the Local Enforcement of Immigration on April 2, 2009. Both errors occur in paragraph four of the letter and are as follows:

*"In 2004, FAIR [Federation for American Immigration Reform] donated \$10,000 to Kris Kobach's congressional campaign in Kansas."*

Correction: It was the U.S. Immigration Reform Political Action Committee (USIRPAC), not FAIR, that made a \$10,000 donation to Kris Kobach's congressional campaign in Kansas in 2004. Until several years ago, USIRPAC was named FAIRPAC. USIRPAC's current treasurer, Bill (William) Chip, is a member of the board of advisors to FAIR, as is Edward H. Harte, who also serves on USIRPAC's national advisory board.

*"It doesn't help matters that Kobach was hired by FAIR, widely perceived as a racist anti-immigrant group during the campaign." (Kansas City Star, June 8, 2004).*

The quote above was mistakenly attributed to the June 8, 2004 edition of the *Kansas City Star*. The quote should have instead been attributed to Kansas Republican leader Timothy Burger's essay, "Why Kobach Lost," published at <http://timothyburger.com/2004/11/why-kris-kobachlost.html>.

The Center for New Community and the Southern Poverty Law Center regret these errors and asks that this correction be added to the record.

Respectfully,

Mark Potok  
Southern Poverty Law Center

The Reverend David L. Ostendorf  
Executive Director  
Center for New Community



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MAIL ROOM USE ONLY  
DO NOT WRITE IN THESE SPACES

**U.S. House of Representatives**  
**Committee on the Judiciary**  
 Washington, DC 20515-0210  
 One Hundred Eleventh Congress  
 February 12, 2009

The Honorable Eric H. Holder, Jr.  
 Attorney General of the United States  
 U.S. Department of Justice  
 950 Pennsylvania Avenue, NW  
 Washington, DC 20530

The Honorable Janet Napolitano  
 Secretary of Homeland Security  
 Department of Homeland Security  
 Washington, DC 20528

Dear Attorney General Holder and Secretary Napolitano:

We write today concerning allegations of misconduct on the part of Maricopa County, Arizona, Sheriff Joe Arpaio that we believe merit federal investigation and action.

In recent months, Arpaio has evinced a blatant disregard for the rights of Hispanic residents of the Phoenix area. Last summer, apparently overreaching his authority under 287(g) agreements with the Department of Homeland Security, Arpaio ordered his deputies to scour Latino neighborhoods in his jurisdiction to search out undocumented immigrants. Reports from the affected communities indicate that accepted notions of probable cause have been replaced by an analysis based solely on (in the words of columnist Ruben Navarette) their "brown skin and Spanish accents." As a result, members of the Latino community – whether they are U.S. citizens or foreign-born, whether they are legal immigrants or undocumented – feel under siege.

Most recently, on February 4, after making sure to alert the media, Arpaio reportedly paraded approximately 200 suspected illegal immigrants in shackles to a segregated area of his "tent city" county facility, where they will supposedly remain until they are adjudicated and have served any sentences they face for local violations. The *New York Times* described this conduct as "ritual humiliation." The men who Arpaio is displaying like trophies are reportedly in pretrial detention, not having been convicted of any crime.

Through the years, Arpaio's actions have triggered numerous civil rights lawsuits, including federal action in the 1990s and a recent lawsuit by the Mexican American Legal Defense and Education Fund for racial profiling of Latino citizens and legal residents. However, his repeated course of conduct, which values publicity opportunities over the civil rights of residents of Arizona, is too disturbing to leave enforcement of the civil rights laws to private litigants. There are several tools at the federal government's disposal to address these allegations, and we urge their prompt consideration and application.

For instance, Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14141), prohibits a "pattern or practice of conduct by law enforcement officers ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States" and authorizes the Attorney General to bring civil actions to prevent such practices. The Civil Rights of Institutionalized Persons Act, or "CRIPA", (42 U.S.C. § 1997) authorizes the Attorney General to conduct investigations and litigation relating to conditions of confinement in state or locally operated institutions to determine whether there is a pattern or practice of violations of residents' federal rights.

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY

The Honorable Eric H. Holder, Jr.  
The Honorable Janet Napolitano  
Page Two  
February 12, 2009


Section 242 of Title 18 of the U.S. Code prohibits anyone from acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. Prior Administrations have undertaken a police misconduct initiative within the Civil Rights Division to coordinate enforcement of these civil and criminal civil rights statutes, and we hope that such cooperation will once again be a hallmark of the Department's civil rights enforcement efforts in the coming years.

Mr. Attorney General, we request that you direct the Special Litigation and Criminal Sections of the Civil Rights Division to undertake a federal investigation into the actions of the Maricopa County Sheriff's Office, under the authority of 42 U.S.C. §14141, the Civil Rights of Institutionalized Persons Act (CRIPA), 18 U.S.C. §242, and any other applicable federal statutes or Constitutional provisions.

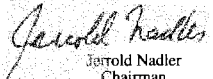
Madam Secretary, we request that you review Maricopa County's agreements with the Department of Homeland Security under Section 287(g) of the Immigration and Nationality Act and take such action as necessary to ensure that the Maricopa County Sheriff's Office conforms to the terms of that agreement and that such agreement is not used to justify the racial profiling of any resident of Arizona. We urge that such agreement be terminated if the situation cannot be remedied. We further request that you immediately provide to the Committee a copy of any agreement between the Department of Homeland Security and the County, whether under Section 287(g) or any other provision of law, such as intergovernmental service agreements to house apprehended immigrants.


Please keep us informed regarding any developments in response to this request. Specifically, we would like to know what actions your Departments will take to ensure that Hispanic residents of Maricopa County are not subjected to racial profiling, unequal treatment at the hands of Sheriff's Department personnel, or violations of generally accepted standards of confinement. Responses and questions should be directed to the Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). We thank you in advance for your cooperation in this important matter.

Sincerely,

  
John Conyers, Jr.  
Chairman  
Committee on the Judiciary

  
Zoe Lofgren  
Chairwoman, Subcommittee on Immigration,  
Citizenship, Refugees, Border Security, and  
International Law

  
Jerrold Nadler  
Chairman  
Subcommittee on the Constitution, Civil  
Rights, and Civil Liberties

  
Robert C. 'Bobby' Scott  
Chairman  
Subcommittee on Crime, Terrorism, and  
Homeland Security

cc: Honorable Lamar S. Smith  
Honorable Howard Coble  
Honorable James F. Sensenbrenner, Jr.  
Honorable Louie Gohmert



U.S. Department of Justice  
Office of Legislative Affairs

---

Office of the Assistant Attorney General

Washington, D.C. 20530

March 16, 2009

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter, dated February 12, 2009, to the Attorney General, requesting that the U.S. Department of Justice investigate allegations of civil rights violations by the Maricopa County, Arizona, Sheriff's Office. We have sent similar responses to the other Members, who joined in your letter to us.

Thank you for the information you provided in your letter. The Department has carefully considered this information, as well as other information we had previously received regarding the Maricopa County Sheriff's Office (MCSO). The Civil Rights Division had already opened a preliminary inquiry of the MCSO pursuant to the pattern or practice provisions of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"), and pursuant to the prohibitions against national origin discrimination in Title VI of the Civil Rights Act of 1964 ("Title VI"), 42 U.S.C. §§ 2000d to 2000d-7, and the Safe Streets Act § 3789d(c). Subsequently, the Department opened an investigation focusing on three areas: discriminatory police practices, unlawful searches and seizures, and national origin discrimination in MCSO facilities, including failure to provide meaningful access to MCSO services for limited English proficient speakers. We welcome any additional factual information that you can provide as the investigation unfolds. To that end, we offer the following description of the enforcement authority of the Civil Rights Division under the above-referenced statutes.

The Special Litigation Section is responsible for enforcing Section 14141 that allows the Department to seek equitable relief to remedy a pattern or practice of misconduct by law enforcement agencies, such as a sheriff's department. When a systemic pattern or practice of misconduct is determined to exist, we have the authority to initiate a civil action against state or local officials to remedy the misconduct.

The Honorable John Conyers, Jr.  
Page Two

In addition, the Special Litigation Section and the Coordination and Review Section have the authority to enforce the Safe Streets Act and Title VI. Both the Safe Streets Act and Title VI prohibit discrimination based on race, color, or national origin by State or local governments receiving federal assistance. Discrimination on the basis of national origin includes failure to provide meaningful access to services for limited English proficient individuals, an area within the particular jurisdiction of the Coordination and Review Section. For additional information, you may wish to review the Special Litigation and Coordination and Review Sections' websites: <http://www.usdoj.gov/crt/split/> and <http://www.usdoj.gov/crt/cor/>.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this, or any other matter.

Sincerely,



M. Faith Burton  
Acting Assistant Attorney General

cc: The Honorable Lamar S. Smith  
Ranking Minority Member

Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528



Homeland  
Security

April 27, 2009

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Conyers:

Thank you for your February 12, 2009 letter to Attorney General Holder and me concerning allegations made against Maricopa County, Arizona, Sheriff Joseph Arpaio that you believe merit review and action by the Department of Homeland Security (DHS). Specifically, you state that Sheriff Arpaio appears to have overreached his authority under 287(g) agreements with DHS, and note that he is the subject of a recently filed civil rights lawsuit alleging racial profiling of Latino citizens and legal residents.

You ask that DHS review Maricopa County's agreement with DHS under Section 287(g) of the *Immigration and Nationality Act*. You further ask that DHS take such action as necessary to ensure that the Sheriff's office conforms to the terms of that agreement, and that the agreement is not used to justify the racial profiling of any Arizona resident.

Let me assure you that the protection of the civil rights and civil liberties of all persons within the United States is a critical element of DHS's mission. On January 30, 2009, I issued an action directive which called for a review of the entire 287(g) program. As a result of this directive and as a response to the January 2009 Government Accountability Office review of the 287(g) program, DHS's Immigration and Customs Enforcement is reviewing the current 287(g) program template memorandum of agreement between DHS and our local law enforcement partners; we are also examining the agreements currently in place. The new agreement, which will be reviewed by the DHS Office for Civil Rights and Civil Liberties, will include the following provisions:

- The agreement more clearly describes the nature and extent of Federal supervision in overseeing the 287(g) program;
- The agreement describes for state and local law enforcement partners the circumstances under which 287(g) authority is to be used by participating agencies;

[www.dhs.gov](http://www.dhs.gov)

The Honorable John Conyers, Jr.  
Page 2

- The agreement articulates that the main objective of the 287(g) program is to enhance the safety and security of communities and specifies categories of high and low priority criminal aliens for Federal detention; and
- The agreement uniformly requires the state and local 287(g) partners to collect data regarding the criminal activity the alien engaged in so DHS may evaluate whether or not our 287(g) partnerships function in accord with DHS priorities and to ensure that the continuation of an agreement is in the best interest of DHS.

As you know the Department of Justice notified Sheriff Arpaio that it has commenced an investigation of alleged patterns and practices of discriminatory police practices and unconstitutional searches and seizures. DHS will work with the Department of Justice's Civil Rights Division to support the investigation.

You also request a copy of any intergovernmental service agreement with Maricopa County related to the detention of non-citizens or any other agreement between Maricopa County and DHS. I have enclosed the memorandum of agreement signed by Maricopa County under the authority of Section 287(g) of the *Immigration and Nationality Act* and an intergovernmental service agreement on the housing of Federal prisoners.

Thank you again for your letter. The co-signers of your letter will each receive a separate, identical response. I look forward to working with you as DHS addresses the challenges of fairly enforcing our Nation's immigration laws. Should you need additional assistance, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,



Janet Napolitano

Enclosures

cc: The Honorable Eric Holder  
Attorney General

APR -23' 01 (MON) 11:24

TEL: 703 603 9520

P. 001

U.S. Department of Justice  
United States Marshals Service

**Modification Intergovernmental Agreement**  
6/10/95 TN

1. MODIFICATION NO. <b>CS 981206</b> Thirteen (13)		2. EFFECTIVE DATE OF MODIFICATION February 1, 1995
3. ISSUING OFFICE U.S. MARSHALS SERVICE PROCUREMENT DIVISION IGA SECTION 600 ARMY NAVY DRIVE ARLINGTON, VA 22202-4210		4. LOCAL GOVERNMENT Maricopa County Board of Supervisors <del>XXXXXXXXXXXX</del> 301 W. Jefferson Phoenix, AZ 85003 10th fl.
7. ACCOUNTING CITATION 15X1020		5. IGA NO. J-E08-M-129 6. FACILITY CODE(S) 9AM, 9RY, 9SE, 9AK, 8PX, 8PY, 8PZ
8. ESTIMATED ANNUAL PAYMENT \$766,500		
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 5, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  The purpose of this Modification is to: (1) convert the temporary jail day rate of \$70.00 to a fixed rate of \$70.00 effective February 1, 1995. (2) incorporate the Minimum Mandatory Conditions of Confinement, as set forth below:  A. On Page 4 of 4, under ARTICLE IX, Paragraph 1., last sentence, add the following:  The mandatory minimum conditions of confinement which are to be met during the entire period of the IGA Agreement are:  1. Jail staffing is provided 24 hours a day to supervise prisoners. Prisoners are counted at least once on every shift.  2. Jail provides for three meals (including two hot meals) per day for prisoners. The meals must meet the nationally recommended dietary allowances published by the National Academy of Sciences.		
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:  A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		
B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U.S. MARSHAL		
11. APPROVALS:  A. LOCAL GOVERNMENT <u>Jon Rowles</u> Signature  CHAIRMAN BOARD OF SUPERVISORS TITLE MAY 17 1995 DATE		B. FEDERAL GOVERNMENT <u>Vicki Livov</u> Signature  Contracting Officer TITLE 4/10/95 DATE

Form USM-241a  
(Rev. 9/91)

Page 1 of 2 Pages

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U.S. Department of Justice  
United States Marshals Service

Intergovernmental Service Agreement Schedule	IGA No. J-E08-M-129	Page No. 2 of 2
<p>3. Jail provides 24-hour emergency medical care for prisoners.</p> <p>4. Jail maintains an automatic smoke and fire detection and alarm system, and maintains written policy, procedure, and practice regarding fire and other safety emergency standards.</p> <p>5. Jail maintains a water supply that is certified to be in compliance with applicable laws and regulations, and maintains a waste disposal program.</p> <p>B. On Page 4 of 4, under ARTICLE IX, delete Paragraph 2. in its entirety.</p>		

Form USM-2418 (Rev. 2/92)

APR -23 '01 (MON) 10:08  
 U.S. Department of Justice  
 United States Marshals Service

TEL: 703 603 9520 P. 003  
 Modification of Intergovernmental Agreement

1. MODIFICATION NO. <b>Twelve (12)</b>		2. EFFECTIVE DATE OF MODIFICATION <b>July 1, 1994</b>	
3. ISSUING OFFICE U.S. MARSHALS SERVICE PROCUREMENT DIVISION IGA SECTION 606 ARMY NAVY DRIVE ARLINGTON, VA 22202-4210		4. LOCAL GOVERNMENT Maricopa County Board of Supervisors 102 West Madison Phoenix, AZ 85003	
5. IGA NO. J-E08-M-129		6. FACILITY CODE(S) 9AM, 9RY, 9SE, 9AK 8PX, 8PY, 8PZ	
7. ACCOUNTING CITATION <b>15X1020</b>		8. ESTIMATED ANNUAL PAYMENT	
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 5, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  <p>The purpose of this Modification is to cancel Modification No. 11 and to extend the temporary rate of \$70.00 from July 1, 1994 through January 31, 1995.</p>			
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:			
A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U.S. MARSHAL	
11. APPROVALS:			
A. LOCAL GOVERNMENT <i>[Signature]</i> Chairman TITLE 11/15/1994 DATE		B. FEDERAL GOVERNMENT <i>[Signature]</i> Vicki Lipoy Signature Contracting Officer TITLE 12/25/94 DATE	

Form USM-241a  
 (Rev. 9/91)

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Page 1 of 1 Pages


U.S. Government Printing Office: 202-512-2499

APR -23' 01 (MON) 10:09


TEL: 703 603 9520

P. 004

APPROVED AS TO FORM:

  
DEPUTY COUNTY ATTORNEY  
DATE: 4/6/94

ATTEST:

  
CLERK OF THE BOARD  
DATE: 5.4.94

APR -23' 01 (MON) 10:09

TEL: 703 603 9520

P. 005

U.S. Department of Justice  
United States Marshals Service

Modification of    Governmental Agreement

1. MODIFICATION NO.  Ten (10)		2. EFFECTIVE DATE OF MODIFICATION  January 1, 1994	
3. ISSUING OFFICE  U.S. MARSHALS SERVICE PROCUREMENT DIVISION IGA SECTION 600 ARMY NAVY DRIVE ARLINGTON, VA 22202-4210		4. LOCAL GOVERNMENT  Maricopa County Board of Supervisors 102 West Madison Phoenix, AZ 85003	
7. ACCOUNTING CITATION  15X1020		5. IGA NO. J-E08-M-129	
		6. FACILITY CODE(S) 9AM, 9RY, 9SE, 9AK, 8PX, 8PY, 8PZ	
		8. ESTIMATED ANNUAL PAYMENT \$1,890,000	
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 5, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  The purpose of this modification is to extend the temporary rate of \$70.00 from January 1, 1994 through June 30, 1994, and to incorporate specific required clauses, as set forth below:  1. On page 2 of 4, under Article II, add the following:  "4. When a federal prisoner is being transferred via the USMS airlift, he/she will be provided with three/seven days of prescription medication which will be dispensed from the detention facility. When possible, generic medications should be prescribed.  5. Medical records must travel with the federal prisoner. If the records are maintained at a medical contractor's facility, it is the detention facility's responsibility to obtain them before a federal prisoner is moved.			
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:			
A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>  2  </u> COPIES TO U.S. MARSHAL	
11. APPROVALS:			
A. LOCAL GOVERNMENT  <u>Albert Bayless</u> Signature Chairman, Board of Supervisors TITLE  MAY 04 1994 DATE		B. FEDERAL GOVERNMENT  Vicki Lipov Signature Contracting Officer TITLE  3/16/94 DATE	

Form USM-241a  
(Rev. 9/91)

Page   1   of   2   Pages

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U.S. Government Printing Office: 1991-512-227/0102

U.S. Department of Justice  
United States Marshals Service

Intergovernmental Service Agreement Schedule	IGA No. J-E08-M-129	Page No. 2 of 2
<p>6. Federal prisoners will not be charged and are not required to pay their own medical expenses. These expenses will be paid by the Federal Government.</p> <p>7. The Local Government agrees to notify the U.S. Marshal as soon as possible when a federal prisoner is involved in an escape, attempted escape, or conspiracy to escape from the facility."</p>		

Form USM-2418 (Rev. 2/93)

APR -23' 01 (MON) 10:09

TEL: 703 603 9520

P. 007

U.S. Department of Justice  
United States Marshals Service

Modification of Intergovernmental Agreement

1. MODIFICATION NO. <p style="text-align: center;">Nine (9)</p>		2. EFFECTIVE DATE OF MODIFICATION <p style="text-align: center;">July 1, 1993</p>	
3. ISSUING OFFICE U. S. MARSHALS SERVICE PROCUREMENT DIVISION IGA SECTION 600 ARMY NAVY DRIVE ARLINGTON, VA 22203-4210		4. LOCAL GOVERNMENT Maricopa County Board of Supervisors 102 West Madison Phoenix, AZ 85003	
7. ACCOUNTING CITATION <p style="text-align: center;">15X1020</p>		8. ESTIMATED ANNUAL PAYMENT <p style="text-align: center;">\$7,560,000</p>	
5. IGA NO. J-208-M-129			
6. FACILITY CODE(S) 9AM, 9RY, 9SE, 9AK, 8PX, 8PY, 8PZ			
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 5, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  <p style="text-align: center;">The purpose of this Modification is to extend the temporary rate of \$70.00 from July 1, 1993 through December 31, 1993.</p>			
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:			
A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U.S. MARSHAL	
11. APPROVALS:			
A. LOCAL GOVERNMENT  <u>Jim Brown</u> Signature <u>Chairman, Board of Supervisors</u> TITLE <u>8/15/93</u> DATE		B. FEDERAL GOVERNMENT  <u>Vicki Lipov</u> Signature <u>Contracting Officer</u> TITLE <u>8/15/93</u> DATE	

Form USM-241a  
(Rev. 9/91)

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Page 1 of 1 Pages

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APR -23' 01 (MON) 10:10

TEL: 703 603 9520

P. 008

U.S. Department of Justice  
United States Marshals Service

Modification of Intergovernmental Agreement

1. MODIFICATION NO. <b>Eight (8)</b>		2. EFFECTIVE DATE OF MODIFICATION <b>January 1, 1993</b>	
3. ISSUING OFFICE U.S. MARSHALS SERVICE PROCUREMENT DIVISION IGA SECTION 600 ARMY NAVY DRIVE ARLINGTON, VA 22202-4210		4. LOCAL GOVERNMENT Maricopa County Board of Supervisors 102 West Madison Phoenix, AZ 85003	
7. ACCOUNTING CITATION <b>15X1020</b>		5. IGA NO. <b>J-E08-M-129</b>	
		6. FACILITY CODE(S) <b>9AM, 9RY, 9SE, 9AK, 8PX, 8PY, 8PZ</b>	
		8. ESTIMATED ANNUAL PAYMENT <b>\$7,612,497.00</b>	
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 5, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  <p>The purpose of this Modification is to increase the rate from \$35.76 to the temporary rate of \$70.00 effective January 1, 1993 through June 30, 1993, to establish a \$70.00 day rate for psychiatric care, and to incorporate the availability of funds clause, as set forth below:</p> <ol style="list-style-type: none"> <li>On Page 2 of 4, under Article II, Paragraph 2, revise the last sentence to read as follows:                       "All costs associated with hospital or health care services provided outside the facility will be paid directly by the government to the medical facility or person performing service".</li> </ol>			
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:			
A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U.S. MARSHAL	
11. APPROVALS:			
A. LOCAL GOVERNMENT <i>[Signature]</i> _____ Signature <i>Chairman</i> _____ TITLE <b>3/5/93</b> DATE		B. FEDERAL GOVERNMENT <i>[Signature]</i> _____ Signature <i>vicki Lipov</i> _____ Contracting Officer _____ TITLE <b>1/5/93</b> DATE	

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(Rev. 9/91)

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U.S. Department of Justice  
United States Marshals Service

Intergovernmental Service Agreement Schedule	IGA No. J-E08-M-129	Page No. 2 of 2
<p>2. On Page 3 of 4, under Article V, delete Paragraph 1 in its entirety and insert the following:</p>		
<p><b>ARTICLE V - TEMPORARY PER DIEM RATE</b></p>		
<p>1. A temporary jail day rate of \$70.00 has been established for a period of six (6) months, expiring on June 30, 1993, pending receipt of actual and allowable costs associated with the operation of the facility. The jail day rate for subsequent periods will be adjusted based on the actual operational costs for the facility which could result in the rate decreasing, increasing, or remaining unchanged.</p>		
<p>3. On Page 4 of 4, add the following Article X:</p>		
<p><b>ARTICLE X - AVAILABILITY OF FUNDS</b></p>		
<p>The Federal Government's obligation under this agreement is contingent upon the availability of appropriated funds from which payment can be made and no legal liability on the part of the Government for any payment may arise until such funds are available.</p>		

Form USM-241B (Rev. 2/92)



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U.S. Department of Justice  
United States Marshals Service

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Modification of Intergovernmental Agreement

1. MODIFICATION NO. Seven (7)		2. EFFECTIVE DATE OF MODIFICATION July 1, 1991	
3. ISSUING OFFICE U.S. MARSHALS SERVICE Procurement Division IGA Section 600 Army Navy Drive ARLINGTON, VA 22202-4210		4. LOCAL GOVERNMENT Maricopa County Sheriff's Office 102 W. Madison Phoenix, Arizona 85003	
		5. IGA NO. T-808-M-129	
		6. FACILITY CODE(S) 9AM, 9RY, 9SE, 9AK, 8PX, 8PY, 8PZ	
7. ACCOUNTING CITATION 15X1020		8. ESTIMATED ANNUAL PAYMENT \$2,860,000	
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 1, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  The purpose of this Modification is to decrease the jail day rate from \$37.31 to \$35.76 effective July 1, 1991.			
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:			
A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U.S. MARSHAL	
11. APPROVALS:			
A. LOCAL GOVERNMENT <u>Bobby Bayless</u> Signature <u>Chief</u> TITLE DATE <u>JUN 06 1992</u>		B. FEDERAL GOVERNMENT <u>[Signature]</u> Signature <u>Contract Specialist</u> TITLE DATE <u>10/23/91</u>	

[Signature]  
CLERK, GUARD OR SUPERVISOR

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This agreement is approved as to form and is determined to be within the powers and authority granted under the laws of the State of Arizona.

  
Deputy/County Attorney

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U.S. Department of Justice  
United States Marshals Service

**Modification Intergovernmental Agreement**

1. MODIFICATION NO. Six (6)		2. EFFECTIVE DATE OF MODIFICATION July 1, 1990	
3. ISSUING OFFICE U.S. MARSHALS SERVICE PRISONER OPERATIONS DIVISION 600 ARMY NAVY DRIVE, SUITE 1090 ARLINGTON, VA 22202-4210		4. LOCAL GOVERNMENT Maricopa County Detention Center 111 South Third Ave. Phoenix, AZ 85003	
		5. IGA NO. J-E08-M-129	
		6. FACILITY CODE(S) 9AM, (RY, 9SE, 9AK 8PX, 8PY, 8PZ	
7. ACCOUNTING CITATION 15X1020		8. ESTIMATED ANNUAL PAYMENT \$2,238,600.00	
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 5, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  The jail day rate is decreased from \$38.09 to \$37.31 effective July 1, 1990, and the estimated annual USMS prisoner days is changed to 60,000.			
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:			
A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U.S. MARSHAL	
11. APPROVALS:			
A. LOCAL GOVERNMENT  <u>[Signature]</u> _____ TITLE DATE		B. FEDERAL GOVERNMENT  <u>[Signature]</u> _____ TITLE DATE Chief, Prisoner Operations Division 11/1/91	

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U.S. Department of Justice  
United States Marshals Service

**Modification of Intergovernmental Agreement**

1. MODIFICATION NO. Five (5)		2. EFFECTIVE DATE OF MODIFICATION July 1, 1989	
3. ISSUING OFFICE U.S. MARSHALS SERVICE PRISONER OPERATIONS DIVISION 600 ARMY NAVY DRIVE, SUITE 1090 ARLINGTON, VA 22202-4210		4. LOCAL GOVERNMENT Maricopa County Detention Center 111 South Third Ave. Phoenix, AZ 85003	
		5. IGA NO. J-E08-K-129	
		6. FACILITY CODE(S) 9AM, 9RV, 9SE, 9AK, 8PX, 8PY, 8PZ	
7. ACCOUNTING CITATION 15X1020		8. ESTIMATED ANNUAL PAYMENT \$2,094,350.00	
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 5, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  A. The jail day rate is decreased from \$40.70 to \$38.09 effective July 1, 1989.  B. The estimated USMS prisoner days per year is changed to 55,000.			
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:  A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT			
B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U.S. MARSHAL			
11. APPROVALS:			
A. LOCAL GOVERNMENT  <u>Jim Brown</u> Signature CHAIRMAN TITLE MAR 12 1990 DATE		B. FEDERAL GOVERNMENT  <u>P. H. Macheray</u> Signature Patricia H. Macheray, Chief Prisoner Operations Division TITLE 12/19/89 DATE	

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U.S. Department of Justice  
United States Marshals Service

**Modification of Intergovernmental Agreement**

1. MODIFICATION NO. Four (4)		2. EFFECTIVE DATE OF MODIFICATION July 1, 1987	
3. ISSUING OFFICE United States Marshals Service Operations Support Division Program Administration Branch One Tyson's Corner Center McLean, Virginia 22102		4. LOCAL GOVERNMENT Maricopa County Detention Center 111 South Third Avenue Phoenix, Arizona 85003	
		5. IGA NO. J-EDB-129	
		6. FACILITY CODE(S) 92M 92V 92E	
7. ACCOUNTING CITATION 1571020      1581020		8. FUNDING AMOUNT \$366,300      \$1,465,200	
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 5, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  The purpose of this Modification is to decrease the jail day rate from \$43.92 to \$40.70 effective July 1, 1987.			
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:			
A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U.S. MARSHAL	
11. APPROVALS:			
A. LOCAL GOVERNMENT  <u>[Signature]</u> CHAIRMAN      DATE TITLE              DEC 07 1987		B. FEDERAL GOVERNMENT  <u>[Signature]</u> JOSEPH B. ENDERS, CHIEF Operations Support Division      10/8/87 TITLE                                      DATE	

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U.S. Department of Justice  
United States Marshals Service

Modification of Intergovernmental Agreement

1. MODIFICATION NO. Three (3)		2. EFFECTIVE DATE OF MODIFICATION July 1, 1986	
3. ISSUING OFFICE United States Marshals Service Operations Support Division Program Administration Branch One Tjanius Currier Center McLean, Virginia 22102		4. LOCAL GOVERNMENT Maricopa County Detention Center 111 South Third Avenue Phoenix, Arizona 85003	
7. ACCOUNTING CITATION 1561020                      1571020		8. FUNDING AMOUNT \$395,280                      \$1,581,120	
5. IGA NO. J-E08-M-129			
6. FACILITY CODE(S) <del>98Y</del> 98E			
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 5, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  The purpose of this Modification is to decrease the jail day rate from \$50.50 to \$43.92 effective July 1, 1986.			
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:			
A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U.S. MARSHAL	
11. APPROVALS:			
A. LOCAL GOVERNMENT  <u>Frank King</u> Signature CHAIRMAN                      DATE TITTLE                                      MAY 4 1987		B. FEDERAL GOVERNMENT  <u>Joseph B. Enders</u> Signature JOSEPH B. ENDERS, CHIEF Operations Support Division                      DATE TITTLE                                      2/13/87	

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MODIFICATION OF INTERGOVERNMENTAL SERVICE AGREEMENT			
MODIFICATION NO. TWO (2)		3. EFFECTIVE DATE 9/1/85	4. CONTROL NO. 0016-E08-86
ISSUING OFFICE UNITED STATES MARSHALS SERVICE OPERATIONS SUPPORT DIVISION PROGRAM ADMINISTRATION BRANCH 1. TRUCKS CENTER CONTROL FELDMAN, VIRGINIA 22102		a. ADMINISTERED BY (If other than blank) _____	
GOVERNMENT ENTITY Maricopa County Detention Center 111 South Third Avenue, Room 502 Phoenix, Arizona 85003		FACILITY CODE 9AM, 9RY 9SE	MODIFICATION OF INTERGOVERNMENTAL SERVICE AGREEMENT NUMBER. J-E08-M-129 DATED 4/5/83
9. ACCOUNTING AND APPROPRIATION DATA (If required) 1551020 (\$151,500)      1561020 (\$1,818,000)			
10. DESCRIPTION OF MODIFICATION The purpose of this Modification is to increase the jail day rate from \$34.34 to \$50.50, effective September 1, 1985.			
<p><i>George Campbell</i> George Campbell, Chairman</p> <p><i>Cherie Ellig</i> Cherie Ellig, Clerk</p>			
<p>11. LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT <input type="checkbox"/> LOCAL COPY IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 2 COMES TO U. S. MARSHAL <input checked="" type="checkbox"/></p>			
12. LOCAL GOVERNMENT BY <i>George Campbell</i>		14. UNITED STATES OF AMERICA BY <i>Joseph B. Enders</i>	
13. NAME AND TITLE OF SIGNER (Type or print) George Campbell CHAIRMAN		15. DATE SIGNED JAN 6 1986	16. DATE SIGNED 11/18/85

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MODIFICATION		INTERGOVERNMENTAL SERVICE AGREEMENT	
1. MODIFICATION NO. One (1)	2. EFFECTIVE DATE 9/1/84	3. REQUESTION/INVOICE REQUEST NO. 0170-P08-84	4. CONTROL NO. 1
5. ISSUING OFFICE Unified Region Mobile Service Operations Support Division Program Administration Branch One Tysons Corner Center McLean, Virginia 22102		6. ADMINISTERED BY (If other than Mark 2)	
7. GOVERNMENT ENTITY Maricopa County Board of Supervisors 102 West Madison Phoenix, Arizona 85003		8. FACILITY CODE 9AM, 9RY, 9SE	9. MODIFICATION OF INTERGOVERNMENTAL SERVICE AGREEMENT NUMBER. J-808-M-129 DATED 5/1/83
10. ACCOUNTING AND APPROPRIATION DATA (If required) 1541020 (\$103,020)      1551020 (\$1,236,240)			
11. DESCRIPTION OF MODIFICATION The purpose of this Modification is to increase the daily rate from \$28.50 to \$34.34 effective September 1, 1984, and to incorporate the Prompt Payment Act as set forth accordingly:  On Page 3 of 4, Article VI, delete Paragraph 3, and insert the following:  3. The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 USC 1801) is applicable to payments under this agreement and requires the payment to the County of interest on overdue payments. Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and the Office of Management and Budget Circular A-25.  4. Payment under this agreement will be due on the thirtieth (30th) calendar day after receipt of a proper invoice, in the office designated to receive the invoice. The date of the check issued in payment shall be considered to be the date payment is made.  5. The original invoice shall be submitted to the government office that has been designated to receive invoices, as stated in paragraph 1. To constitute a proper invoice, the invoice must include the name, title, phone number and complete mailing address of the official of the designated payment office. In addition, it shall list the names of each federal prisoner, the specific dates of confinement for each, the total days to be reimbursed, the agreed upon rate per day and the total amount billed (total days multiplied by the rate per day).			
12. LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT <input type="checkbox"/> LOCAL GOVT. IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U. S. MARSHAL			
13. LOCAL GOVERNMENT SIGNATURE <i>Fred Kony Jr.</i>	14. UNITED STATES OF AMERICA SIGNATURE <i>J.B. Enders</i>	15. DATE SIGNED DEC 3 1984	
16. NAME AND TITLE OF SIGNER (Type or print) FRED KONY JR. CHAIRMAN	17. NAME OF AUTHORIZING OFFICIAL JOSEPH B. ENDERS	18. DATE SIGNED 10/1/84	

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MARICOPA COUNTY BOARD OF SUPERVISORS DIVISION: Sheriff

**BRIEF DESCRIPTION OF PROPOSAL AND REQUESTED BOARD ACTION:**

It is requested that the Board of Supervisors approve a modification of Intergovernmental Service Agreement #J-E08-M-129, between Maricopa County and the U. S. Marshal's Service. The former agreement between the U. S. Marshal's Service and Maricopa County provided for a daily prisoner per diem rate of \$34.34, to be paid by the Marshal's Service. The appended agreement between the parties calls for an increase to \$50.50 for the same service, retroactive to 1 September 1985. The Marshal's Service is allocating nearly 2 million dollars to be paid to Maricopa County under the new arrangement.

**FILE**

CONTINUED FROM MEETING OF \_\_\_\_\_ THIS DEPARTMENT WILL CAUSE PUBLICATION  
 DISCUSSED IN POLICY ON \_\_\_\_\_ CLERK OF THE BOARD TO PUBLISH  
 MOTION: It is moved that the Maricopa County Board of Supervisors... approve a modification of Intergovernmental Service Agreement #J-E08-M-129, between Maricopa County and the U. S. Marshal's Service, raising the daily prisoner per diem rate from \$34.34 to \$50.50, to be paid by the Marshal's Service to Maricopa County.

**FINANCIAL:**  Budgeted  Contingency  Budget Amendment  Transfer  Grant or other  
 \$ 2,800,000 (Revenue)  GENERAL FUND  \_\_\_\_\_  \_\_\_\_\_  
 Total Cost Fund Financial Officer Date 12/16/85

**PERSONNEL:** \_\_\_\_\_ **OTHER:** \_\_\_\_\_  
 Personnel Director Date (Signature) Date 12/14/85

**LEGAL:** Approved as to form and within the powers and authority granted under the laws of the State of Arizona to the Maricopa County Board of Supervisors.  
 \_\_\_\_\_  
 Deputy County Attorney Date 12-18-85

**DEPARTMENT:** SHERIFF **APPROVED FOR AGENDA:**  
 \_\_\_\_\_  
 Action Recommended By Date 9 Dec 85 Approving Official Date

**BOARD OF SUPERVISORS:** Action taken: \_\_\_\_\_  
 Approved  Disapproved  Deleted **RECOMMENDATION OF COUNTY MANAGER:**  
 Approve  Disapprove

Continued to: \_\_\_\_\_  
 (Date & type of meeting)  
 \_\_\_\_\_  
 Clerk of the Board Date 1-6-86 \_\_\_\_\_  
 County Manager Date

**MEMORANDUM OF AGREEMENT**  
**C-50-07-058-2-00**

This Memorandum of Agreement (MOA) constitutes an agreement between United States Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), and Maricopa County, a political subdivision of the State of Arizona, pursuant to which ICE authorizes up to a maximum of 160 nominated, trained, and certified personnel of the Maricopa County Sheriff's Office (hereinafter interchangeably referred to as MCSO or the "Law Enforcement Agency" (LEA)), to perform certain immigration enforcement functions as specified herein. The MCSO represents Maricopa County in the implementation and administration of this MOA. It is the intent of the parties that these delegated authorities will enable the LEA to identify and process immigration violators in Maricopa County consistent with the terms of this MOA. The ICE and LEA points of contact for purposes of this MOA are identified in Appendix A.

**I. PURPOSE**

The purpose of this MOA is to set forth the terms and conditions pursuant to which selected LEA personnel (participating LEA personnel) will be nominated, trained, and thereafter perform certain functions of an immigration officer within the LEA. This MOA sets forth the scope of the immigration officer functions that DHS is authorizing the participating LEA personnel to perform. Nothing contained herein shall otherwise limit the jurisdiction and powers normally possessed by participating LEA personnel as members of the LEA. However, the exercise of the immigration enforcement authority granted under this MOA to participating LEA personnel shall occur only as provided in this MOA. This MOA also describes the complaint procedures available to members of the public regarding immigration enforcement actions taken by participating LEA personnel pursuant to this agreement.

**II. AUTHORITY**

Section 287(g) of the Immigration and Nationality Act (INA), also codified at 8 U.S.C. § 1357(g), as amended by the Homeland Security Act of 2002, Public Law 107-276, authorizes the Secretary of the Department of Homeland Security, acting through the Assistant Secretary of ICE, to enter into written agreements with a State or any political subdivision of a State so that qualified personnel can perform certain functions of an immigration officer. This MOA constitutes such a written agreement.

**III. POLICY**

This MOA sets forth the scope of the immigration officer functions that DHS is authorizing the participating MCSO personnel to perform. It sets forth with specificity the duration of the authority conveyed and the specific lines of authority, including the requirement that participating MCSO personnel are subject to ICE supervision while performing immigration-related duties pursuant to this MOA. For the purposes of this MOA, ICE officers will provide supervision for participating MCSO personnel only as to immigration enforcement functions. MCSO retains supervision of all other aspects of the employment and performance of duties of participating MCSO personnel.

#### IV. ASSIGNMENTS

Before participating LEA personnel receive authorization to perform immigration officer functions granted under this MOA, they must successfully complete mandatory 5 week (4 week for LEA personnel functioning solely in a correctional facility or ICE detention facility) training in the enforcement of federal immigration laws and policies as provided by ICE instructors and thereafter pass examinations equivalent to those given to ICE officers. Only participating LEA personnel who are selected, trained, authorized, and supervised, as set out herein, have authority pursuant to this MOA to conduct the immigration officer functions enumerated in this MOA.

Participating LEA personnel performing immigration-related duties pursuant to this MOA will be LEA officers assigned to the Violent Fugitive Apprehension Squad (VFAS), Criminal Investigations Section (CIS), Anti-Gang Unit, Drug Enforcement Unit and Community Action Teams (CAT). Participating LEA personnel will be exercising their immigration-related authorities during the course of criminal investigations involving aliens encountered within Maricopa County. Any combination of these officers or others may be assigned and/or co-located as task force officers to assist ICE agents with criminal investigations.

The mission of these various LEA assignments are summarized as follows:

**Violent Fugitive Apprehension Squad (VFAS):** The LEA personnel assigned to the VFAS unit are charged with the responsibility of identifying high-risk felons who are wanted for crimes or offenses that represent a significant threat to public safety.

**Criminal Investigation Section (CIS):** The LEA personnel assigned to CIS by statute are charged with the responsibility of identifying criminal enterprises and other forms of organized criminal activities.

**Anti-Gang Unit:** The LEA personnel assigned to the anti-gang unit engage in law enforcement actions that are targeted against gang activity.

**Drug Enforcement Unit:** The LEA personnel assigned to these various drug enforcement units are involved with illegal trafficking in narcotics investigations, quite often they encounter individuals who may be in the country illegally.

**Community Action Teams (CAT):** The LEA personnel assigned to the Community Action Teams are officers who have been assigned to these special units and charged with the responsibility of assisting local authorities in urban areas who have requested assistance due to pervasive criminal activity occurring in hot spots within their communities.

## V. DESIGNATION OF AUTHORIZED FUNCTIONS

For the purposes of this MOA, participating LEA personnel will be authorized to perform the following functions pursuant to the stated authorities, subject to the limitations contained in this MOA:

- The power and authority to interrogate any alien or person believed to be an alien as to his right to be or remain in the United States (INA § 287(a)(1) and 8 C.F.R. § 287.5(a)(1)) and to process for immigration violations those individuals who are convicted of State or Federal felony offenses;
- The power to arrest without warrant any alien entering or attempting to unlawfully enter the United States, or any alien in the United States, if the officer has reason to believe the alien to be arrested is in the United States in violation of law and is likely to escape before a warrant can be obtained. INA § 287(a)(2) and 8 C.F.R. 287.5(c)(1).
- The power to arrest without warrant for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens. INA § 287(a)(4) and 8 C.F.R. § 287(c)(2).
- The power to serve warrants of arrest for immigration violations under 8 C.F.R. § 287.5(e)(3).
- The power and authority to administer oaths and to take and consider evidence (INA § 287(b) and 8 C.F.R. § 287.5(a)(2)) to complete required criminal alien processing, to include fingerprinting, photographing, and interviewing, as well as the preparation of affidavits and the taking of sworn statements for ICE supervisory review;
- The power and authority to prepare charging documents (INA Section 239, 8 C.F.R. 239.1; INA Section 238, 8 C.F.R. 238.1; INA Section 241(a)(5), 8 C.F.R. 241.8; INA Section 235(b)(1), 8 C.F.R. 235.3) including the preparation of the Notice to Appear (NTA) application or other charging document, as appropriate, for the signature of an ICE officer for aliens in categories established by ICE supervisors;
- The power and authority to issue immigration detainers (8 C.F.R. § 287.7) and I-213, Record of Deportable/Inadmissible Alien, for processing aliens in categories established by ICE supervisors; and
- The power and authority to detain and transport (8 C.F.R. § 287.5(c)(6)) arrested aliens to ICE-approved detention facilities.

## VI. DETENTION ISSUES

The LEA is expected to pursue to completion prosecution of the state or local charges that caused the individual to be taken into custody. ICE will assume custody of individuals who have been convicted of a State or local offense only after such individuals have concluded service of any sentence of incarceration. ICE will also assume custody of aliens with prior criminal convictions and when immigration detention is required by statute. The ICE Detention and Removal Field Office Director or designee will assess on a case-by-case basis the appropriate removal vehicle to be employed and/or whether to assume custody of individuals that do not meet the above criteria based on special interests or other extenuating circumstances after processing by the LEA. The immigration laws provide ICE Detention and Removal Operations (DRO) with the discretion to manage limited DHS detention resources, and ICE Field Office Directors may exercise this discretion by declining to detain aliens whose detention is not mandated by federal statute.

If ICE determines that it is necessary, the LEA will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which, the LEA will provide, for a reimbursable fee, detention of incarcerated aliens in LEA facilities, upon the completion of their sentences. The LEA facility will be expected to meet the ICE detention standards for either a less than 72-hour or over 72-hour facility as determined by ICE, and consistent with the anticipated detention period.

The parties understand that the LEA will not continue to detain an alien after that alien is eligible for release from the LEA's custody in accordance with applicable law and LEA policy, except for a period of up to 48-hours, excluding Saturday, Sunday, and any holiday, pursuant to an ICE detainer issued in accordance with 8 C.F.R. § 287.7, absent an IGSA in place as described above.

Upon completion of processing and release from MCSO detention facilities of an individual who participating MCSO personnel have determined to be a removable alien, the alien will be transported by MCSO on the same day to the ICE detention office located at 2035 N. Central Ave., Phoenix, Arizona 85004 or another ICE designated office or facility, after notification to and coordination with the ICE supervisory officer, so that no further detention costs will be incurred by ICE.

## VII. NOMINATION OF PERSONNEL

The Sheriff of Maricopa County will nominate candidates for initial training and certification under this MOA. For each candidate, ICE may request any information necessary for a background check and to evaluate a candidate's suitability to participate in the enforcement of immigration authorities under this MOA. All candidates must be United States citizens. All candidates must have at least two years of LEA work experience. All candidates must be approved by ICE and must be able to qualify for appropriate federal security clearances.

Should a candidate not be approved, a substitute candidate may be submitted if time permits such substitution to occur without delaying the start of training. Any future expansion in the number of participating LEA personnel or scheduling of additional training classes may be based on an oral agreement of the parties, but will be subject to all the requirements of this MOA.

#### VIII. TRAINING OF PERSONNEL

ICE will provide participating LEA personnel with the mandatory 4 and 5 week training tailored to the immigration functions to be performed. Training will take place at a mutually designated site in Maricopa County, utilizing ICE-designed curriculum and competency testing.

Training will include, among other things: (i) discussion of the terms and limitations of this MOA; (ii) the scope of immigration officer authority; (iii) relevant immigration law; (iv) the ICE Use of Force Policy; (v) Civil Rights laws; (vi) the U.S. Department of Justice "Guidance Regarding the Use Of Race By Federal Law Enforcement Agencies" dated June 2003; (vii) public outreach and complaint procedures; (viii) liability issues; (ix) cross-cultural issues; and (x) the obligations under federal law and the Vienna Convention on Consular Relations to make proper notification upon the arrest or detention of a foreign national.

Approximately one year after the participating LEA personnel are trained and certified, ICE may provide additional updated training on relevant administrative, legal, and operational issues related to the performance of immigration officer functions, unless either party terminates this MOA pursuant to Section XX below. Local training on relevant issues will be provided on an ongoing basis by ICE supervisors or a designated team leader.

#### IX. CERTIFICATION AND AUTHORIZATION

The ICE Training Division will certify in writing to the ICE Special Agent in Charge and the ICE Field Office Director in Phoenix the names of those LEA personnel who successfully complete training and pass all required testing. Upon receipt of Training Division certification, the ICE Special Agent in Charge and the ICE Field Office Director in Phoenix will provide the participating LEA personnel with a signed authorization to perform specified functions of an immigration officer for an initial period of one year from the date of the authorization. ICE will also provide a copy of the authorization to the LEA. The ICE supervisory officer, or designated team leader, will evaluate the activities of all personnel certified under this MOA.

Authorization of participating LEA personnel to act pursuant to this MOA may be revoked at any time by ICE or the LEA. Such revocation will require immediate notification to the other party to this MOA. The Maricopa County Sheriff and the ICE Special Agent in Charge and ICE Field Office Director in Phoenix will be responsible for notification of the appropriate personnel in their respective agencies. The termination of this MOA, pursuant to Section XX below, shall constitute revocation of all immigration enforcement authorizations delegated hereunder.

X. COSTS AND EXPENDITURES

Participating LEA personnel will carry out designated functions at the LEA's expense, including salaries and benefits, local transportation, and official issue material.

ICE will provide the instructors and training materials. The LEA is responsible for the salaries and benefits, including overtime, for all of its personnel being trained or performing duties under this MOA, and for those personnel performing the regular functions of the participating LEA personnel while they are receiving training. LEA will cover the costs of all LEA candidates' travel, housing, and per diem affiliated with the training required for participation in this agreement. ICE is responsible for the salaries and benefits of all of its personnel, including instructors and supervisors.

If ICE determines that it is necessary, the LEA will enter into an Inter-Governmental Service Agreement (IGSA) with ICE pursuant to which the LEA will provide, for a reimbursable fee, transportation for all incarcerated aliens in the LEA's facilities, upon the completion of their sentences, or upon completion of processing in those circumstances in which state or local prosecution is not available, to a facility or location designated by ICE. If ICE determines that it is necessary, the LEA will provide ICE, at not cost, with an office within each participating LEA facility for ICE supervisory employees to work.

ICE agrees to be responsible for the purchase, installation, and maintenance of technology (computer/IAFIS/Photo and similar hardware/software) necessary to support the investigative functions of participating LEA personnel at each LEA facility with an active 287(g) program. The use of this equipment is to be limited to the performance of responsibilities authorized by this MOA under section 287(g) of the INA by participating LEA personnel. ICE also agrees to provide the necessary technological support and software updates for use by participating LEA personnel to accomplish the delegated functions. Such hardware, software, and other technology purchased or provided by ICE, shall remain the property of ICE and shall be returned to ICE upon termination of this agreement, or when deemed necessary by the ICE Special Agent in Charge and the ICE Field Office Director in Phoenix.

XI. ICE SUPERVISION

Immigration enforcement activities conducted by the participating LEA personnel will be supervised and directed by ICE supervisory officers or the designated team leader in Phoenix. Participating LEA personnel are not authorized to perform immigration officer functions, except when working under the supervision of an ICE officer. Participating LEA personnel shall give timely notice to the ICE supervisory officer within 24 hours or any detainer issued under the authorities set forth in this MOA.

In the correction setting, participating MCSO personnel shall give notice to the ICE supervisory officer as soon as practicable after, and in all cases within 24 hours of, any detainer issued under the authorities set forth in this MOA. In the field setting, participating MCSO deputies will contact an ICE duty officer at the time of exercising the authority in this MOA for guidance. The actions of participating MCSO personnel will be reviewed by the ICE supervisory officers on an ongoing basis to ensure compliance with the requirements of the immigration laws and procedures and to assess the need for additional training or guidance for that specific individual.

For purposes of this MOA, ICE officers will provide supervision of participating LEA personnel only as to immigration enforcement functions. The LEA retains supervision of all other aspects of the employment of and performance of duties by participating LEA personnel.

In the absence of a written agreement to the contrary, the policies and procedures to be utilized by the participating LEA personnel in exercising these authorities shall be DHS and ICE policies and procedures, including the ICE Use of Force Policy. However, when engaged in immigration enforcement activities, no participating LEA personnel will be expected or required to violate or otherwise fail to maintain the LEA's rules, standards, or policies, or be required to fail to abide by restrictions or limitations as may otherwise be imposed by law.

If a conflict arises between an order or direction of an ICE supervisory officer and LEA rules, standards, or policies, the conflict shall be promptly reported to the ICE Special Agent in Charge and ICE Field Office Director in Phoenix, or designees, and the Sheriff of Maricopa County, or designee, when circumstances safely allow the concern to be raised. The Special Agent in Charge, the ICE Field Office Director in Phoenix, and the Sheriff of Maricopa County shall attempt to resolve the conflict.

Whenever possible, MCSO will deconflict all addresses, telephone numbers, and known or suspected identities of violators of the INA with ICE's Office of Investigations (OI) or ICE's Office of Detention and Removal (DRO) prior to taking any enforcement action. This deconfliction will, at a minimum, include wants/warrants, criminal history, and a person, address, and vehicle check through TECS II.

MCSO participating personnel authorized pursuant to this MOA may be assigned and/or co-located with ICE as task force officers to assist ICE agents with criminal investigations.

#### XII. REPORTING REQUIREMENTS

The LEA will be responsible for tracking and maintaining accurate data and statistical information for their 287(g) program, including any specific tracking data requested by ICE. Upon ICE's request, such data and information shall be provided to ICE for comparison and verification with ICE's own data and statistical information, as well as for ICE's statistical reporting requirements and to assess the progress and success of the LEA's 287(g) program.



## XIII. LIABILITY AND RESPONSIBILITY

If any participating LEA personnel are the subjects of a complaint of any sort that may result in that individual receiving employer discipline or becoming the subject of a criminal investigation or civil lawsuit, the LEA shall, to the extent allowed by state law, immediately notify ICE of the existence and nature of the complaint. The resolution of the complaint shall also be promptly reported to ICE. Complaints regarding the exercise of immigration enforcement authority by participating LEA personnel shall be handled as described below.

Except as otherwise noted in this MOA or allowed by federal law, the LEA will be responsible and bear the costs of participating LEA personnel with regard to their property or personnel expenses incurred by reason of death, injury, or incidents giving rise to liability.

Participating LEA personnel will only be treated as federal employees for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and worker's compensation claims, 5 U.S.C. § 8101 et seq., when performing a function as authorized by this MOA. 8 U.S.C. § 1357(g)(7). It is the understanding of the parties to this MOA that participating LEA personnel will enjoy the same defenses and immunities available to ICE officers from personal liability arising from tort lawsuits based on actions conducted in compliance with this MOA. 8 U.S.C. § 1357(g)(8).

Participating LEA personnel named as defendants in litigation arising from activities carried out under this MOA may request representation by the U.S. Department of Justice. Such requests must be made in writing directed to the Attorney General of the United States, and will be handled in coordination with the ICE Special Agent in Charge and/or the ICE Field Office Director in Phoenix. Requests for representation must be presented to the ICE Office of the Chief Counsel at 2035 N. Central Avenue, Phoenix, AZ 85004. Any request for representation and related correspondence must be clearly marked "Subject to Attorney-Client Privilege." The Office of the Chief Counsel will forward the individual's request, together with a memorandum outlining the factual basis underlying the event(s) at issue in the lawsuit, to the ICE Office of the Principal Legal Advisor, which will forward the request, the factual memorandum, and an advisory statement opining whether such representation would be in the interest of the United States, to the Director of the Constitutional and Specialized Torts Staff, Civil Division, Department of Justice. ICE will not be liable for defending or indemnifying acts of intentional misconduct on the part of participating LEA personnel.

The LEA agrees to cooperate with any federal investigation related to this MOA to the full extent of its available powers. It is understood that information provided by any LEA personnel under threat of disciplinary action in an administrative investigation cannot be used against that individual in subsequent criminal proceedings, consistent with Garrity v. New Jersey, 385 U.S. 493 (1967).

As the activities of participating LEA personnel under this MOA are undertaken under federal authority, the participating LEA personnel will comply with federal standards and guidelines relating to the Supreme Court's decision in Giglio v. United States, 405 U.S. 150 (1972), and its progeny, which relates to the disclosure of potential impeachment information about possible witnesses or affiants in a criminal case or investigation.

#### XIV. COMPLAINT PROCEDURES

The complaint reporting and resolution procedure for allegations of misconduct by participating LEA personnel, with regard to activities undertaken under the authority of this MOA, is included at Appendix B.

#### XV. CIVIL RIGHTS STANDARDS

Participating LEA personnel who perform certain federal immigration enforcement functions are bound by all federal civil rights statutes and regulations, including the U.S. Department of Justice "Guidance Regarding The Use Of Race By Federal Law Enforcement Agencies" dated June 2003.

Participating LEA personnel will provide an opportunity for subjects with limited English language proficiency to request an interpreter. Qualified foreign language interpreters will be provided by the LEA as needed.

#### XVI. STEERING COMMITTEE

The ICE Special Agent in Charge, the ICE Field Office Director, and the Sheriff of Maricopa County shall establish a steering committee that will meet periodically to review and assess the immigration enforcement activities conducted by the participating LEA personnel and to ensure compliance with the terms of this MOA. The steering committee will meet periodically in Maricopa County at locations to be agreed upon by the parties, or via teleconference. Steering committee participants will be supplied with specific information on case reviews, individual participants' evaluations, complaints filed, media coverage, and, to the extent practicable, statistical information on increased immigration enforcement activity in Maricopa County. An initial review meeting will be held no later than nine months after certification of the initial class of participating LEA personnel under Section IX, above.

#### XVII. COMMUNITY OUTREACH

The LEA may, at its discretion, engage in community outreach with individuals and organizations expressing an interest in this MOA. ICE may participate in such outreach upon the LEA's request.

#### XVIII. RELATIONS WITH THE NEWS MEDIA

LEA may, at its discretion, communicate the substance of this agreement to organizations and groups expressing an interest in the law enforcement activities to be engaged in under this MOA. This MOA also describes the complaint procedures available to members of the public regarding actions taken by participating LEA personnel pursuant to this agreement.

The LEA hereby agrees to coordinate with ICE before releasing information to the media regarding actions taken under this MOA. The points of contact for ICE and MCSO for this purpose are identified in Appendix C.

XIX. MODIFICATION OF THIS MOA

Modifications to this MOA must be proposed in writing and approved by the signatories.

XX. DURATION AND TERMINATION OF THIS MOA

This MOA will be in effect from the date of signing until it is terminated by either party. Either party, upon written notice to the other party, may terminate the MOA at any time. A termination notice shall be delivered personally or by certified or registered mail and termination shall take effect immediately upon receipt of such notice.

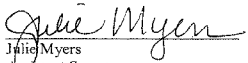
Either party, upon written or oral notice to the other party, may temporarily suspend activities under this MOA when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE shall be given to the Sheriff of Maricopa County. Notice of termination or suspension by MCSO shall be given to the ICE Special Agent in Charge and the ICE Field Office Director in Phoenix.

Except for the provisions contained in Section XIII, this MOA does not, is not intended to, shall not be construed to, and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

By signing this MOA, each party represents it is fully authorized to enter into this MOA, and accepts the terms, responsibilities, obligations, and limitations of this MOA, and agrees to be bound thereto to the fullest extent allowed by law.

Date: 2/29/07

Date: \_\_\_\_\_

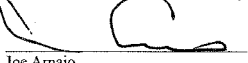


(See attached page 10A)

Julie Myers  
Assistant Secretary  
Immigration and Customs Enforcement  
Office of Homeland Security

\_\_\_\_\_  
Maricopa County  
Board of Supervisors

Date: JAN 19, 2007




Joe Arpaio  
Sheriff  
Maricopa County

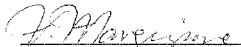
Maricopa County Board of Supervisors

 2-7-07  
Chairman of the Board Date

ATTEST:

 2-7-07  
Clerk of the Board Date

IN ACCORDANCE WITH A.R.S. §11-952 THIS CONTRACT HAS BEEN REVIEWED BY THE UNDERSIGNED WHO HAS DETERMINED THAT THIS CONTRACT IS IN APPROPRIATE FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO EACH RESPECTIVE PUBLIC BODY.

 1-25-07  
Andrew P. Thomas Date  
Maricopa County Attorney

This signature page is added and made part of the Memorandum of Agreement (MOA) between United States Immigration and Customs Enforcement (ICE) and Maricopa County

**APPENDIX A**

**POINTS OF CONTACT**

The ICE and MCSO points of contact for purposes of implementation of this MOA are:

For MCSO: David A. Hendershott  
Chief Deputy, Maricopa County Sheriff's Office  
100 W. Washington Street, Suite 1900  
Phoenix, AZ 85003  
(602) 876-1824

For ICE DRO: Jon Gurule  
Assistant Field Office Director  
Detention and Removal Operations  
2035 N. Central Avenue  
Phoenix, AZ 85004 (602)379-6696

For ICE OI: Troy Henley  
Deputy Special Agent in Charge  
400 N. 5<sup>th</sup> Street, 11<sup>th</sup> Floor  
Phoenix, AZ 85004  
(602) 514-7392

## APPENDIX B

## COMPLAINT PROCEDURE

This MOA is an agreement between DHS/ICE and the Maricopa County Sheriff's Office, hereinafter referred to as the "Law Enforcement Agency" (LEA), in which selected LEA personnel are authorized to perform immigration enforcement duties in specific situations under Federal authority. As such, the training, supervision, and performance of participating LEA personnel pursuant to the MOA, as well as the protections for individuals' civil and constitutional rights, are to be monitored. Part of that monitoring will be accomplished through these complaint reporting and resolution procedures, which the parties to the MOA have agreed to follow.

The MOA sets forth the process for designation, training, and certification of certain LEA personnel to perform certain immigration enforcement functions specified herein. Complaints filed against those personnel in the course of their non-immigration duties will remain the domain of the LEA and be handled in accordance with the LEA Manual of Policy and Procedures. The LEA will also handle complaints filed against personnel who may exercise immigration authority, but who are not designated and certified under this MOA. The number and type of the latter complaints will be monitored by the Steering Committee established under Section XVI of the MOA.

In order to simplify the process for the public, complaints against participating LEA personnel relating to their immigration enforcement can be reported in a number of ways. The ICE Headquarters Office of Professional Responsibility (OPR) and the LEA's Internal Affairs Division will coordinate complaint receipt and investigation.

The ICE OPR will forward complaints to the Department of Homeland Security's Office of Inspector General (DHS OIG) as appropriate for review, and ensure notification as necessary to the U.S. Department of Justice Civil Rights Division (DOJ CRD). The ICE OPR will coordinate complaints related to participating personnel with the LEA Internal Affairs Division as detailed below. Should circumstances warrant investigation of a complaint by the DHS OIG or the DOJ CRD, this will not preclude the DHS OIG, DOJ CRD, or ICE OPR from conducting the investigation in coordination with the LEA's Internal Affairs Division, when appropriate.

The ICE OPR will adhere to established procedures relating to reporting and resolving allegations of employee misconduct, and the LEA's Internal Affairs Division will follow applicable LEA policies and procedures, personnel rules, Arizona statutes, and collective bargaining agreement requirements.

#### 1. Complaint Reporting Procedures

Complaint reporting procedures shall be disseminated as appropriate by the LEA within facilities under its jurisdiction (in English and other languages as appropriate) in order to ensure that individuals are aware of the availability of such procedures.

Complaints will be accepted from any source (e.g.: ICE, LEA, participating LEA personnel, inmates, and the public).

Complaints can be reported to federal authorities as follows:

- A. Telephonically to the ICE OPR at the Joint Intake Center (JIC) in Washington, D.C. at the toll-free number 1-877-246-8253; or
- B. Telephonically to the Resident Agent in Charge of the ICE OPR office in Tucson, AZ at (520) 407-2200; or
- C. Via mail as follows:

U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
Office of Professional Responsibility  
425 I Street, NW  
Room 3260  
Washington, D.C. 20536

Complaints can also be referred to and accepted by any of the following LEA entities:

- A. The LEA Internal Affairs Division; or
- B. The supervisor of any participating LEA personnel; or
- C. The LEA Internal Affairs Division as follows:  
Commander  
Internal Affairs Division  
Maricopa County Sheriff's Office  
100 W. Washington Street, Suite 1900  
Phoenix, AZ 85003

## 2. Review of Complaints

All complaints (written or oral) reported to the LEA directly, which involve activities connected to immigration enforcement activities authorized under this MOA, will be reported to the ICE OPR. The ICE OPR will verify participating personnel status under the MOA with the assistance of the ICE Special Agent in Charge and the ICE Field Office Director in Phoenix. Complaints received by any ICE entity will be reported directly to the ICE OPR as per existing ICE policies and procedures.

In all instances, the ICE OPR, as appropriate, will make an initial determination regarding DHS investigative jurisdiction and refer the complaint to the appropriate office for action as soon as possible, given the nature of the complaint.

Complaints reported directly to the ICE OPR will be shared with the LEA's Internal Affairs Division when the complaint involves LEA personnel. Both offices will then coordinate appropriate investigative jurisdiction, which may include initiation of a joint investigation to resolve the issue(s).

3. Complaint Resolution Procedures

Upon receipt of any complaint, the ICE OPR will undertake a complete review of each complaint in accordance with existing ICE allegation criteria and reporting requirements. As stated above, the ICE OPR will adhere to existing ICE reporting requirements as they relate to the DHS OIG and/or the DOJ CRD. Complaints will be resolved using the existing procedures, supplemented as follows:

A. Referral of Complaints to LEA Internal Affairs Division.

The ICE OPR will refer complaints, as appropriate, involving LEA personnel to the LEA's Internal Affairs Division for resolution. The Internal Affairs Division Commander will inform ICE OPR of the disposition and resolution of any complaints referred by ICE OPR.

B. Interim Action Pending Complaint Resolution

Whenever any participating LEA personnel are under investigation and subject to interrogation by the LEA for any reason that could lead to disciplinary action, demotion, or dismissal, the policy requirements of the Maricopa County Sheriff's Office shall be honored. If appropriate, an individual may be removed from participation in the activities covered under the MOA pending resolution of an inquiry.

C. Time Parameters for Resolution of Complaints

It is expected that any complaint received will be resolved within 90 days. However, this will depend upon the nature and complexity of the substance of the complaint itself.

D. Notification of Resolution of a Complaint

ICE OPR will coordinate with the LEA's Internal Affairs Division to ensure notification as appropriate to the subject(s) of a complaint regarding the resolution of the complaint.



**APPENDIX C**

**PUBLIC INFORMATION POINTS OF CONTACT**

Pursuant to Section XVIII of this MOA, the signatories agree to coordinate any release of information to the media regarding actions taken under this MOA. The points of contact for coordinating such activities are:

For MCSO:

Lt. Paul Chagoya  
Public Information Office  
Maricopa County Sheriff's Office  
100 W. Washington Street, Suite 1900  
Phoenix, AZ 85003  
(602) 525-6239

For ICE:

Virginia Kice  
Western Regional Communications Director/Spokesperson  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
Western Region Public Affairs  
24000 Avila Road  
Laguna Niguel, CA 92677  
(949) 360-3096

MARICOPA COUNTY BOARD OF SUPERVISORS  
**AGENDA FORM**

Contract/Lease for  NEW  RENEWAL  AMENDMENT  CANCELLATION  
(FOR REVENUE, RECORD ENCUMBRANCE AND SECURITY)

LOW ORG. NO. 5410 DEPARTMENT: Sheriff CONTROL NUMBER: 92-92  
ENCUMBRANCE NO. CS921092 AGENCY: \_\_\_\_\_ CONTROL NUMBER: CJS91-161

**1. BRIEF DESCRIPTION OF PROPOSAL AND REQUESTED BOARD ACTION:**  
In May 1991 the Board of Supervisors approved the jail per diem rate of \$35.76 per day for inmate detention during FY 91/92. The US Department of Justice, United States Marshals Service is now requesting modification to an existing Intergovernmental Agreement, reducing the previously agreed per diem rate of \$37.31 to \$35.76.

**2. Compliance with Maricopa County Procurement Code** 10 Procurement Officer

**3. CONTINUED FROM MEETING OF** \_\_\_\_\_ **4.  THIS DEPARTMENT WILL CAUSE PUBLICATION**  
**DISCUSSED IN MEETING OF** \_\_\_\_\_  **CLERK OF THE BOARD TO CAUSE PUBLICATION**

**5. MOTION:** It is moved that the Maricopa County Board of Supervisors ... approve a modification of the existing Intergovernmental Agreement between Maricopa County and the US Department of Justice, United States Marshals Service to reduce the prisoner per diem rate from \$37.31 to \$35.76 effective July 1, 1991.

**6. FINANCIAL:**  Expenditure  Revenue  Budgeted  Contingency  Budget Amendment  Transfer  Grant or other  
\$ 35.76 per day per prisoner Amount Agreement Date 12/23/91

**7. PERSONNEL:** \_\_\_\_\_ **8. DEPARTMENT:** Sheriff  
Personnel Director Date Signature Date 11-27-91

**9. MATERIALS MANAGEMENT:** \_\_\_\_\_ **10. LEGAL:** \_\_\_\_\_  
Materials Management Director Date Signature Date 12/23/91

**11. OTHER:** \_\_\_\_\_ **12. APPROVED FOR AGENDA:** \_\_\_\_\_  
Signature Date Signature Date

**13. OTHER:** \_\_\_\_\_ **15. RECOMMENDATION OF COUNTY MANAGER:**  
Signature Date  Approve  Disapprove

**14. BOARD OF SUPERVISORS: Action taken:**  
 Approved  Amended  Disapproved  Deleted  
Continued to: JAIL 05 1830 Date  
John McLaughlin Signature Date  
Clerk of the Board Date

APR -23' 01 (MON) 10:14

TEL: 703 603 9520

P. 020

MARICOPA COUNTY BOARD OF SUPERVISORS  
AGENDA FORM

CB0 94-375

miracle/Lease for  NEW  RENEWAL  AMENDMENT  CANCELLATION  
(For meeting record Enclosure No. 2000)

IW ORG. NO. \_\_\_\_\_ DEPARTMENT: Sheriff CONTROL NUMBER: 96-13

COMBRANCE NO. CS921092 AGENCY: \_\_\_\_\_ CONTROL NUMBER: \_\_\_\_\_

1. BRIEF DESCRIPTION OF PROPOSAL AND REQUESTED BOARD ACTION:

The Maricopa County Sheriff's Office requests the Board of Supervisors approve a modification of the Intergovernmental Agreement with the United States Marshals Service. This modification extends the temporary per diem rate of \$70 per day per inmate, until June 30, 1994, and stated specific procedural changes.

2. Compliance with Maricopa County Procurement Code  article \_\_\_\_\_  paragraph \_\_\_\_\_ Procurement Order \_\_\_\_\_

3. CONTINUED FROM MEETING OF \_\_\_\_\_ DISCUSSED IN MEETING OF \_\_\_\_\_  
4.  THIS DEPARTMENT WILL CAUSE PUBLICATION  
 CLERK OF THE BOARD TO CAUSE PUBLICATION

5. MOTION: It is moved that the Maricopa County Board of Supervisors... approve the modification of the Intergovernmental Agreement with the United States Marshals Service. until June 30, 1994

6. FINANCIAL:  Expenditure  Revenue  Budgeted  Contingency  Budget Amendment  Transfer  Grant or other

Extend per diem rate of \$70 for Federal prisoner  
Total: \_\_\_\_\_ Fund: General Fiscal Officer: S. Wilson Date: 4-16-94

7. PERSONNEL: Personnel Director \_\_\_\_\_ Date \_\_\_\_\_  
8. DEPARTMENT: Sheriff's Office Date: 3-31-94

9. MATERIALS MANAGEMENT: A. Materials Management Director \_\_\_\_\_ Date \_\_\_\_\_  
B. Warehouse Representative \_\_\_\_\_ Date \_\_\_\_\_  
10. LEGAL: John W. Hanks Date: 4/16/94

11. OTHER: Signatures \_\_\_\_\_ Date \_\_\_\_\_  
12. APPROVED FOR AGENDA: Approving Official \_\_\_\_\_ Date \_\_\_\_\_

13. OTHER: Signatures \_\_\_\_\_ Date \_\_\_\_\_  
15. RECOMMENDATION OF COUNTY MANAGER:  Approve  Disapprove  
Comments: Paula Cooper Date: \_\_\_\_\_  
County Manager

14. BOARD OF SUPERVISORS: Action taken:  Approved  Amended  Disapproved  Deleted  
Continued for: John W. Hanks Date: 5/4/94  
Clerk of the Board

SEP 6 '98 9:52 FROM WARRANTS

PAGE.001

OFFICE OF THE SHERIFF  
MARICOPA COUNTY

THOMAS J. AGNOS  
SHERIFF

102 W. Madison Street

Phoenix, Arizona 85003

(602) 256-1000  
STATEWIDE  
TOLL-FREE NUMBER  
1-800-368-4883



FAX COVER SHEET

FROM: MARICOPA COUNTY SHERIFF'S OFFICE  
PHOENIX, ARIZONA 85003  
FAX NUMBER (602) 256-1008

TO: Immigration + Naturalization Service  
Western Regional Office  
ATTN: Gatty Serrano  
FAX NUMBER: (714) 443-4348

THIS IS A FAX COMMUNICATION IN REFERENCE TO: \_\_\_\_\_  
U.S. Marshall Contract  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE ACKNOWLEDGE THE RECEIPT OF THE 5 PAGES TRANSMITTED.

Linda Christophel  
OFFICER SENDING

PH \* (602) 256-1745

SEP 6 '90 8:52 FROM WARRANTS

PAGE.002

MARICOPA COUNTY BOARD OF SUPERVISORS  
**AGENDA FORM**

ADP 50  
3/14/90

Contract/Vendor for:  NEW  RENEWAL  AMENDMENT  CANCELLATION  
(Use existing Vendor Enc. # when applicable)

LOW ORG. NO. 9410 DEPARTMENT: Sheriff CONTROL NUMBER: 90-10

ENCUMBRANCE NO. \_\_\_\_\_ AGENCY: \_\_\_\_\_ CONTROL NUMBER: CJS 90-000

**1. BRIEF DESCRIPTION OF PROPOSAL AND REQUESTED BOARD ACTION:**

In September 1989 the Board of Supervisors approved the jail per diem rate of \$38.09 per day for inmate detention during FY 89/90. The US Department of Justice, United States Marshals Service is now requesting a modification to an existing Intergovernmental Agreement, reducing the previously agreed per diem rate of \$40.70 to \$38.09.

---

**2. Compliance with:**  
 a. Maricopa County Procurement Code NA  
 b.  THIS DEPARTMENT WILL CAUSE PUBLICATION  
 CLERK OF THE BOARD TO CAUSE PUBLICATION

**3. CONTINUED FROM MEETING OF** \_\_\_\_\_ **4. MOTION:** It is moved that the Maricopa County Board of Supervisors ... approve a modification of the existing Intergovernmental Agreement between Maricopa County and the US Department of Justice, United States Marshals Service to reduce the prisoner per diem rate from \$40.70 to \$38.09, effective July 1, 1990.

**5. FINANCIAL:**  Expenditure  Revenue  Budgeted  Contingency  Budget Amendment  Transfer  Grant or other

Person per diem  
 \$ 38.09 \_\_\_\_\_  
 Total \_\_\_\_\_

**7. PERSONNEL:** \_\_\_\_\_  
**8. DEPARTMENT:** Sheriff's Office  
 Proposed by: \_\_\_\_\_ Date: 2-14-90  
 Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

**9. MATERIALS MANAGEMENT:**  
 A. \_\_\_\_\_ Date: \_\_\_\_\_  
 B. \_\_\_\_\_ Date: \_\_\_\_\_

**10. LABEL:** \_\_\_\_\_  
 Date: 2-14-90

**11. OTHER:** \_\_\_\_\_  
 Approved for Agenda: Thomas J. Cochran 2-27-90

**12. APPR:** \_\_\_\_\_  
 Date: 2-22-90

**13. RECOMMENDATION OF COUNTY MANAGER:**  
 Approve  Disapprove  
 Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 County Manager Date: \_\_\_\_\_

**14. BOARD OF SUPERVISORS: Action taken:**  
 Approved  Amended  Disapproved  Deleted  
 Continued for: \_\_\_\_\_  
 Date and type of meeting: \_\_\_\_\_  
 Clerk of the Board Date: \_\_\_\_\_

1. AGREEMENT NUMBER J-208-M-129		2. EFFECTIVE DATE 5/1/83		3. REQUISITION/PURCHASER/REQUEST NO. 0137-ED8-83		4. CONTROL NO.	
5. ISSUING OFFICE UNITED STATES MARSHALS SERVICE PRISONER SUPPORT DIVISION CONTRACTS BRANCH 1-TYSONS CORNER CENTER MCLEAN, VIRGINIA 22102				6. GOVERNMENT ENTITY NAME AND ADDRESS Maricopa Co. Board of Supervisors 102 W. Madison Phoenix, Arizona 85003 Contact Person: Major Emma Carter Area Code & Telephone No. - (602) 256-1811		FACILITY CODE(S) 9801 9802 9803	
7. APPROPRIATION DATA							
8. ITEM NO.	9. SUPPLIES/SERVICES			10. QUANTITY	11. UNIT	12. UNIT PRICE	13. AMOUNT
(1)	This Agreement is for the housing, safekeeping and subsistence of adult male and female federal prisoners in accordance with the contents set forth herein.			ESTIMATED USMS PRISONER DAYS/YR		FIXED RATE	ESTIMATED ANNUAL PAYMENT
(2)	This Agreement consists of the following: (A) I-G-A Cover Page, Form #241 (B) Agreement Schedule, Pages 2, 3 and 4.			36,000	PD's	\$26.50	\$1,026,000
14. AGENCY CERTIFYING <i>To the best of my knowledge and belief, data submitted in support of this agreement is true and correct, the document has been duly authorized by the governing body of the Department or Agency and the Department or Agency will comply with ALL PROVISIONS SET FORTH HEREIN.</i>				15. NAME AND TITLE OF PERSON(S) AUTHORIZED TO SIGN OFFER <i>James S. Hill</i> Date <i>4-17-83</i> JERRY S. HILL, SHERIFF <i>Hawley Atkinson</i> Date <i>4-10-83</i> Hawley Atkinson, Chairman, Board of Supervisors			
16. TYPE OF USE <input type="checkbox"/> Hold Over <input checked="" type="checkbox"/> Regular Support <input type="checkbox"/> Seasonal Support <input type="checkbox"/> Other		17. PRISONER TYPE TO BE INCLUDED UNSENTENCED SENTENCED <input checked="" type="checkbox"/> Adult Male <input type="checkbox"/> Adult Male <input checked="" type="checkbox"/> Adult Female <input type="checkbox"/> Adult Female <input type="checkbox"/> Juvenile Male * <input type="checkbox"/> Juvenile Male <input type="checkbox"/> Juvenile Female <input type="checkbox"/> Juvenile Female <input type="checkbox"/> Alien <input type="checkbox"/> Work Release <input type="checkbox"/> *Emergency basis only-NITE 48 hours <input type="checkbox"/> YCA Male <input type="checkbox"/> YCA Female		18. This Negotiated Agreement is Heraby Approved And Accepted For THE UNITED STATES OF AMERICA BY DIRECTION OF THE DIRECTOR OF THE UNITED STATES MARSHALS SERVICE BY <i>J. Enders</i> SIGNATURE OF AUTHORIZING OFFICIAL			
19. ANTICIPATED ANNUAL USAGE UNSENTENCED SENTENCED ALIENS TOTAL No. of Prisoners 36,000 100 1,000 37,100 Prisoner Days Guard Hours		20. NAME OF AUTHORIZING OFFICIAL (Type or Print) Joseph B. Enders		21. DATE SIGNED April 5, 1983			

SEP 6 '98 9:53 FROM WARRANTS

PAGE.004

UNITED STATES MARSHALS SERVICE	AGREEMENT NO:	Page No.
AGREEMENT SCHEDULE (SUPPORT OF U.S. PRISONERS)	J-EDR-N-129	2 of 4

ARTICLE I - PURPOSE

The purpose of this Intergovernmental Service Agreement (IGA) is to establish a formal binding relationship between the U.S. Marshals Service and other federal user agencies (the government) and Maricopa County, Arizona (the County) for the detention of persons charged with or convicted of violations of federal law or held as material witnesses (federal prisoners) at the Maricopa County Jail, Avondale Substation, and Durango Correction & Detention Center (the facility).

ARTICLE II - SUPPORT AND MEDICAL SERVICES

1. The County agrees to accept and provide for the secure custody, care and safekeeping of federal prisoners in accordance with state and local laws, standards, policies, procedures, or court orders applicable to the operations of the facility.
2. The County agrees to provide federal prisoners with the same level of medical care and services provided local prisoners including the transportation and security for prisoners requiring removal from the facility for emergency medical services. All costs associated with hospital or health care services provided outside the facility will be paid directly by the government.
3. The County agrees to provide transportation between Maricopa County facilities as necessary for medical attention or for classification purposes. To the extent possible, federal prisoners will be brought downtown from satellite facilities upon adequate notification by the USMS.

ARTICLE III - RECEIVING AND DISCHARGE

1. The County agrees to accept as federal prisoners those persons committed by federal law enforcement officers for violations of federal laws only upon presentation by the officer of proper law enforcement credentials.
2. The County agrees to release federal prisoners only to law enforcement officers of agencies initially committing the prisoner (i.e. DEA, INS, etc.) or to a Deputy United States Marshal. Those prisoners who are remanded to custody by a U.S. Marshal may only be released to a U.S. Marshal or an agent specified by the U.S. Marshal of the Judicial District.
3. Government user agencies agree to maintain federal prisoner population levels at or below the level established by the facility administrator. The facility administrator may establish levels for each user agency.
4. Federal prisoners may not be released from the facility or placed in the custody of state or local officials for any reason except for medical or emergency situations. Federal prisoners sought for a state or local court proceeding must be acquired through a Writ of Habeas Corpus or the Interstate Agreement of Detainers and then only with the concurrence of the District U.S. Marshal.

ARTICLE IV - PERIOD OF PERFORMANCE

This Agreement shall be in effect indefinitely until terminated in writing by either party. Should conditions of an unusual nature occur making it impractical or undesirable to continue to house prisoners, the County may suspend or restrict the use of the facility by any or all federal agencies by giving written notice to the U.S. Marshal and the affected user agency. Such notice will be provided 30 days in advance of the

SFD 110-910

Form USM 21  
(Ed. 07/87)

SEP 6 '80 0154 FROM WARRANTS

PAGE 005

UNITED STATES MARSHALS SERVICE		AGREEMENT NO.	Page No.						
<b>AGREEMENT SCHEDULE</b> (SUPPORT OF U.S. PRISONERS)		J-808-M-129	2 of 4						
<p>Effective date of formal termination and at least two weeks in advance of a suspension of restriction of use unless an emergency situation requires the immediate relocation of prisoners.</p>									
<b>ARTICLE V - ECONOMIC PRICE ADJUSTMENT</b>									
<p>1. Payment rates shall be established on the basis of actual costs associated with the operation of the facility during a recent annual accounting period or upon an approved annual operating budget.</p> <p>2. The rate may be renegotiated not more than once per year, after the Agreement has been effective for twelve months.</p> <p>3. The County may initiate a request for a rate increase or decrease by notifying the U.S. Marshal in writing at least 60 days prior to the desired effective date of the adjustment. Each rate adjustment submitted must include a completed Basic Data Sheet and Certification Form available from the U.S. Marshal. The County agrees to provide additional cost information to support a rate increase and to permit an audit of accounting records upon request of the Marshals Service.</p> <p>4. Criteria used to evaluate the increase or decrease in the per-capita rate shall be those specified in the federal cost standards for contracts and grants with State and local governments issued by the Office of Management and Budget.</p> <p>5. The effective date of the rate modification will be negotiated and specified on the GA Modification form approved and signed by a Marshals Service Contracting Officer. The effective date will be established on the first day of a month for accounting purposes. Payments at the modified rate will be paid upon the return of the signed modification by the authorized local official to the U.S. Marshal.</p> <p>6. Unless other justifiable reasons can be documented by the County, per diem rate increases shall not exceed the National Inflation rate as established by the U.S. Department of Commerce.</p>									
<b>ARTICLE VI - FINANCIAL PROVISIONS</b>									
<p>1. The billing addresses of the agencies using this facility are as follows:</p> <table border="0"> <thead> <tr> <th style="text-align: center;"><u>PAYOR</u></th> <th style="text-align: center;"><u>PAYOR</u></th> </tr> </thead> <tbody> <tr> <td>           United States Marshal            230 North First Avenue            Phoenix, Arizona 85025            Phone: (602) 261-3621         </td> <td>           Bureau of Prisons            Community Programs Manager            1419 Federal Building            230 North First Avenue            Phoenix, Arizona 85025            Phone: (602) 621-4947         </td> </tr> <tr> <td>           Immigration &amp; Naturalization Service            Asst. Regional Commissioner, PMP            Terminal Island            San Pedro, California            Phone: (213) 548-2361         </td> <td></td> </tr> </tbody> </table>				<u>PAYOR</u>	<u>PAYOR</u>	United States Marshal 230 North First Avenue Phoenix, Arizona 85025 Phone: (602) 261-3621	Bureau of Prisons Community Programs Manager 1419 Federal Building 230 North First Avenue Phoenix, Arizona 85025 Phone: (602) 621-4947	Immigration & Naturalization Service Asst. Regional Commissioner, PMP Terminal Island San Pedro, California Phone: (213) 548-2361	
<u>PAYOR</u>	<u>PAYOR</u>								
United States Marshal 230 North First Avenue Phoenix, Arizona 85025 Phone: (602) 261-3621	Bureau of Prisons Community Programs Manager 1419 Federal Building 230 North First Avenue Phoenix, Arizona 85025 Phone: (602) 621-4947								
Immigration & Naturalization Service Asst. Regional Commissioner, PMP Terminal Island San Pedro, California Phone: (213) 548-2361									

SPD 020-014

Form USM-2  
(Rev. 5/18/79)



SEP 6 '80 9:55 FROM WARRANTS		PAGE.006	
UNITED STATES MARSHALS SERVICE AGREEMENT SCHEDULE (SUPPORT OF U.S. PRISONERS)		INREEMENT NO.	Page No.
		J-855-M-248	4 of 4
<p>The government shall reimburse the County at the fixed rate identified on page one of the agreement. The rate covers one person per prisoner day. The government may not be billed for two days when a prisoner is admitted one evening and removed the following morning. The County may bill for the day of arrival but not for the day of departure.</p> <p>3. The County shall bill each federal agency for prisoner services provided on a monthly basis. Monthly billing shall list each federal prisoner, the specific dates of confinement for each, and the total days to be reimbursed, the agreed upon rate per day, and the total amount billed (total days multiplied by the rate per day).</p> <p><b>ARTICLE VII - GOVERNMENT FURNISHED PROPERTY</b></p> <p>1. It is the intention of the Marshals Service to furnish excess federal property to local governments for the specific purpose of improving jail conditions and services. Accountable excess property, such as furniture and equipment, remains titled to the Marshals Service and shall be returned to the custody of the Marshals Service upon termination of the agreement.</p> <p>2. The County agrees to inventory, maintain, repair, assume liability for and manage all federally provided accountable property and to immediately report the loss or destruction of accountable property to the U.S. Marshal. Annual inventory reports will be provided by the County to the U.S. Marshal.</p> <p>3. The dollar value of property provided each year will not exceed the annual dollar payment made by the Marshals Service for prisoner support.</p> <p><b>ARTICLE VIII - MODIFICATIONS/DISPUTES</b></p> <p>1. Either party may initiate a request for modification to this agreement in writing. All modifications negotiated will be written and approved by the U.S. Marshals Service contracting officer and submitted to the County on form USM 241a for approval.</p> <p>2. Disputes, questions or concerns pertaining to this agreement will be resolved between the U.S. Marshal and the appropriate County official. Unresolved issues are to be directed to the Chief, Prisoner Support Division, U.S. Marshals Service Headquarters.</p> <p><b>ARTICLE IX - INSPECTION AND TECHNICAL ASSISTANCE</b></p> <p>1. The County agrees to allow periodic inspections of the facility by U.S. Marshals Service Inspectors. Findings of the inspection will be shared with the facility administrator in order to promote improvements to facility operations, conditions of confinement and levels of services.</p> <p>2. The Marshals Service will endeavor to provide or acquire technical training and management assistance from other federal, state or local agencies or national organizations upon the request of the facility administrator.</p>			

SPD 111-244

Form USM-2  
(Rev. 5/16/70)

\*\* TOTAL PAGE.006 \*\*

UNITED STATES OF AMERICA  
 UNITED STATES DEPARTMENT OF JUSTICE  
 U.S. MARSHALS SERVICE  
 SOLICITATION, OFFER AND AWARD

Page 1 of 35

CONTRACT NUMBER J-E08-M-129	CODE: 9SE 9AM, 9RY-D3	2. RFP NUMBER 235-C-08-80	3. ISSUE DATE February 12, 1980
4. ISSUING OFFICE UNITED STATES MARSHALS SERVICE PRISONER OPERATIONS DIVISION CONTRACTS AND AGREEMENTS BRANCH 1-TYSONS CORNER CENTER MCLEAN, VIRGINIA 22102		5. ADDRESS OFFER TO (if other than Block 4)	

SOLICITATION

6. The United States Marshals Service solicits your proposal for the housing, safekeeping and subsistence of federal prisoners and other services listed in any continuation sheets hereof. It is the intent of this solicitation to obtain all the services specified in the schedule in accordance with the conditions of confinement.

THIS SOLICITATION CONSISTS OF THE FOLLOWING:

- Solicitation, Offer and Award, Form USM241, 4 pages
- The solicitation Instructions and Conditions, Form USM 1 page.
- The schedule attached hereto, 4 pages(s).
- Conditions of Confinement, 11 pages.
- The General Contract Provisions, 15 pages.
- Service Contract Act of 1965, as amended, (Incorporated by Reference).

OFFER (pages 2 thru 4 must also be fully completed by offeror)

7. The offeror having satisfied himself as to the conditions of confinement (except as noted in the cover page thereof hereby proposes and agrees to perform the required services as stated herein subject to the Government's acceptance of the following cost considerations or other rates or considerations mutually agreed to through subsequent negotiations:

\$ 18.00 per prisoner per day.

8. OFFEROR NAME AND ADDRESS (Street, city, county, State and ZIP code) Maricopa County Board of Supervisors 102 W. Madison Phoenix, Arizona 85003 REA CODE AND TELEPHONE NO. ▶	9. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) FRED KOORY, CHAIRMAN, BOARD OF SUPERVISORS SIGNATURE & DATE <i>Fred Koory</i> JUN 23 1980 SIGNATURE & DATE
---	---

AWARD (To be completed by Government)

10. <input type="checkbox"/> NEGOTIATED RATE	11. AMOUNT \$1,259,118 69,951 PDS	12. Your offer on this solicitation including the additions or changes made by you which additions or changes are set forth in full herein, is hereby accepted as to the items listed and on any continuation sheets.
<input checked="" type="checkbox"/> RATE ACCEPTED AS PROPOSED \$18.00		THE UNITED STATES OF AMERICA BY DIRECTION OF THE DIRECTOR OF THE UNITED STATES MARSHALS SERVICE BY <i>[Signature]</i> (SIGNATURE OF CONTRACTING OFFICER)
13. ACCOUNTING AND APPROPRIATION DATA 1511020 \$429,642 23,869 PDS (Estimated 24,000 PDS annually)	14. EFFECTIVE DATE OF CONTRACT May 1, 1980	15. EXPIRATION DATE April 31, 1983
	NAME OF CONTRACTING OFFICER (Type or Print) BURDETTE S. BURTON	16. DATE SIGNED 1-28-81

PRIOR EDITIONS ARE OBSOLETE AND ARE NOT TO BE USED

## OFFEROR'S REPRESENTATIONS AND CERTIFICATIONS

1. CONTINGENT FEE REPRESENTATION (Check appropriate boxes): The offeror represents (a) that he  has,  has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure this contract, and (b) that he  has,  has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (NOTE: For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Chapter 1, Subpart 1-1.5.)
2. EQUAL OPPORTUNITY
- (a) He  has,  has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114; that he  has,  has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the equal opportunity clause.)
- (b) The bidder (or offeror) represents that (1) he  has developed and has on file,  has not developed and does not have on file, at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) or (2) he  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor. (The above representation shall be completed by each bidder (or offeror) whose bid (offer) is \$30,000 or more and who has 30 or more employees.)
3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:
- (a) By submission of this proposal, each offeror certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, that in connection with this procurement:
- (1) The prices on this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor.
  - (2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to award directly or indirectly to any other offeror or to any competitor; and
  - (3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
- (b) Each person signing this proposal certifies that:
- (1) He is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to (a) through (a)(3) above; or
  - (2)(i) He is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3), and as their agent does hereby so certify, and
  - (ii) He has not participated, in any action contrary to (a)(3).

(c) This certification is not applicable to a foreign offeror submitting a proposal for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A proposal will not be considered for award where (a)(1), (3), or (b) has been deleted or modified. Where (a)(2) has been deleted or modified, the proposal will not be considered for award unless the offeror furnished with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

**4. NOTICE OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES:**

Bidders and offerors are cautioned as follows: By signing this bid or offer, the bidder or offeror will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this solicitation. The certification provides that the bidder or offeror does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The Certification also provides that he will not maintain such segregated facilities. Failure of a bidder or offeror to agree to the Certification of Nonsegregated Facilities will render his bid or offer nonresponsive to the terms of solicitation involving awards of contracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause.

**5. CERTIFICATION OF NONSEGREGATED FACILITIES:**

(Applicable to contracts, subcontracts, and agreements with applicants who are themselves performing Federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause.)

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, rest rooms and wash rooms, restaurants and other eating areas; time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, which are segregated by explicit national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certification in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities as required by May 9, 1967, order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The Certifications may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**6. CLEAN AIR AND WATER CERTIFICATION:**

(Applicable if bid or offer exceeds \$100,000, or the contracting officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean

## OFFEROR'S REPRESENTATIONS AND CERTIFICATIONS

Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c) and is listed by EPA, or is not otherwise exempt.)

The bidder or offeror certifies as follows:

- (a) Any facility to be utilized in the performance of this proposed contract has  , has not  , been listed on the Environmental Protection Agency List of Violating Facilities.
- (b) He will promptly notify the contracting officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that any facility which he proposed to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities.
- (c) He will include substantially this certification, including this paragraph in every nonexempt subcontract.

## 7. MINORITY BUSINESS ENTERPRISE:

(Applicable if bid or offer is in excess of \$10,000.) The offeror represents that he  is,  is not "business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members." For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts.

8. By submission of this proposal, the offeror hereby certifies that he is not barred by any Government agency from doing business with the Government

NAME OF OFFEROR OR BIDDER		RFP OR CONTRACT NO.
MARICOPA COUNTY BOARD OF SUPERVISORS		235-C-08-80
By (Signature)	TITLE	DATE
FRED KOORY, JR. /s/	CHAIRMAN	JUNE 23, 1980

ADDENDUM TO  
UNITED STATES FEDERAL CONTRACT  
FOR  
CARE AND CUSTODY OF U. S. MARSHAL'S PRISONERS

SUBJECT: DESCRIBING GENERAL AND SPECIAL MEDICAL CARE

GENERAL MEDICAL CARE:

This shall be taken to mean the regular medical care and medications dispensed in the dispensaries of the several institutions operated by Maricopa County General Jail System which includes the services of medical doctors, and registered nurses.

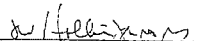
SPECIAL MEDICAL CARE:

This shall be taken to mean all situations whereby the medical staff determines that the kind of treatment required can only be taken care of at the Maricopa County General Hospital, or in the special Psychiatric Unit at Durango. If a federal prisoner is medically ordered to the Maricopa County General Hospital, the Federal Government shall be responsible for the hospital room, ward or clinic cost, whichever the case may be, any medications, X-rays, surgery, or other medical attention that is required in each individual case.


Special Medical Care also includes psychiatric care. If an individual is determined to be in need of psychotropic drug therapy, or is considered to be hallucinating, schizophrenic, paranoid to an excessive degree, by a registered psychiatrist, then that individual will be moved to the Special Psychiatric Unit at Durango at an additional charge of \$11.00 per day, per each day the federal prisoner is so housed, will be incurred against the Government.

  
GEORGE ROWLAND, M.D., DIRECTOR  
PUBLIC HEALTH SERVICES

DATE: May 20, 1980

  
STUART HOLLINGSWORTH, M.D.  
CHAIRMAN OF PSYCHIATRY

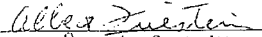
DATE: May 20, 1980

  
P. L. SEVERSON, DIRECTOR  
MARICOPA COUNTY DETENTION DIV.

DATE: 19 May 1980

APPROVED AS TO FORM ON May 20, 1980.

U.S. MARSHAL FOR CONTRACT OFFICER  
DATE:

  
Deputy County Attorney

U.S. Department of Justice  
United States Marshals Service

Modification Intergovernmental Agreement

1. MODIFICATION NO. Five (5)		2. EFFECTIVE DATE OF MODIFICATION July 1, 1989	
3. ISSUING OFFICE U.S. MARSHALS SERVICE PRISONER OPERATIONS DIVISION 500 ARMY AVENUE, SUITE 1090 ARLINGTON, VA 22202-4210		4. LOCAL GOVERNMENT Maricopa County Detention Center 111 South Third Ave. Phoenix, AZ 85003	
		5. IGA NO. J-EDS-M-129	
		6. FACILITY CODE(S) 9AM, 9RY, 9SE, 9AK, 8FX, 8PY, 8PZ	
7. ACCOUNTING CITATION 15X1020		8. ESTIMATED ANNUAL PAYMENT \$2,094,950.00	
9. EXCEPT AS PROVIDED SPECIFICALLY HEREIN, ALL TERMS AND CONDITIONS OF THE IGA DOCUMENT REFERRED TO IN BLOCK 3, REMAIN UNCHANGED. TERMS OF THIS MODIFICATION:  A. The jail day rate is decreased from \$40.70 to \$38.09 effective July 1, 1989.  B. The estimated USMS prisoner days per year is changed to 55,000.			
10. INSTRUCTIONS TO LOCAL GOVERNMENT FOR EXECUTION OF THIS MODIFICATION:			
A. <input type="checkbox"/> LOCAL GOVERNMENT IS NOT REQUIRED TO SIGN THIS DOCUMENT		B. <input checked="" type="checkbox"/> LOCAL GOVERNMENT IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> COPIES TO U.S. MARSHAL	
11. APPROVALS:			
A. LOCAL GOVERNMENT <i>Jim Brown</i> Signature <b>CHAIRMAN</b> <b>MAR 12 1990</b> TITLE DATE		B. FEDERAL GOVERNMENT <i>Patricia H. Macherey</i> Signature Patricia H. Macherey, Chief Prisoner Operations Division <b>12/19/89</b> TITLE DATE	

AMERICAN CIVIL LIBERTIES UNION



**The American Civil Liberties Union**

Written Statement  
For a Joint Hearing on

AMERICAN CIVIL LIBERTIES UNION  
540 R STREET, N.W.  
WASHINGTON, D.C. 20037  
TEL: 202.638.1000  
WWW.ACLU.ORG

**The Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws**

Submitted to the U.S. House of Representatives

AMERICAN CIVIL LIBERTIES UNION  
540 R STREET, N.W.  
WASHINGTON, D.C. 20037  
TEL: 202.638.1000

Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

and

AMERICAN CIVIL LIBERTIES UNION  
540 R STREET, N.W.  
WASHINGTON, D.C. 20037  
TEL: 202.638.1000

Subcommittee on the Constitution, Civil Rights, and Civil Liberties

April 2, 2009

ACLU Washington Legislative Office  
Caroline Fredrickson, Director  
Joanne Lin, Legislative Counsel  
[jljin@aclu.org](mailto:jljin@aclu.org)

ACLU Immigrants' Rights Project  
Mónica M. Ramirez, Staff Attorney

ACLU Racial Justice Program  
Reginald T. Shuford, Senior Staff Attorney



## I. Introduction

The American Civil Liberties Union (ACLU) commends both the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties for conducting a joint hearing on the public safety and civil rights implications of local police enforcement of immigration laws.

The ACLU is a nationwide, non-partisan organization of more than 500,000 members dedicated to enforcing the fundamental rights of the Constitution and United States laws. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy and public education to enforce and protect the constitutional and civil rights of immigrants. The Racial Justice Program (RJP) of the ACLU engages in a nationwide program of litigation, advocacy and public education to combat racial profiling and enforce the constitutional and civil rights of people of color. Together, and through a robust network of ACLU affiliates across the country, the IRP and the RJP are actively engaged in assessing the role of state and local law authorities in immigration enforcement; investigating the impact of state and local enforcement of immigration laws on immigrant communities and people of color; and challenging constitutional and civil rights violations that arise when state and local police engage in unlawful discrimination for purposes of enforcing the immigration laws.

The ACLU submits this statement to express its grave concern about the growing trend toward shifting responsibility for enforcement of civil immigration laws to state and local police, which has resulted in racial profiling by local police of Latino U.S. citizens and immigrants.

## II. The Shift Toward Local Police Enforcement of Immigration Law

Since 2002 the federal government has actively shifted significant responsibility for enforcement of civil immigration laws to state and local police and other state and local agencies. A keystone of this trend has been to enter into memoranda of understanding or agreement (MOUs or MOAs) with states and localities under Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), which authorizes the Department of Homeland Security (DHS) to enter into written agreements with a state or any political subdivision of a state authorizing local law enforcement officers to perform immigration-related functions under certain circumstances and provided there is oversight, supervision and training of local officers by Immigration and Customs Enforcement (ICE).<sup>1</sup> Section 287(g) was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act in 1996. The first agreement under the provision was not entered into until 2002 by the State of Florida.<sup>2</sup> Today a total of 67 287(g) MOAs have been signed in 23 states,<sup>3</sup> and approximately 80 applications to join the

<sup>1</sup> 8 U.S.C. § 1357(g)(5) ("[T]he specific powers and duties that may be, or are required to be, exercised or performed by the individual [officer], and the position of the agency of the Attorney General who is required to supervise and direct the individual, [must] be set forth in [the] written agreement between the Attorney General and the state or political subdivision.")

<sup>2</sup> Riley, William. Written Statement for March 4, 2009 House Committee on Homeland Security Hearing on "Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law," p. 4.

<sup>3</sup> GAO, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, GAO-09-109 (Jan. 2009) (hereinafter the "GAO 287(g) Report"), p. 2.

program are pending approval.<sup>4</sup> ICE's budget for the program has increased as well, from \$5.4 million in 2007 to \$54.1 million in 2009.<sup>5</sup>

In addition to the 287(g) program, ICE has many other programs by which state and local authorities may investigate immigration law violations. State and local police, for example, may query into immigration status of individuals they arrest and book through ICE's Law Enforcement Support Center. ICE has Criminal Alien Program teams that respond to local law enforcement agencies' requests to determine alienage of individuals for crimes and other immigration violations. Secure Communities is a new program, created in 2008, that provides for fingerprint checks against DHS databases, rather than just FBI databases, during the booking process in jails.<sup>6</sup> It is expected to be fully implemented in all jails and prisons throughout the country by 2013.<sup>7</sup>

The growth in local police involvement in immigration enforcement, in particular the 287(g) program, over the past few years has been the subject of substantial controversy and criticism. Leading police chiefs<sup>8</sup>, national civil and immigrants' rights organizations<sup>9</sup>, community advocates<sup>10</sup> and academic researchers<sup>11</sup>, among others, have raised serious concerns about the program's mission; lack of internal controls, oversight, supervision, and training of local police; and ineffectiveness. A chief concern has been that local enforcement of immigration laws undermines community trust and detracts police from their core mission; when police are deputized as ICE agents, immigrants are less likely to report crimes that affect them or that they witnessed.

The Government Accountability Office ("GAO") recently reported that ICE lacks key internal controls for the implementation of the 287(g) program even though the program has been in operation for approximately seven years.<sup>12</sup> The report conclusively found that 287(g) program objectives have not been documented in any program-related materials; guidance on how and when to use program authority is inconsistent; guidance on how ICE officials are to

<sup>4</sup> Chishti, Muzaffar. Written Statement for March 4, 2009 House Committee on Homeland Security Hearing on "Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law" (hereinafter "Chishti Written Statement"), p. 2.

<sup>5</sup> GAO 287(g) Report, p. 9.

<sup>6</sup> National Immigration Law Center, *More Questions than Answers about the Secure Communities Program* (Mar. 23, 2009), available at <http://www.nilc.org/imnlawpolicy/LocalLaw/secure-communities-2009-03-23.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> See, e.g., Manger, Thomas, Chief of Police, Montgomery County Police Department. Written Statement for March 4, 2009 House Committee on Homeland Security Hearing on "Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law."

<sup>9</sup> See, e.g., Leadership Conference on Civil Rights and Rights Working Group. Written Testimony for March 4, 2009 House Committee on Homeland Security Hearing on "Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law."

<sup>10</sup> See, e.g., University of North Carolina, Immigration and Human Rights Policy Clinic & ACLU of North Carolina Legal Foundation, *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina* (Feb. 2009) (hereinafter "UNC/ACLU-NC Report"), available at <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>; Shahani, Aarti; Greene, Judith. Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Enforcement. A Justice Strategies Report (Feb. 2009) (hereinafter "Justice Strategies Report"), p. 9.

<sup>11</sup> *Id.*

<sup>12</sup> See GAO 287(g) Report.

supervise officers from participating agencies has not been developed; data that participating agencies are to track and report to ICE has not been defined; and performance measures to track and evaluate progress toward meeting program objectives have not been developed.

Moreover, there has been significant criticism that the program, without internal controls or real oversight and supervision, effectively grants local police unbridled discretion to decide how and when to enforce federal immigration law, thereby undermining the federal government's actual ability to set priorities in immigration enforcement.<sup>13</sup>

### **III. The Problem of Racial Profiling in Local Immigration Enforcement**

The ACLU submits this statement to address a particularly acute aspect of local immigration enforcement: the discrimination against Latino citizens and immigrants that has resulted from local police enforcing immigration law. As demonstrated below, racial and ethnic discrimination by local police in the context of immigration enforcement is a real phenomenon that causes an array of harms to immigrant and Latino communities and, therefore, is one that must be systematically discouraged, monitored and eliminated. In Part VI, we provide specific recommendations for addressing this problem in a concrete and effective manner.

#### **A. Defining Racial Profiling**

Racial profiling is a term used to describe improper use of race or ethnicity in targeting suspects or engaging in other law enforcement actions. It can manifest itself in at least two principal ways: (1) selective enforcement of certain laws against members of a particular racial or ethnic group; or (2) pretextual stops and arrests motivated by the race or ethnicity of the individual who is targeted even where that individual is not suspected of committing any particular crime.

Both forms of racial profiling violate the Constitution. “[T]he Constitution prohibits selective enforcement of the law based on considerations such as race.”<sup>14</sup> Thus, the decision “whether to prosecute may not be based on ‘an unjustifiable standard such as race, religion, or other arbitrary classification.’”<sup>15</sup> The same standard applies to the actions of law enforcement officers. Courts have repeatedly held that any general policy of employing “impermissible racial classifications in determining whom to stop, detain, and search” violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.<sup>16</sup> In other words, race or ethnicity cannot be used as a proxy for illegal behavior.<sup>17</sup> There is no question that the prohibition against racial discrimination contained in the Equal Protection Clause protects non-citizens as well.<sup>18</sup> The same legal protections exist for citizens, lawful permanent residents and non-citizens who are unlawfully discriminated against by law enforcement.

<sup>13</sup> See, e.g., Chishti Written Statement, p. 6.

<sup>14</sup> *Whren v. United States*, 517 U.S. 806, 813 (1996).

<sup>15</sup> *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (quoting *Oyler v. Boles*, 368 U.S. 448, 456 (1962)).

<sup>16</sup> *Chavez v. Illinois State Police*, 251 F.3d 612, 635 (7th Cir. 2001).

<sup>17</sup> *Bush v. Vera*, 517 U.S. 952, 968 (1996) (plurality).

<sup>18</sup> *Plyler v. Doe*, 457 U.S. 202, 212 (1981) (concluding that the Fourteenth Amendment applies to all individuals within a State); *Yick Wo v. Hopkins* 118 U.S. 356, 369 (1886) (concluding that the Fourteenth Amendment applies to non-citizens).

The improper use of race or ethnicity in targeting suspects without reasonable suspicion or probable cause for stops, arrests and searches also violates the Fourth Amendment, which protects individuals from unreasonable searches and seizures.<sup>19</sup> Traffic stops are the most common reason for contact between police and the public.<sup>20</sup> An investigative stop of an automobile must be justified by some objective indication that the person is, or is about to be, engaged in criminal activity. In other words, some level of reasonable suspicion of unlawful activity is required. The law enforcement officer conducting the stop must be able to “point to specific and articulable facts which, when taken together with rational inferences from these facts, reasonably warrant” stopping a person to conduct further investigation.<sup>21</sup> Race or ethnicity alone does not satisfy this standard.

Racial profiling by state and local law enforcement also violates civil rights and other federal laws. These include Title VI of the Civil Rights Act of 1964 and its implementing regulations, which prohibit discrimination by agencies receiving federal funding.<sup>22</sup> The Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789) prohibits discrimination by state and local government that receive federal funds for law enforcement, and it authorizes enforcement of the statute in the form of civil actions by the Department of Justice and by private citizens.<sup>23</sup> Racial profiling in the context of 287(g) programs may also violate the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14141), which authorizes the Department of Justice to file suit for declaratory and equitable relief against law enforcement agencies engaged in “patterns or practices” that violate the Constitution.<sup>24</sup> Approximately one-third of state legislatures in this country have adopted laws banning the practice as well.<sup>25</sup> Further, racial profiling violates international standards against non-discrimination and multiple treaties to which the U.S. is a party, including the United Nations Convention for the Elimination of All Forms of Racial Discrimination and the International Convention on Civil and Political Rights.<sup>26</sup>

#### **B. Understanding Race-Based Local Immigration Enforcement**

Immigration enforcement by local police raises grave concerns about racial profiling against Latino U.S. citizens and immigrants. Although the overwhelming majority of Latinos in the United States are U.S. citizens and legal permanent residents—and are expected to constitute

<sup>19</sup> U.S. Const. Amend. IV.

<sup>20</sup> Matthew R. Durose, Erica L. Smith, and Patrick A. Langan, Ph.D., *Contacts Between Police and the Public*, 2005, BUREAU OF JUSTICE STATISTICS, Apr. 2007.

<sup>21</sup> *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

<sup>22</sup> 42 U.S.C. § 2000d et seq., Title VI of the Civil Rights Act of 1964. Title VI provides: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

<sup>23</sup> U.S. Department of Justice Letter ordering investigation of Maricopa County Sheriff’s Office (focusing on “alleged patterns and practices of discriminatory police practices and unconstitutional searches and seizures”) (Mar. 10, 2009), available at <http://ndlon.org/images/documents/usdojlettertoarpaio.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> See Amnesty International USA, *Racial Profiling Laws In Your State*, available at <http://www.amnestyusa.org/us-human-rights/other/racial-profiling---laws-in-your-state/page.do?id=1106665>.

<sup>26</sup> Amnesty International USA, *Threat and Humiliation: Racial Profiling, Domestic Security and Human Rights in the United States* (Sep. 2004), p. 32.

nearly 25 percent of the U.S. population by 2050<sup>27</sup>—Latinos have often been singled out as a group for immigration stops and inquiries by local law enforcement. Such race-based immigration enforcement imposes injustices on innocent racial and ethnic minorities, in particular reinforcing the harmful perception that Latinos—U.S. citizens and non-citizens alike—are presumed to be “illegal immigrants” and therefore not entitled to full and equal citizenship unless and until proven innocent or “legal.”

Because a person is not visibly identifiable as being undocumented, the basic problem with local police enforcing immigration law is that police officers who are often not adequately trained, and in some cases not trained at all, in federal immigration enforcement will improperly rely on race or ethnicity as a proxy for undocumented status. In 287(g) jurisdictions, for example, state or local police with minimal training in immigration law are put on the street with a mandate to arrest “illegal aliens.” The predictable and inevitable result is that *any* person who looks or sounds “foreign” is more likely to be stopped by police, and more likely to be arrested (rather than warned or cited or simply let go) when stopped. Indeed, as explained in the next section, officials operating under 287(g) MOUs often arrest persons whom they suspect of being undocumented based on racial or ethnic appearance for minor offenses as a pretext for initiating an immigration inquiry. And, as explained further in Part V, the federal government meanwhile provides no meaningful oversight, supervision or training.

The problem of racial profiling, however, is not limited to 287(g) field models. As previously noted, the federal government uses an array of other agreements to encourage local police to enforce immigration law. Racial profiling concerns therefore are equally present under jail-model MOUs or other jail-screening programs. Officers, for example, may selectively screen in the jails only those arrestees who appear to be Latino or have Spanish surnames. Police officers may also be motivated to target Latinos for selective or pretextual arrests in order to run them through the booking process and attempt to identify undocumented immigrants among them.

As with 287(g) agreements and other models of federal-local cooperation, the use of ICE detainers or holds also tends, especially in the absence of any countervailing training or incentives, to encourage state and local police to treat individuals who look or sound foreign differently – stopping or arresting them when they would not ordinarily do so. Indeed, local jails often detain persons whom they suspect of being undocumented without criminal charges in anticipation of an ICE detainer being issued. Local jails will also often hold persons whom they suspect of being undocumented in criminal custody for more than 48 hours after ICE issues a detainer in violation of immigration regulation.<sup>28</sup>

Studies have long shown that when police officers have a high degree of discretion in enforcing the law, there is a greater risk that they will act on the basis of prejudice related to race or ethnicity in their determination of targeted individuals. As previously explained, the 287(g) and other similar federal-local cooperation mechanisms authorize a high degree of discretion to local police, without any oversight or supervision by ICE. Several Northeastern University

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<sup>27</sup> U.S. Census Bureau, *U.S. Interim Projections by Age, Sex, Race, and Hispanic Origin* (Mar. 28, 2004), available at <http://www.census.gov/population/www/projections/usinterimproj/natprojtab01a.pdf>.

<sup>28</sup> See 8 C.F.R. 287.7.

researchers, who produced a resource guide on racial profiling data collection systems for the U.S. Department of Justice in November 2000, found that “in the high-discretion stop category,” such as traffic stops, racial profiling is a serious threat.<sup>29</sup> “These high-discretion stops invite both intentional and unintentional abuses. Police are just as subject to the racial and ethnic stereotypes they learn from our culture as any other citizen. Unless documented, such stops create an environment that allows the use of stereotypes to go undetected.”<sup>30</sup>

#### **IV. Racial Profiling in Local Immigration Enforcement is a Real Phenomenon**

Existing data and other evidence suggests that race-based immigration enforcement is widespread and significantly impacts Latinos. The full scope and depth of the racial profiling problem, however, is still unknown because ICE does not currently require racial profiling data collection from participating state and local authorities that enforce immigration law. There is no question that data collection is necessary to unravel the serious racial consequences of local immigration enforcement.

The danger of underreporting racial profiling incidents is particularly serious in the context of immigration enforcement because, as described in Part V, victims of racial profiling are especially unlikely to report police abuses. The reasons for this are varied. Many of the individuals arrested are swiftly deported and have little access to counsel; state or local officials may not exercise their ordinary oversight roles when their police are performing a “federal” function; and the federal government has not created effective oversight mechanisms. As a result, the abuses that police commit are likely to go unpunished and undeterred.

##### 1. Disproportionate Increase in Arrests of Latino Drivers and Misuse of Authority

Available statistics nevertheless show that there has been a disproportionate increase in arrests of Latino drivers in some 287(g) jurisdictions. For example, in Tennessee, a study of arrest data found that the arrest rates in Davidson County for Latino defendants driving without a license more than doubled after the implementation of the 287(g) program in that county.<sup>31</sup> In Alabama, 58 percent of motorists stopped by a 287(g) police officer were Latino, although Latinos make up less than two percent of the population.<sup>32</sup>

In addition to the disproportionate increase in arrests of Latino drivers in certain 287(g) jurisdictions, available data suggests that 287(g) officers may be misusing their authority to target individuals for traffic stops and other minor offenses. According to a 2007 ICE Fact Sheet, the 287(g) program is aimed at “violent crimes, human smuggling, gang/organized crime

<sup>29</sup> Deborah Ramirez, Jack McDevitt, & Amy Farrell, *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned* (Nov. 2000), at 9-10, available at <http://www.ncjrs.gov/pdffiles1/bja/184768.pdf>.

<sup>30</sup> Id. See also David A. Harris, *When Success Breeds Attack: The Coming Backlash Against Racial Profiling Studies*, 6 Mich. J. Race & Law 237 (2001).

<sup>31</sup> Tennessee Immigrant and Refugee Rights Coalition, *Arrests for No Drivers License by Ethnicity and Race: A Comparison of May-July 2006 to May-July 2007*, at 1 (July 31, 2007), available at <http://tirrc.bondwaresite.com/photos/File350.pdf>.

<sup>32</sup> David C. Volk, *Police Join Feds to Tackle Immigration*, Stateline.org (Nov. 27, 2007), available at <http://stateline.org/live/details/story?contentId=259949>.

activity, sexual-related offenses, narcotics smuggling and money laundering,” and not “designed to allow state and local agencies to perform random street operations” or “impact issues such as excessive occupancy and day labor activities.”<sup>33</sup> Despite the program’s limited scope, at least one sheriff told the GAO investigators that his understanding was that “287(g)-trained officers could go to people’s homes and question individuals regarding their immigration status even if the individual is not suspected of criminal activity.”<sup>34</sup> In North Carolina, researchers found that a high percentage of persons arrested in 287(g) counties were charged with traffic or other minor violations. In Gaston County, for example, 83 percent of the persons arrested under 287(g) were charged with traffic offenses.<sup>35</sup> In Mecklenburg County, of the 2,321 undocumented immigrants who were put into removal proceedings in 2007, fewer than five percent of the charges against them were felonies and over 16 percent of the total charges were traffic violations.<sup>36</sup>

## 2. Police Engaged in Discrimination Seeking Immigration Enforcement Authority

Threats of racial profiling by local immigration enforcement are especially serious where departments engaged in discrimination have sought or are seeking authority to enforce immigration law. The City of Rogers, Arkansas, for example, entered into a 287(g) MOA (as part of a Regional Task Force in Northwest Arkansas) in 2007 after it was sued for unlawfully targeting Latino motorists for stops, searches and investigations in 2001.<sup>37</sup> The plaintiffs in the lawsuit obtained a federal court order prohibiting local police from engaging in racial profiling, specifically barring them from checking individuals’ documents to prove their immigration status.<sup>38</sup> When the City of Rogers applied for 287(g) authority to enforce immigration law, it was still under federal court supervision pursuant to the lawsuit. ICE authorized the MOA notwithstanding strong objections by community and immigrants’ rights groups in light of the lawsuit and continued reports of problems.<sup>39</sup>

Several communities in Illinois that have recently requested participation in the 287(g) program have also been accused of disproportionately stopping and searching Latinos at higher rates than whites.<sup>40</sup> A recent Chicago Reporter study examined the transportation department’s data and found that 44 out of more than 200 communities in the six-county Chicago area recorded a disparity of at least 10 percentage points when the share of Latino drivers stopped is compared to their size in the driving-age population.<sup>41</sup> The Reporter’s analysis also found that

<sup>33</sup> Chishti Written Statement, p. 5. See also GAO 287(g) Report, p. 11.

<sup>34</sup> GAO 287(g) Report, at 11-12.

<sup>35</sup> UNC/ACLU Report, p.29; see also Barrett, Michael, *Officers Decide When to Arrest, But For Immigrant Community, Decision Can Lead to Deportation*, Gaston Gazette (July 1, 2008), available at [http://www.gastongazette.com/news/cloningcr\\_22388\\_article.html/charges\\_arrested.html](http://www.gastongazette.com/news/cloningcr_22388_article.html/charges_arrested.html).

<sup>36</sup> Lindsay Haddix, *Immigration and Crime in North Carolina: Beyond the Rhetoric*, Department of City and Regional Planning, UNC Chapel Hill (2008).

<sup>37</sup> See *Lopez v. City of Rogers*, No. 01-5061 (W.D. Ark. filed Mar. 23, 2001); see also MALDEF Letter to Attorney General Michael Mukasey (Apr. 1, 2008), available at <http://www.bibdaily.com/pdfs/Mukasey%20Chertoff%20MALDEF%204-1-08.pdf>.

<sup>38</sup> *Id.*

<sup>39</sup> MALDEF Letter to Attorney General Michael Mukasey (Apr. 1, 2008), available at <http://www.bibdaily.com/pdfs/Mukasey%20Chertoff%20MALDEF%204-1-08.pdf>.

<sup>40</sup> Fernando Diaz, *Driving While Latino*, The Chicago Reporter (Mar 2, 2009), available at <http://www.chicagoreporter.com/print/index.php>.

<sup>41</sup> *Id.*

Latino drivers were asked for permission to search their cars at a higher rate in 25 out of the 44 communities than white counterparts.<sup>42</sup>

### 3. Overt Hostility and Racism Against Latinos

This danger of racial profiling is further underscored by overt hostility and racism against Latinos in certain communities. Sheriff Steve Bizzell of Johnston County, North Carolina, a 287(g) applicant, has publicly acknowledged that “his goal is to reduce if not eliminate the immigrant population of Johnston County.”<sup>43</sup> He has described “Mexicans” as “trashy” people who “breed[] like rabbits” and “rape, rob and murder American citizens.”<sup>44</sup> In Alamance County, North Carolina, a 287(g) participant, Sheriff Terry Johnson has expressed similar views, assuming that all undocumented immigrants are Mexican and stating that “[Mexicans’] values are a lot different – their morals – than what we have here. In Mexico, there’s nothing wrong with having sex with a 12-, 13-year-old girl . . . They do a lot of drinking down in Mexico.”<sup>45</sup>

### 4. Civil Rights Lawsuits Challenging Racial Profiling in Immigration Enforcement

Litigation brought by the ACLU and other groups, including the Mexican American Legal Defense and Educational Fund (MALDEF), confirms that racial profiling resulting from local enforcement of immigration laws is a serious problem. It is a problem that affects Latinos in both areas with emerging Latino populations<sup>46</sup> and areas with longstanding Latino communities.

- *Latino U.S. citizens sue Maricopa County for Racial Profiling.* Last year, several Latino U.S. citizens filed a class-action lawsuit against the Maricopa County Sheriff’s Office (MCSO), Sheriff Joe Arpaio and Maricopa County in Arizona for racial profiling against Latino drivers for the purpose of selectively enforcing the immigration laws.<sup>47</sup> Two of the plaintiffs, David and Jessica Rodriguez, were stopped by a Maricopa County deputy and given a traffic citation for failing to follow a road sign. The Rodriguezes, however, were the only persons to receive a citation, even though deputies pulled over several other vehicles and gave oral warnings to the drivers – all of whom were white. In addition, the deputy demanded to see Mr. Rodriguez’s Social Security card, which has no bearing on his driving, but did not request Social Security information of the other drivers.

<sup>42</sup> Id.

<sup>43</sup> UNC/ACLU-NC Report, p.30.

<sup>44</sup> Kristin Collins, *Tolerance Wears Thin*, News & Observer (Sep. 4, 2008), available at <http://www.newsobserver.com/news/immigration/story/1209646.html>.

<sup>45</sup> Kristin Collins, *Sheriffs Help Feds Deport Illegal Aliens*, News & Observer (Apr. 22, 2007), available at <http://www.newsobserver.com/102/story/566759.html>.

<sup>46</sup> See generally Anthony E. Mucchetti, *Driving While Brown: A Proposal for Ending Racial Profiling in Emerging Latino Communities*, 8 HARV. LATINO L. REV. 17 (2005).

<sup>47</sup> The ACLU, MALDEF and Steptoe & Johnson LLP represent the Plaintiffs in the lawsuit. See *Ortega-Melendres v. Arpaio*, No. 07-02513 (D. Az. Amended Complaint filed July 16, 2008), available at <http://www.aclu.org/immigrants/gcn/359981gl20080716.html>.



Two other plaintiffs in the same lawsuit, siblings Velia Meraz and Manuel Nieto, were subjected to harassment and Mr. Nieto to assault by local sheriff's deputies for no justifiable reason. The siblings were harassed by sheriff's deputies as they pulled into a gas station while singing along to Spanish music with their windows down. As the siblings pulled out of the gas station, they noticed a motorcycle officer and three other Sheriff's vehicles behind them. The motorcycle officer told Mr. Nieto to pull over and get out of the car. Mr. Nieto quickly dialed 9-1-1 and reported that he was being harassed by Sheriff's officers for no apparent reason. Mr. Nieto's family business was no more than 50 yards away, so he pulled into the parking lot there. The four police vehicles descended on them, blocking off the street and their business. The officers jumped out of their vehicles and raised their weapons. One of the officers grabbed Mr. Nieto and pulled him out of the car. He was pressed face first against his car. Mr. Nieto's father ran out of the shop, told the deputies that he owned the shop, that Mr. Nieto and Ms. Meraz were his children and that they were U.S. citizens. The deputies then uncuffed Mr. Nieto and ran his identification through their computer system. The deputies did not give him any citation. Mr. Nieto asked why the officers had subjected him and his sister to such treatment. He was not given any explanation or apology.<sup>48</sup>

- *Latinos Sue Sonoma County and ICE for Racial Profiling and Unlawful Detention.*<sup>49</sup> Latino drivers in Sonoma County have been unlawfully stopped, searched and interrogated as to their immigration status for no justifiable reason. One of the plaintiffs in the lawsuit, 23-year-old Christyan Sonato-Vega, and his fiancée were stopped after they had parked outside a bakery. Two deputy sheriff's approached them, saying the car had a crack in the windshield, and proceeded to question Sonato-Vega about his immigration status. The deputies searched him, without adequate justification, before allowing him to leave. About a week later, a deputy sheriff and ICE officer confronted Sonato-Vega at his job and arrested him on the sole basis of suspected immigration status. He was held in Sonoma County jail for several days without any criminal charges

<sup>48</sup> The Maricopa County and Sheriff's Office's pattern and practice of racial profiling is evidenced by numerous statements of Sheriff Arpaio. For example, he has claimed that physical appearance alone is sufficient to question an individual regarding her immigration status. The federal district court recently denied the County's Motion to Dismiss the lawsuit, finding that Plaintiffs had sufficiently alleged claims upon which relief could be sought and recognizing that a Latino appearance is of "little or no use" in determining which individuals should be stopped by law enforcement seeking "illegal aliens," and that reasonable suspicion of a traffic violation does not justify questioning of drivers or passengers about immigration status. See *Ortega-Melendres v. Arpaio*, No. 07-02513 (D. Az. Feb. 10, 2009 Order Dismissing Defendants' Motion to Dismiss), available at <http://www.aclu.org/immigrants/gen/387091gl20090210.html>. In addition, the U.S. Department of Justice announced on March 10, 2009, that it would conduct an official investigation of the MCSO, focusing on "alleged patterns and practices of discriminatory police practices and unconstitutional searches and seizures conducted by the MCSO." U.S. DOJ Letter ordering investigation, available at <http://ndlon.org/images/documents/usdojlettertoarpaio.pdf>. Yet ICE has remained deafeningly silent on this issue.

<sup>49</sup> The ACLU of Northern California represents the plaintiffs in the lawsuit against Sonoma County and ICE. See *Committee for Immigrants Rights of Sonoma County v. Sonoma Co.* (N.D. Cal. Complaint filed Sept. 5, 2008), available at [http://www.aclunc.org/docs/news\\_room/complaint\\_for\\_declaratory\\_injunctive\\_relief\\_and\\_damages.pdf](http://www.aclunc.org/docs/news_room/complaint_for_declaratory_injunctive_relief_and_damages.pdf).

against him and without notice of his right to a hearing, to legal representation, or to be considered for release on bond.

- *Latino Families Sue Southern New Mexico Otero County Sheriff's Office for Racial Profiling.*<sup>50</sup> The lawsuit charged sheriff's deputies with raiding the homes of Latino residents without search warrants, interrogating families without evidence of criminal activity, and targeting households on the basis of race and ethnicity. In one case, sheriff's deputies ousted a family from its home by banging loudly on the home's walls in the pre-dawn hours. Without a warrant, one deputy attempted to enter through an open bedroom window where the mother had been asleep, while another shouted from the front door. The case settled after the Sheriff's Department agreed to revise Operational Procedures to ensure that the rights of all Latinos living in the County would be protected and that they would not become the targets of immigration-related investigations and detentions without justification.<sup>51</sup> The County also agreed to pay the families monetary damages.
- *Latino U.S. Citizen Unlawfully Deported to Mexico Sues Los Angeles County and ICE.* In the notorious case of Pedro Guzman, a Latino U.S. citizen born in California, Mr. Guzman was deported to Mexico because an employee of the Los Angeles County Sheriff's Office, despite documentation that Mr. Guzman was a US citizen, insisted that Mr. Guzman was a Mexican national. This story received broad national press attention, and Mr. Guzman's lawyers previously testified before Congress.<sup>52</sup> Mr. Guzman, cognitively impaired and living with his mother prior to being deported, ended up being dumped in Mexico—a country where he had never lived—forced to eat out of trash cans and bathe in rivers for several months. His mother, also a U.S. citizen, took leave from her job to travel to Mexico to search for her son in jails and morgues. After he was located and allowed to reenter the U.S., Mr. Guzman was so traumatized that he could not speak for some time. The illegal deportation of Mr. Guzman occurred pursuant to a 287(g) MOA between Los Angeles County and ICE. The ACLU of Southern California and law firm Morrison & Foerster LLP filed a civil suit last year against ICE on behalf of Mr. Guzman, alleging violation of his constitutional rights.<sup>53</sup>

<sup>50</sup> The ACLU of New Mexico and Mexican American Legal Defense and Education Fund filed the lawsuit on behalf of five Latino families. See *Daniel T. v. Board of Co. Commissioners for the County of Otero* (D. NM Complaint filed Oct. 17, 2007), available at [http://www.aclu-nm.org/News\\_Events/news\\_10\\_17\\_07.html](http://www.aclu-nm.org/News_Events/news_10_17_07.html).

<sup>51</sup> Press Release, *MALDEF, ACLU and Otero County Sheriff's Department Resolve Civil Rights Suit* (Apr. 9, 2008), available at <http://www.aclu.org/immigrants/discrim/35336prs20080409.html>.

<sup>52</sup> See Paloma Esquivel, *Suit Filed Over Disabled U.S. Citizen's Deportation Ordeal*, Los Angeles Times (Feb. 28, 2008), available at <http://articles.latimes.com/2008/feb/28/local/me-guzman28>; Testimony of James Brosnahan Before House Judiciary Committee For a Hearing on Problems with ICE Interrogation, Detention, and Removal Procedures (Feb. 13, 2008), available at <http://fdsys.gpo.gov/fdsys/pkg/CHRG-11040742/pdf/CHRG-11040742.pdf>.

<sup>53</sup> *Guzman v. Chertoff*, No. CV08-01327 (C.D. Cal. Complaint filed Feb. 2008).

##### 5. Community Trust Broken As Result of Racial Profiling

In addition to being illegal and contrary to American values and human rights standards, racial profiling undermines the trust between the police and the communities they serve. Racial profiling sends the message that some citizens do not deserve equal protection under the law and creates fear in communities, rather than trust. Latino U.S. citizen children with parents who are either immigrants or citizens may fear coming in contact with police or any public officials, including school officials for fear that they or their parents or family members will be targeted by local enforcement because of their actual or perceived immigration status.<sup>54</sup> Thus, racial profiling deepens racial rifts, fueling the belief by people of color that law enforcement policies are unfair and justice is not blind. Respect and trust between law enforcement and communities of color are essential to successful police work.<sup>55</sup> It is for this reason that police organizations such as the International Association of Chiefs of Police have adopted resolutions condemning the practice of racial profiling.<sup>56</sup>

Indeed, without this necessary trust, local immigration enforcement also gives rise to abusive police practices against Latinos. Among recent examples of ineffective community policing and impact on children are the following:

- *In Florida, Police Ignore Domestic Violence Victim and Arrest Sister Instead.*<sup>57</sup> In response to a 9-1-1 call placed as a result of a domestic assault, Tavares Police completely ignored the domestic violence call to which they were responding and instead immediately asked everyone inside the home for identification to prove their citizenship. The domestic violence victim had bruises on her neck and made several pleas to press charges against her boyfriend. But the Tavares Police officers, which are not authorized to enforce immigration law, refused to remove the assailant from the home and did not follow the procedures required by Florida law for assisting victims of domestic violence. Rather, they arrested the victim's sister, Rita Cote, a twenty-three-year-old mother of three, without charge, unjustly taking her away from her U.S. citizen husband and children over an outstanding deportation order. Local authorities then detained Mrs. Cote at Lake County Detention Center without charge and without review of her detention by a judicial officer for one week until ICE assumed custody.

<sup>54</sup> See generally Sarah Auersbach, *English Language Learners Feel Effects of Battle Over Illegal Immigration*, The ELL Outlook (Nov/Dec 2007), available at [http://www.coursecrafters.com/ELL-Outlook/2007/nov\\_dec/ELLOutlookITIArticle1.htm](http://www.coursecrafters.com/ELL-Outlook/2007/nov_dec/ELLOutlookITIArticle1.htm) (describing the effect of local enforcement efforts on children and how some towns and states often deliberately provoke fear of schools; indeed, William Ghcen of Americans for Legal Immigration, a supporter of local enforcement efforts, has said that "provoking fear—and, ultimately, flight from the schools—is an intentional effect of local enforcement").

<sup>55</sup> U.S. Department of Justice Community Relations Service, *Principles of Good Policing: Avoiding Violence Between Police and Citizens* (2003), at 43-44, available at <http://www.usdoj.gov/crs/pubs/principlesofgoodpolicingfinal092003.pdf>.

<sup>56</sup> International Association of Chief of Police, *Resolution Condemning Racial and Ethnic Profiling in Traffic Stops* (1999), available at [http://www.theiacp.org/resolution/index.cfm?fa=dis\\_public\\_view&resolution\\_id=41&CFID=21616957&CFTOKEN=41368191](http://www.theiacp.org/resolution/index.cfm?fa=dis_public_view&resolution_id=41&CFID=21616957&CFTOKEN=41368191).

<sup>57</sup> The ACLU of Florida represents Ms. Cote in a habeas proceeding. See *Cote v. Lubins*(M.D. Fla Complaint filed Feb. 22, 2009, available at <http://www.aclufl.org/pdfs/cotehabeas.pdf>).

- *In Tennessee, Sheriff's Deputies Arrest Pregnant Woman and Separate Her from Newborn Child Over Traffic Offense.* Another egregious case of police abuse involves the arrest of Juana Villegas, a young Latina mother, in Nashville. Villegas was pulled over last year by a Berry Hill police officer for “careless driving.” Mrs. Villegas, nine months pregnant, was forced to wait in her hot car with her three children for over an hour. Eventually the children were allowed to leave with a family member without Villegas’s permission, and she was taken into custody. By the time she was released from county jail six days later, she had gone through labor with a sheriff’s officer standing guard in her hospital room, where one of her feet was cuffed to the bed most of the time. County officers barred her from seeing or speaking with her husband. Up until an hour before the actual birth, her foot remained shackled to the hospital bed. As she was taken back to the Davidson County jail, she was told that her baby would be given to her husband. Mrs. Villegas was never allowed to speak to her husband. She later appeared in court on the misdemeanor charge of driving without a license, and was sentenced to time served. She did not see her newborn again until the several days after giving birth, after she was released from the sheriff’s custody on her own recognizance. The “careless driving” charge—the original basis for the stop and arrest—against Villegas was eventually dismissed in municipal court.<sup>58</sup>
- *In North Carolina, Sheriff's Deputies Abandon Children on Highway to Arrest Mother for Traffic Offense.*<sup>59</sup> Maria Chavira Ventura was pulled over by Alamance County deputies on Interstate 85 near Burlington, North Carolina around 2:00 a.m. one morning as she drove to meet her husband in Baltimore. In the vehicle were her three young children and an adult male who was a fellow church parishioner but unrelated to the family. The deputies arrested Ms. Ventura for driving without a license and false vehicle tags. When they took Ms. Ventura away, the deputies also took the car keys, leaving her three children with the adult male in the car. Shortly thereafter, the adult male left looking for help. Alone, frightened and crying, the children called their father in Baltimore. He immediately drove down to get them, but it took over six hours to drive from Baltimore to Burlington. During those hours the children were stranded in the car on Interstate 85, with one bottle of water to share among them. No deputy or law enforcement official returned to the car to check on them, nor did the deputies take the children’s mobile telephone number to confirm they had returned home safely.

<sup>58</sup> Mrs. Villegas filed a lawsuit against the County and ICE for violation of her rights. The lawsuit is *Villegas v. Metropolitan Government of Davidson County, et al.*, and was filed in the District Court for the Middle District of Tennessee on March 4, 2009.

<sup>59</sup> See Kristin Collins, *Mom Arrested, Kids Left on I-85*, News & Observer (July 23, 2008), available at [http://www.newsobserver.com/news/crime\\_safety/story/1150866.html](http://www.newsobserver.com/news/crime_safety/story/1150866.html).

#### V. ICE's Lack of Response to and Monitoring of Racial Profiling

Despite the substantial evidence of discrimination against Latino immigrants and citizens by local police enforcement of immigration law, ICE has not responded to or monitored this serious problem. It is critical that ICE collect data on racial profiling and provide strong oversight of local police engaging in immigration enforcement. Without strong oversight, clear policies to ensure that stops and arrests are undertaken in a fair manner and without genuine consequences for individuals and agencies that engage in profiling, profiling is going to arise naturally and, importantly, without actual malice or racial animus on the part of the police. Of course, without oversight, the opportunity for overt discrimination by bad officers is more acute.

ICE claims to have a complaint process for complaints involving 287(g) enforcement. But this process is completely mysterious and inadequate. There is no information available online on how to file a complaint with either ICE or state or local participating agencies. The available fact sheets and other information on ICE's website merely refer to an "agreed upon complaint process governing officer conduct during the life of the MOU."<sup>60</sup> But unless the state or local agency participating in the 287(g) program makes the MOU publicly available, the public has no clear way of knowing whether and how it can file a complaint, or what the process is for resolving one. It has been the ACLU's experience that some sheriffs' offices or police departments will not release the MOU to the public absent a formal public records request, making it that much more difficult, if not impossible, for the public to report specific incidents of racial profiling.

Even if the complaint procedure were transparent and accessible, which it is not, the absence of formal complaints does not mean the absence of racial profiling. There are many reasons that cause individuals who are victims of racial or ethnic profiling not to come forward to lodge official complaints against local police officers or departments who have discriminated against them. For example, victims of racial profiling may fear retaliation against themselves or their families, whose members may be of mixed immigration status, if they come forward. According to one recent study, "[m]ore than fifteen percent of U.S. families are mixed-status with at least one parent who is a non-citizen and one child who is a citizen."<sup>61</sup> Indeed, one woman living in Johnston County, North Carolina, who is a legal permanent resident and has three citizen children, told reporters that "many Hispanics feel as if law officers are looking for excuses to deport them."<sup>62</sup> Fear of profiling in the community necessarily chills victims or even witnesses of specific incidents of racial profiling from speaking out and complaining about abuses. Another reason that racial profiling may be underreported is that many arrested individuals are swiftly deported and have little, if any, access to immigration counsel. The GAO recently reported in its 287(g) study, for example, that almost half of those who are detained and placed in removal proceedings under the 287(g) program are summarily removed.<sup>63</sup> We have no

<sup>60</sup> See <http://www.ice.gov/> (last visited Mar. 13, 2009).

<sup>61</sup> Justice Strategies Report, p. 9.

<sup>62</sup> Kristin Collins, *Tolerance Wears Thin*, News & Observer (Sep. 4, 2008), available at <http://www.newsobserver.com/news/immigration/story/1209646.html>.

<sup>63</sup> GAO 287(g) Report, p. 23.

way of knowing how many of these individuals, like U.S. citizen Pedro Guzman, may have been profiled and unlawfully deported.

Moreover, many victims of racial or ethnic profiling may not be aware that they were singled out because of their race or ethnicity, or they may be embarrassed or even ashamed to admit the same because they do not want to feel further humiliated if their complaints go unaddressed or unresolved. As one report, quoting a victim of racial profiling, explained: "It's almost like somebody pulls your pants down around your ankles. You're standing there nude, but you've got to act like there's nothing happening."<sup>64</sup> Victims of profiling "are left with 'psychological scar tissue' which can result in feelings of resentment, frustration, and outrage."<sup>65</sup> Rather than rushing to the same agency responsible for their mistreatment to lodge complaints, victims of profiling may "question the very legitimacy" of the criminal justice system and instead go out of their way to avoid it.<sup>66</sup> Victims of profiling also may believe that complaining will be futile and unlikely to result in an effective remedy.

#### **VI. ACLU Recommendations to Stop Race-Based Immigration Enforcement**

1. DHS should suspend the 287(g) program pending a comprehensive, detailed review of the 287(g) program. Review of the program shall include field hearings in those jurisdictions where 287(g) MOAs are in place. The 287(g) program review should be undertaken by independent experts charged with determining whether and to what extent these programs:

- Increase racial or ethnic profiling
- Enhance public safety
- Undermine community policing efforts
- Result in the arrest, detention, or deportation of U.S. citizens and legal permanent residents
- Reduce individuals' likelihood of reporting crimes or serving as witnesses
- Reduce access to education, health, fire, and other services by immigrants and members of their families and communities
- Exceed the limitations established in the MOU/MOA
- Are sufficiently supervised by ICE personnel
- Collect data necessary to enable proper oversight
- Are subject to sufficient community, municipal, state and federal oversight
- Result in costs to the state/local participants
- Are cost-effective from the federal government's perspective
- Undermine federal prosecutorial discretion or the ability of DHS to effectively set priorities in immigration enforcement

<sup>64</sup> Mucchetti, *Driving While Brown: A Proposal for Ending Racial Profiling in Emerging Latino Communities*, 8 HARV. LATINO L. REV. 17 (2005).

<sup>65</sup> *Id.* (quoting David Harris) (citations omitted).

<sup>66</sup> *Id.* at 21 (noting that "legal and illegal immigrants may refrain from interacting with police since they fear being detained, interrogated or deported [and given that these individuals generally live in 'tightly knit communities,' news of race-conscious police enforcement may spread fast and help foster a culture of fear and cynicism toward officers]").

2. ICE should require that all law enforcement agencies (“LEAs”) with 287(g) MOAs or MOUs or other agreements with ICE collect data on all contacts with the public. The data should include the following:

- Date, time and location of the stop or contact
- Length of the stop
- Make and model of the vehicle and whether the motorist was local or from out-of-state
- Race and ethnicity of the motorist
- Reason for the stop
- Result of the stop – i.e., whether a ticket was issued or an arrest was made, or whether the driver was let go without a warning
- Whether a search was conducted
- Type of search – i.e., probable cause, consent, or inventory search after an arrest was made
- What, if anything, was found in the course of the search
- Officer badge number or individual identifier
- Passenger activity, if any

3. DHS should require all LEAs with MOAs or MOUs to create transparent complaint procedures that are communicated clearly to the public. The LEAs should print and disseminate brochures describing the complaint procedures that are handed out by law enforcement officers upon every contact with the public. ICE should institute reporting requirements by all LEAs with MOAs or MOUs to ICE, as well as regular review of all reported activities. ICE should also require anti-profiling training by all LEAs entering into 287(g) MOAs or MOUs or other cooperation agreements or relationships with ICE.

4. The DHS Office of Policy should issue guidance to all LEAs explicitly clarifying that their authority to engage in immigration enforcement is limited to narrow circumstances (i.e., where there is a *criminal* immigration violation and any state-law limitations on authority are satisfied) and that any decision to assist DHS or participate in immigration enforcement must be voluntary and must comport with state and/or local laws and policies.

5. DHS should require and fund meaningful training on the complexity of immigration laws, limitations of state/local authority, ICE enforcement priorities, and problems with profiling, as a precondition to any officer’s participation in 287(g) or any other program envisioning state and local participation in immigration enforcement.

6. DHS should stop entering civil immigration violations including records relating to so-called “absconders” and “NSEERS violators” into the NCIC database and remove those records that have previously been entered. The FBI should mandate that all NCIC entries comply with the accuracy standards of the Privacy Act.

7. Congress should pass the End Racial Profiling Act without exemptions for immigration enforcement.

**VII. Conclusion**

The enforcement of immigration laws by state and local law enforcement agencies, pursuant to the 287(g) program or other programs, raises serious concerns about racial and ethnic profiling against Latinos. The racial profiling of immigrant communities is not only illegal and ineffective, but also anathema to closely held American values of fairness and equality. Congress should act to rein in counter-productive and unlawful practices and suspend the 287(g) program.







Written Testimony of Kavitha Sreeharsha  
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on  
Immigrant Victim Perspective on Local Immigration Enforcement

Hearing: The Public Safety and Civil Rights Implications of State and Local Enforcement of  
Federal Immigration Laws

The Committee on the Judiciary  
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law  
and  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

April 2, 2009

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**Overview**

Founded in 1970, Legal Momentum is the nation's oldest legal advocacy organization dedicated to advancing the rights of women and girls. The Immigrant Women Program (IWP) of Legal Momentum strives to protect and expand the rights and options of immigrant women and their children. IWP aims to enable immigrant women to improve their lives and future prospects in their new country.

As national policy advocates, IWP staff drafted many of the immigration provisions of the Violence Against Women Act (VAWA), the Trafficking Victims Protection Act (TVPA) and their subsequent reauthorizations. These laws form the cornerstone of immigration protections for victims of crime. IWP co-chairs the National Network to End Violence Against Immigrant Women, a national public policy voice for 3000 members across the United States, including attorneys, advocates, community members and survivors of violence against immigrant women. IWP is also funded by the Office of Violence Against Women of the Department of Justice as a national technical assistance provider to those providing services to immigrant victims of domestic violence, sexual assault, stalking, and human trafficking. In this capacity, we interact with individual immigrant victims and their advocates on a daily basis and work in coalition to conduct national advocacy on their behalf. Our technical assistance and training also build the foundation of our advocacy benefiting immigrant women and children. All of the examples included in this testimony are real life situations reported to IWP with the names changed to protect the identity of the individuals.

Over the past several years, local immigration enforcement has created distinct challenges in communities across the United States. While many of these concerns have been well-documented, the impact of local immigration enforcement on crime and crime victims has been overlooked. The concerns are significant. Immigrant victims now have more reason to fear deportation and do not report crimes. Undocumented immigrants feel so fearful of deportation that they become vulnerable to crime and exploitation against them. When immigrant crime victims do not trust law enforcement and do not report the crimes committed against them, crime

perpetrators become emboldened and crime rises in our communities. Research among immigrant women has found that this distrust of law enforcement extends deeply into immigrant communities with reporting rates for foreign born legal residents and naturalized citizens significantly below the crime victimization reporting rates of U.S. born citizens.<sup>1</sup> As immigrant settlement patterns shift, greater numbers of communities across the nation are harmed by community-based policing designed to turn local law enforcement into immigration enforcement officers. For all of these reasons, we applaud Congress for investigating this issue and hope that these circumstances are considered in the evaluation and assessment of local immigration enforcement.

#### **History of Immigration Protections**

Immigrant victims of certain crimes have always experienced additional barriers to safety. Victims of domestic violence experience a pattern of power and control that often prevent them from being able to seek the protection needed to be safe. Immigrant domestic violence victims experience additional barriers including threats of deportation, isolation, lack of knowledge about U.S. laws, cultural barriers, and lack of language access. Congress recognized the particular threat to domestic violence victims by enacting immigration protections in the landmark Violence Against Women Act in 1994 (VAWA).<sup>2</sup> VAWA created a process allowing a battered immigrant to self-petition for immigration status if his or her abuser was a Lawful Permanent Resident or U.S. Citizen and met certain other criteria. Though these protections have been available for approximately fifteen years, IWP still regularly fields calls from immigrant victims and social service advocates who are unaware that these protections exist. Because many of the eligible self-petitioners are new or isolated from knowledge about legal protections in the U.S., abusers can often still use threats of deportation as a tool to keep an immigrant woman in an abusive relationship.

When Congress first reauthorized VAWA, they found that the VAWA self-petitioning process still limited many vulnerable crime victims from coming forward. In the Victims of Trafficking

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<sup>1</sup> Dutton, Mary, Leslye Orloff, and Giselle Aguilar Hass. 2000. "Characteristics of Help-Seeking Behaviors, Resources, and Services Needs of Battered Immigrant Latinas: Legal and Policy Implications." *Georgetown Journal on Poverty Law and Policy*. 7(2).

<sup>2</sup> The Violence Against Women Act of 1994, Pub. L. No. 103-322 §40701 (1994).

and Violence Prevention Act of 2000 (VTVPA) which included both VAWA 2000 and the Trafficking Victims Protection Act (TVPA), Congress expanded VAWA self-petitioning and created two new forms of immigration relief to protect a range of crime victims, the T non-immigrant visa and the U non-immigrant visa.<sup>3</sup> The T-visa was made available to victims of a severe form of trafficking if they cooperated with an investigation or prosecution of an incident of trafficking and met several other requirements.<sup>4</sup> The U-visa was similarly available to victims of certain qualifying crimes who could demonstrate helpfulness in the investigation or prosecution of that crime and met several other requirements.<sup>5</sup> In creating these two visas that allowed a path to lawful permanent residence, Congress recognized that crime victims would not come forward and cooperate with law enforcement to investigate crimes if they were not assured some permanent protection from deportation.<sup>6</sup>

#### **VAWA Confidentiality**

At the same time, Congress recognized that with increased enforcement of immigration laws, abusers would utilize these laws against their victims. Congress created VAWA Confidentiality protections to acknowledge and lessen this control.<sup>7</sup> The protections include maintaining the confidentiality of an immigration filing, preventing the Department of Homeland Security from solely relying on information from a crime perpetrator in enforcing immigration laws, and protecting certain locations from immigration enforcement actions for victims of VAWA, T, and U visa crimes.

While these provisions have been critical in preventing crime perpetrators from using immigration laws as a tool to control their victims, in reality, these provisions are far less effective in this current environment where immigration enforcement agents are accessible to the general public. Perpetrators have found their way around these confidentiality protections by manipulating federal and local law enforcement to arrest, detain and remove immigrant victims

<sup>3</sup> The Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 106-386 (2000).

<sup>4</sup> Id. at §107(e).

<sup>5</sup> Id. at §1513(b).

<sup>6</sup> 146 Cong. Rec. S10,195 (daily ed. Oct. 11, 2000) (Violence Against Women Act of 2000 Section-by-Section Summary).

<sup>7</sup> See "Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402" H.R. Rep. No. 109-233, at 123 (2005); see also 151 Cong. Rec. E2606-07 (2005) (statement of Rep. Conyers) ("Conyers remarks").

who are as a matter of law eligible for immigration relief in the United States. Crime perpetrators can now make one phone call and initiate an immigration enforcement action against a victim. Currently, ICE does not have a screening protocol to identify individuals for any eligible immigration relief, including the forms of relief associated with being a crime victim. Domestic violence abusers and traffickers regularly threaten their victims with deportation. In effect, local and federal government law enforcement and immigration enforcement agents are now playing an active role in helping perpetrators carry out their threats.

#### **Immigrant Access to Law Enforcement**

Without any other barriers, immigrants naturally feel apprehensive about law enforcement. They experience a fear of law enforcement based on their perceptions of law enforcement in their home countries. Many victims come from countries where law enforcement are either easily influenced by corruption or bribery or are largely ineffective. With regard to domestic violence crimes, many immigrants come from countries where domestic violence is perceived as a family and not a criminal matter. Abusers also build on these negative perceptions of law enforcement by emphasizing a victim's vulnerability to deportation due to a lack of legal immigration status.

For example:

*Leela had been physically abused on several occasions since coming to the United States. She thought about calling the police but would quickly dismiss it. She would hear her husband's taunt in her head, "If you call the police, they won't believe you. I am the U.S. Citizen."*

These perceptions coupled with the sphere of control imposed by an abuser, trafficker, or employer prevents most immigrant victims from seeking protection from law enforcement.

Immigrants also face language barriers in accessing law enforcement protections. Title VI requires law enforcement officials to provide interpreters when investigating criminal activity.<sup>8</sup> This law is not systematically enforced. For example, IWP staff has identified many situations

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<sup>8</sup> 42 U.S.C. § 2000d.

in which immigrant victims called 911 but police did not follow up because no one was able to interpret the 911 phone call. Similarly, Limited English Proficient (LEP) domestic violence victims commonly report incidents in which law enforcement agents do not provide interpreters. English-speaking abusers convince the police that no crime occurred, the injuries resulted from an accident, or the victim is actually the abuser. Victims also report law enforcement using children, neighbors, and abusers' family members as the interpreters instead of accessing unbiased interpreters. This results in immigrant victims being wrongfully arrested as the crime perpetrators.

For example:

*After an abusive incident, Mila called 911. She had very limited English-speaking capacity and the police did not provide interpretation. She became agitated because she could partially understand that her English-speaking abuser was lying to the police officer. The police officer left but another officer returned after another call was placed, this time by the abuser's friend who misrepresented that Mila was threatening suicide. The police officer placed her on a 72 hour involuntary psychiatric hold. Once Mila had access to an interpreter at the hospital, they released her, understanding that it was a mistake to have brought her to the hospital. The abuser was never arrested.*

These structural barriers must be eliminated as they prevent access to justice for immigrant victims. These infrastructural barriers are only exacerbated when local law enforcement becomes synonymous with immigration actions. Instead, immigrants need to have more direct access to the protections of the criminal justice system.

#### **Deportation of Crime Perpetrators**

Immigrant domestic violence victims often choose not to report crimes if their abusers are not U.S. Citizens. Both immigrant victims and abusers clearly understand that an arrest of either party could lead to deportation. Though a victim may want to escape an immigrant abuser or a trafficker, one call to 911 can increase the danger to the lives of the victim and her family members. If an abuser is put in removal proceedings, he is likely to be even angrier and more

likely to retaliate. In many cases, abusers and traffickers threaten their family members in the home country and victims worry that law enforcement in their home countries will not keep their family members safe.

Secondly, immigrant victims believe that the abuser's deportation will result in their own deportation and separation from their U.S. born children. Many immigrant crime victims have received forms of derivative legal immigration status based on immigration status of the abuser. They know that if the abuser loses his status, the victim too will lose her immigration status and will be subject to deportation. Most victims do not know that they are eligible for crime victim related immigration relief.

Many undocumented domestic violence and employer-perpetrated sexual assault victims, the abuser may be the only support for a victim and her children.

For example:

*Yun Sook's husband started punching her severely one night and she called the police. Yun Sook's husband was not a U.S. Citizen. The police arrested him and he was put in removal proceedings. Yun Sook had only called the police hoping it would scare her husband so that he stopped hitting her. She later tried to drop the charges in order to prevent his deportation but it was too late. Yun Sook's husband had never petitioned for her and so Yun Sook had no status and no employment authorization. Yun Sook did not know how to support her family and has struggled economically to provide for herself and her children.*

### **Vulnerabilities of Immigrants**

Domestic violence alone impacts one in four people in his or her lifetime in the United States.<sup>9</sup> These statistics do not begin to reflect the prevalence of non-domestic violence crimes for which victims are afforded immigration protection. Beyond those who have already been victimized,

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<sup>9</sup> Tjaden, Patricia & Thoennes, Nancy. National Institute of Justice and the Centers of Disease Control and Prevention. "Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey," (2000).

immigrants are vulnerable to crimes because their lack of immigration status can be exploited. For example, the criminal prosecutions and lawsuits related to the raid of the Agriprocessors Inc. plant in Postville, Iowa revealed an entire community so reliant on this factory's employment that workers knowingly came and returned daily to a factory where people were assaulted, subject to extortion, and otherwise exploited. Employers, landlords, and family members of undocumented immigrants know that the immigrants are targets for exploitation and that immigrants fear taking steps with law enforcement to protect themselves. Local law enforcement can only be effective in protecting public safety if all immigrants feel that law enforcement's role is to protect their rights. Community policy that builds relationships of trust with cultural and linguistically isolated communities can be so effective. Immigrants' current perception of the lack of delineation between the missions of ICE and local law enforcement puts both immigrants and communities at peril and vulnerable to crime and exploitation.

The environment of heightened enforcement has altered the way victims function, even if they are able to escape an abusive situation. IWP staff routinely advise immigrants through their victim advocates to carry receipts from their VAWA, T or U-visa filings with them if they have already filed. These victims, though eligible for status, are also advised to carry their attorney's phone number with them at all times. IWP has been forced to modify our counsel as a result of heightened enforcement. Traditionally domestic violence victims file protective stay away orders, obtain custody of their children, and seek residence at a domestic violence shelter as some of the first steps towards safety. However, any of these actions have the potential of upsetting an abuser and may lead an abuser to report the victim to ICE as a way to perpetuate control over the victim and retaliate. In order for ICE to be able to identify someone protected by VAWA Confidentiality provisions, we advise victims to immediately find immigration representation and if possible file for immigration status before taking any of these steps.

Abusers also use information about immigration enforcement as a way of maintaining control and keeping an immigrant victim in the abusive or exploitative situation.

For example:



*Nina suffered from severe abuse at the hands of her U.S. Citizen husband. He constantly assaulted her and threatened her that he would have her deported. Nina's husband detailed what would happen if ICE came. He said she would be locked up and have no access to an attorney while detained. He made her so fearful of being locked up that Nina was always too scared to call the police for protection.*

The idea of being treated like a criminal, notwithstanding deportation, is enough to prevent a victim from seeking protection.

#### **Local Enforcement Consequences**

Immigrant victims and immigrants vulnerable to crime and exploitation clearly fear immigration consequences of any action they take to reveal their victimization and report a perpetrator. They also experience multiple institutional barriers that create distrust with law enforcement. All of the problems identified thus far occur in individual instances across the field and often establish a foundation of distrust of local law enforcement. Distrust is exacerbated when DHS officials prioritize one statutory obligation over another. Congress enacted federal laws that protect crime victims by granting them access to legal immigration status. It has also enacted laws to govern enforcement. Enforcement leading to removal is perceived by immigrants as a priority over facilitating victim protection. However, when local enforcement of immigration laws becomes blind to any other DHS obligations except enforcement, the government allows itself to be a tool used by crime perpetrators to revictimize the most vulnerable immigrant populations. The comingling of immigration enforcement and local crime enforcement cannot serve as the final barrier to safety for immigrants.

Immigration enforcement officials often lack understanding about and access to information regarding VAWA Confidentiality protected applications. DHS has not yet implemented a computerized system for flagging VAWA, T and U visa immigrant cases so that ICE agents know they are not to remove these victims. VAWA, T and U visa filings are protected in a confidential database and unless a victim provides DHS with a receipt notice, law enforcement agents will not be able to otherwise access information to identify the individual as a victim. The

more local law enforcement agents enforce immigration laws, the greater the danger for immigrant victims.

Since the publication of the rule on U crime victim visas in October 2007, advocates and attorneys across the country have been working with local law enforcement on the narrow issue of certifying undocumented victims of crime for the purposes of assisting in their immigration application. The requirements are clearly set forth in the rule but to date, advocates have identified very few police and sheriff departments with processes or protocols in place to work with U-visa eligible immigrant victims. Immigration laws are expansive and dynamic and local law enforcement should not enforce immigration laws that they do not fully understand.

As immigrant victims are often arrested as perpetrators, victims risk being put in jail. Whether or not there is a 287(g) agreement, ICE has access to many local jails around the United States. We receive technical assistance requests from advocates of immigrant victims who are wrongfully arrested and then are put into immigration detention and removal proceedings because ICE has done a sweep of the jail while they were detained.

For example:

*Minh had endured severe domestic violence. Though she had reported domestic violence crimes in the past, she was too scared to continue to cooperate with law enforcement in prosecuting her abuser. She was experiencing ongoing control from her abuser and was not yet at the stage where she felt strong enough to push for him to be prosecuted. Because her husband controlled her and failed to sponsor her for her immigration status, Minh decided to file a VAWA self-petition and left her husband. The stalking and abuse continued even after the separation and one day, the police arrested Minh saying that her husband alleged that she threatened him. Ultimately, the charges were dropped. However, while she was in jail, ICE conducted a sweep and issued her a Notice to Appear in immigration court. Minh explained to the ICE agent that her abuser called the police on her and was able to supply her VAWA self-petition. Nevertheless, Minh still remains in removal proceedings and risks deportation.*

In other locations, a state or local statute, or an agreement with an adjoining 287(g) jurisdiction can also have the same effect.

For example:

*Marisol had lived in fear of her boyfriend for many years. He was physically and sexually abusive but she was always too scared to seek help. During one incident, Marisol's boyfriend pushed her against the wall. He beat her repeatedly and she tried to slam the door on her hands. Marisol scratched her boyfriend in order to prevent the door from shutting. She later called the police. When they arrived, the police did not provide an interpreter. Based on the scratches on her boyfriend's hand, Marisol was arrested. I was taken to jail and the only questions she was asked were about her immigration status. Marisol's boyfriend was also arrested but as a U.S. Citizen, he faced no immigration consequences. Marisol was transferred to immigration detention without having been able to even make one phone call. She remained in detention and was separated from her baby, who remained in the custody of her abuser. Eventually Marisol was released but is still subject to removal proceedings because of the arrest.*

#### **T and U visa relief**

The T and U non-immigrant visas were created to improve public safety by providing crime victims with a shield of immigration protection if they found the courage to come forward and report crimes. This was further Congressional recognition that immigrant victims' fear of deportation prevents them from coming forward to report crimes. However, heightened immigration enforcement through local informal or 287(g) agreements have rendered the protections of the T and U-visa nearly useless for many victims to whom Congress intended immigration protection.

As a technical assistance provider, we regularly receive calls from advocates and individuals wanting to report a crime and hoping that law enforcement will investigate the perpetrator. But victims fear coming forward.

For example:

*Sonya had been repeatedly abused by her boyfriend. Despite severe abuse, Sonya was always too scared to call law enforcement because she was undocumented. After going to a shelter, Sonya found out that if she came forward to tell the police about the crime, she could be eligible for U-visa relief. However, the domestic violence service provider was also concerned that law enforcement would deport her. Sonya's advocate searched and could not find any identifiable local law enforcement protocols about signing U visas. Sonya now has to choose between remaining undocumented and not seeking police protection or reporting the crime to the police and potentially receiving a certification for her U-visa application but also risking being put in removal proceedings and immigration detention.*

We train and encourage mainstream domestic violence service providers to programmatically ensure that immigrant victims have the same access to legal and victim services as any other victim. However, it has become increasingly difficult to encourage service providers who cannot keep up with the nuances of immigration law and enforcement to work with immigrant victims in jurisdictions that do not have procedures and protocols encouraging U-visa certification. Those applying for U-visas must provide a law enforcement certification in order to meet the requirement of helpfulness with a law enforcement investigation or prosecution. Yet reports about local enforcement of immigration laws heighten immigrant victims' overriding fear and as in the case of Sonya, prevent undocumented victims from making police reports.

### **Community Safety**

Building on Congressional intent when creating the T and U visas, there is yet another significant effect of our failure to protect immigrant victims and facilitate their access to local law enforcement protection. The effects endanger not just immigrant victims, but every community member. Today, 25% of the United States population are either immigrants themselves or born to immigrant parents.<sup>10</sup> Data from 2007 indicates that San Jose's population is 37.2 % and the

<sup>10</sup> Fix, Michael and Jeffrey Passel "Immigration and Immigrants: Setting the Record Straight" The Urban Institute, 1994.

populations of both Miami and Los Angeles exceed 30%.<sup>11</sup> Overall, one out of eight people in the United States is an immigrant.<sup>12</sup> Furthermore, studies show that immigrant populations are increasing in rural communities and in many states that previously had much smaller immigrant communities. Indeed, Postville, Iowa is a perfect example of a small town reliant on the labor of hard-working and vulnerable immigrants.

Immigrant victims face numerous barriers in reporting crimes and certain crimes like domestic violence, sexual assault, and human trafficking impose additional barriers. Whether immigrants make up a small minority or a near majority of the population, it is vital to investigate and eliminate the barriers that prevent immigrants from having equal access to the protections of local law enforcement.

The stated goals of the 287(g) program and the Secure Communities Program are to keep our communities safe. The effect of local enforcement of immigration laws not only leaves immigrant victims unprotected but it also leaves entire communities unprotected. Each time an immigrant victim feels unsafe reporting a crime, one more crime remains unsolved and one more perpetrator is able to inflict a crime on another person.

### **Conclusion**

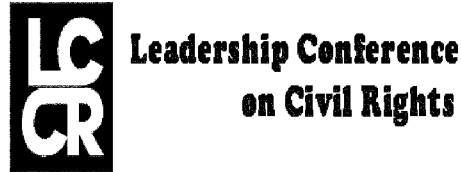
Without a doubt, there are preexisting conditions that make it harder for immigrants to feel safe and comfortable accessing law enforcement protections. There are also immigration laws that will continue to create fear and vulnerability among immigrants. However, local enforcement of immigration laws creates the ultimate barrier. It effectively creates a two-tier system in this country. People who are not immigrants have access to a criminal justice infrastructure that strives to keep them safe. Immigrants on the other hand live in fear of victimization and are vulnerable to victimization. The lack of criminal protection only drives undocumented immigrants further underground. While the realization will come late, this two-tier system not only harms immigrants but promotes the commission of crimes against entire communities.

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<sup>11</sup> Frey, William A. et al. "Getting Current: Recent Demographic Trends in Metropolitan America" The Brookings Institution, March 2009.

<sup>12</sup> American Communities Survey, 2007.

Immigrant victims are obviously an extremely vulnerable community. But our experience providing technical assistance to advocates working with immigrant crime victims leads us to believe that victimization among immigrants is a continuum. The fear, hiding, and economic vulnerability places all immigrants within the range of victimization and keeps them vulnerable to that exploitation. Creating special screening or protections for immigrant victims is a remedial measure and will not solve the problems we see every day in our work. The United States should look at measures that proactively reduce the vulnerability and exposure of immigrants to criminal activity and exploitation. We urge Congress to investigate the overall efficacy of local enforcement of immigration laws, not just as a resource issue but as a public safety issue that affects the lives and safety of all communities. To proactively increase community safety for immigrants and communities as a whole, local law enforcement should cease efforts to enforce immigration laws.



rights\*working\*group

**STATEMENT OF**

**WADE HENDERSON, PRESIDENT & CEO  
LEADERSHIP CONFERENCE ON CIVIL RIGHTS  
AND  
MARGARET HUANG, EXECUTIVE DIRECTOR  
RIGHTS WORKING GROUP**

**JOINT HEARING ON: THE PUBLIC SAFETY AND CIVIL RIGHTS  
IMPLICATIONS OF STATE AND LOCAL ENFORCEMENT OF FEDERAL  
IMMIGRATION LAWS**

**COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER  
SECURITY  
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL  
LIBERTIES  
UNITED STATES HOUSE OF REPRESENTATIVES**

**THURSDAY APRIL 2, 2009**

Chairman Conyers, Chairwoman Lofgren, Chairman Nadler, Ranking Member Smith, Ranking Member King, Ranking Member Sensenbrenner, and members of the Committee: we are Wade Henderson, President & CEO of the Leadership Conference on Civil Rights (LCCR), and Margaret Huang, Executive Director of the Rights Working Group. Thank you for the opportunity to submit testimony for the record regarding today's hearing on state/local enforcement of federal immigration laws.

As the nation's oldest, largest, and most diverse coalition of civil and human rights organizations, LCCR has long been concerned with the civil rights implications surrounding the use of Section 287(g) of the Immigration and Nationality Act ("287(g)"). LCCR was founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins,

and seeks to further the goal of equality under law through legislative advocacy and public education. LCCR consists of approximately 200 national organizations representing persons of color, women, children, organized labor, people with disabilities, older Americans, LGBT Americans, and major religious groups.

Formed in the aftermath of September 11<sup>th</sup>, the Rights Working Group (RWG) is a national coalition of more than 250 organizations representing civil liberties, national security, immigrant rights and human rights advocates. RWG seeks to restore due process and human rights protections that have eroded since 9/11, ensuring that the rights of all people in the U.S. are respected regardless of citizenship or immigration status, race, national origin, religion or ethnicity. RWG is particularly concerned about the impact of 287 (g) agreements on the civil liberties and human rights of communities of color.

### **ICE 287(g) Agreements Lead to Racial Profiling**

287(g) was passed in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), at a time when the Department of Justice recognized no inherent authority for state and local law enforcement to enforce federal immigration law. A 2002 opinion from the Department of Justice Office of Legal Counsel (OLC), however, reversed the earlier ruling and found that state and local police departments did have such an inherent authority. The use of Section 287(g), combined with the 2002 OLC opinion, has led to rampant abuses of the authority granted to local law enforcement agencies.

An ICE factsheet describing the 287(g) program states that it is:

not designed to allow state and local agencies to perform random street operations. It is not designed to impact issues such as excessive occupancy and day laborer activities . . . it is designed to identify individuals for potential removal, who pose a threat to public safety, as a result of an arrest and/or conviction for state crimes. It does not impact traffic offenses such as driving without a license unless the offense leads to an arrest . . . Officers can only use their 287(g) authority when dealing with persons suspected of committing state crimes and whose identity is in question or are suspected of being an illegal alien.<sup>1</sup>

When one looks closely at the implementation of 287(g) agreements, a few things become clear. First, despite the rhetoric that these programs are not intended to be used for traffic stops or to disrupt day laborer sites, the facts argue otherwise. The agreements have been used to set up traffic checkpoints in areas heavily populated by Latinos and to engage in “crime suppression sweeps” of day laborer sites. Arrest records in localities that have 287(g) agreements show that a majority of the arrests result from traffic stops that are not incident to serious criminal activity. Second, the push to focus on civil

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<sup>1</sup> United States Immigration and Customs Enforcement, Delegation of Immigration Authority: Section 287(g) Immigration and Nationality Act, Sept. 5, 2007, available at <http://www.ice.gov/pi/news/factsheets/070906factsheet287gprover.htm>.



immigration status has pulled limited law enforcement resources away from addressing criminal activity in their communities. Finally, because it is impossible to ascertain a person's legal status by his or her name, appearance, or way of speaking, 287(g) programs that focus on enforcing civil immigration law incentivize police to target members of the Latino community in a broad way, leading to racial profiling.

Racial profiling is an insidious violation of civil and human rights that can affect people in both public and private places – in their homes or at work, or while driving, flying or walking. Racial profiling by law enforcement instills fear and distrust among members of targeted communities, making them less likely to cooperate with criminal investigations or to seek police protection when victimized. Multiple studies have shown that when police focus on race, even as one of several predictive factors, they tend to pay less attention to actual criminal behavior.

Racial profiling is defined as any use of race, religion, ethnicity, or national origin by law enforcement agents as a means of deciding who should be investigated, except where these characteristics are part of a specific suspect description. Under this definition, racial profiling doesn't only occur when race is the sole criterion used by a law enforcement agent in determining whom to investigate. Such a definition would be far too narrow.

Today, overt racism is roundly condemned whenever it comes to light, and it is rare for individuals to be targeted by law enforcement agents *solely* because of their race. However, race is often the decisive factor in guiding law enforcement decisions about whom to stop, search, or question. Selective enforcement based in part on race is no less pernicious or offensive to the principle of equal justice than is enforcement based solely on race. Indeed, because the first form of selective enforcement is more prevalent and more subtle than explicit racism, it may be more damaging to our constitutional fabric.

### **Racial Profiling is a Civil and Human Rights Violation**

**“[R]acially biased policing is at its core a human rights issue. While some may view it as merely a public relations problem, a political issue or an administrative challenge, in the final analysis, racially biased policing is antithetical to democratic policing.”<sup>2</sup>**

Local enforcement of civil immigration laws under 287(g) agreements is a civil and human rights issue, not just an immigration issue. Although the program is promoted as one that allows local and state police to identify serious criminals who are non-citizens and facilitate their deportation once their sentence is completed, the reality of that

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<sup>2</sup> Fridell, Lorie, et al., “Racially Biased Policing: A Principled Response.” Police Executive Research Forum, 2001, p. x.  
[http://www.policeforum.org/upload/RaciallyBiasedPolicingfull%5B1%5D\\_715866088\\_12302005114449.pdf](http://www.policeforum.org/upload/RaciallyBiasedPolicingfull%5B1%5D_715866088_12302005114449.pdf)

program has been rampant racial profiling that has affected undocumented immigrants, legal residents and citizens.

A stated goal of the 287(g) program is to give police the tools to bring in absconders, criminals and security threats. Many supporters of 287(g) agreements will misleadingly cite cases of serious or violent criminals who are also undocumented. The simple fact is that the police always have the ability to investigate, question and arrest criminals, regardless of status. Giving officers the ability to inquire into a person's citizenship in no way enhances their ability to meet the goals of any local law enforcement agency – to protect and serve the community it operates in.

In written testimony by Frederick County, Maryland Sheriff Charles Jenkins submitted to the House Homeland Security Committee last month, he said “Some of the most serious offenses in which criminal aliens have been arrested as offenders and identified include: Attempted 2nd Degree Murder, 2nd Degree Rape, Armed Robbery, 1st Degree Assault, Child Abuse, Burglary, and Possessing Counterfeit U.S. Currency.”<sup>3</sup> Any local law enforcement officer can already arrest anyone suspected of committing these offenses, however, without authority from ICE, since the authority to arrest is based on the act and not the actor's immigration status. The conflation of immigration status with criminality does not reflect reality and is nothing more than a tactic to inflate the necessity of a program that has been proven to be mismanaged and that operates with little to no oversight.

Police officers have interpreted the authority from ICE to allow them to raid day laborer sites and use traffic stops to check people's immigration status. Citizens have been detained after traffic stops based on their name and accent, or even for listening to Spanish music while standing outside a family business. Painting the program with a veneer of immigration enforcement does not accurately relay the nature of the program, nor does it cure the underlying violations. A recent Justice Strategies report entitled “Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement” found that 287(g) agreements were being used in Maricopa County, AZ to do “crime suppressions sweeps” of day laborer sites.<sup>4</sup> A report by the North Carolina ACLU and the University of North Carolina Chapel Hill Immigration and Human Rights Policy Clinic studying the implementation of 287(g) agreements in North Carolina found that a majority of arrests in several counties came as a result of traffic stops, not criminal acts.<sup>5</sup>

<sup>3</sup> Testimony of Sheriff Charles Jenkins, Frederick County, MD, to the House Homeland Security Committee, March 2, 2009. <http://homeland.house.gov/SiteDocuments/2009/03/04/140923-73834.pdf>

<sup>4</sup> See generally Chapter 2 “Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement,” February 2009, <http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice-print.pdf>

<sup>5</sup> “For example, during the month of May 2008, eighty-three percent of the immigrants arrested by Gaston County ICE authorized officers pursuant to the 287(g) program were charged with traffic violations. This pattern has continued as the program has been implemented throughout the state. The arrest data appears to indicate that Mecklenburg and Alamance Counties are typical in the targeting of Hispanics for traffic offenses for the purposes of a deportation policy.” The Policies and Politics of Local Immigration Enforcement Laws, February 2009, Pg. 29, [http://acluofnc.org/files/287gpolicyreview\\_0.pdf](http://acluofnc.org/files/287gpolicyreview_0.pdf)

### **Racial Profiling is an Ineffective Tool of Law Enforcement**

In addition to violating individual's civil and human rights, racial profiling has long been understood to be an ineffective method of law enforcement. Targeting people based on race, religion, ethnicity or national origin rather than specific indicators of criminal activity may increase the number of people who are brought through the system, but decreases the hit rate on catching criminals. By focusing on spurious factors unrelated to criminal activity, profiling allows criminals to go free while terrorizing communities and destroying relationships between local law enforcement and the communities they serve.

This was made clear in 1998 when the U.S. Customs Service responded to a series of discrimination complaints by eliminating the use of race in their investigations and focusing solely on suspect behavior. A study by Lamberth Consulting found that this policy shift led to an almost 300% increase in searches that resulted in discovery of contraband or illegal activity.<sup>6</sup> More striking was the blunt commentary by the DC Police Chief Charles Ramsey about why it took so long to find the DC area snipers. For days while two men drove around shooting unsuspecting victims in parking lots and at gas stations, police in the area were relying on scientific profiling that determined the shooter was white. When asked about the amount of time it took to find the snipers, the Chief Ramsey commented "We were looking for a white van with white people, and we ended up with a blue car with black people."

### **Racial Profiling Violates U.S. Laws**

According to the U.S. Constitution, federal laws and guidelines, and international treaties, every person has the fundamental right to equal protection under the law, regardless of race, ethnicity, religion, or national origin. Two of these sources are the 14<sup>th</sup> Amendment of the Constitution and the Department of Justice' "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies." The Equal Protection clause of the Constitution reads in part ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The DOJ Guidance states unequivocally:

In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity in a specific suspect description. This prohibition applies even where the use of race or ethnicity might otherwise be lawful.<sup>7</sup>

<sup>6</sup> Lamberth Consulting, "Racial Profiling Doesn't Work." <http://www.lamberthconsulting.com/about-racial-profiling/racial-profiling-doesnt-work.asp>

<sup>7</sup> Department of Justice "Guidance Regarding the Use of Race By Federal Law Enforcement Agencies," June 2003, [http://www.usdoj.gov/crt/splh/documents/guidance\\_on\\_race.php](http://www.usdoj.gov/crt/splh/documents/guidance_on_race.php)

Implementation of 287(g) programs by local law enforcement have run afoul of both of these provisions, and many more. In a recent hearing on 287(g) programs before the House Homeland Security Committee, there were several claims made that not a single complaint about racial profiling had been lodged in areas where 287(g) agreements are in place. These statements belie the reality of existing lawsuits, lack of oversight, and convoluted complaint processes that make it difficult if not impossible to track such complaints.

Currently, there is a class action suit certified in Maricopa County, AZ, alleging illegal profiling<sup>8</sup>, a lawsuit against Fredrick County, MD, under the Maryland Public Information Act attempting to obtain documents that would prove the racial profiling inherent in its application of 287(g)<sup>9</sup>, and a Department of Justice investigation into allegations of discriminatory police practices and allegations of discrimination on the basis of national origin.<sup>10</sup> Lawsuits and investigations aside, a recent GAO report shed light on the complete lack of oversight and general mismanagement of the 287(g) program.<sup>11</sup> In addition, a report from the ACLU of North Carolina and the University of North Carolina Law School describes in great detail the difficulty in locating a complaint process (if one is available) and the complete lack of process to file a complaint in some 287(g) jurisdictions.<sup>12</sup> Due to the lack of oversight and the difficulty in filing a complaint, the true scope of civil and human rights violations arising from state and local enforcement of federal immigration laws is not yet clear, but anecdotal evidence indications that violations are pervasive.

**Authority to Enforce Federal Immigration Laws Should Reside with the Federal Government, not be Devolved to Local Police**

The 287(g) program is part of a dangerous trend that can inhibit effective law enforcement and ultimately can endanger the lives of all persons who depend on law enforcement for protection. When local law enforcement begins targeting people for their suspected immigration status and not criminal activity, the entire community suffers. Recommendations by the Major Cities Chiefs on local enforcement of federal immigration law states in part:

Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that they will be deported or subjected to an immigration status investigation, then they will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well.

<sup>8</sup> "Ortega Melendres, et al. v. Arpaio, et al.," [http://www.maldef.org/news/releases/arpaio\\_2\\_11\\_09/](http://www.maldef.org/news/releases/arpaio_2_11_09/)

<sup>9</sup> [http://www.casademaryland.org/index.php?id=590&option=com\\_content&task=view](http://www.casademaryland.org/index.php?id=590&option=com_content&task=view)

<sup>10</sup> Letter from Acting Assistant Attorney General Loretta King to Maricopa County Sheriff Joseph Arpaio, March 10, 2009 <http://ndlon.org/images/documents/usdojlettertoarpaio.pdf>

<sup>11</sup> See generally "Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws," January 2009, <http://www.gao.gov/new.items/d09109.pdf>

<sup>12</sup> See generally "The Policies and Politics of Local Immigration Enforcement Laws: 287(g) programs in North Carolina," February 2009, [http://acluofnc.org/Files/287gpolicyreview\\_0.pdf](http://acluofnc.org/Files/287gpolicyreview_0.pdf)

Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.<sup>13</sup>

There is an emerging consensus that giving state and local police the authority to inquire into people's immigration status interferes with a police force's mission and subverts critical community policing goals. In a recent letter to House Judiciary Committee Chairman John Conyers, El Paso County Sheriff Richard Wiles wrote:

[L]ocal law enforcement depends on the communication of the community it serves in order to prevent and solve crimes in its jurisdiction. In fact, many local agencies spend large amounts of time and energy building relationships just for this purpose. The enforcement of federal immigration laws by local law enforcement will undermine these efforts and impair cooperation and communication between local law enforcement and the communities they serve.

The significance of this letter is amplified by the fact that El Paso County is just across the border from Ciudad Juarez, a city that is recently in the news for the high number of murders and increasing violence attributed to the drug trade. Sheriff Wiles and others understand from years of experience that if community members have to weigh the possibility of becoming a victim of violence in their own neighborhood against the certainty that they or a member of their household will be detained and deported, they will take their chances with violent elements. Such a policy creates safe havens for criminals who will exploit the community's fears and use the lack of trust in law enforcement to hide in plain sight.

By allowing police officers to detain people for civil immigration violations, either through 287(g) agreements or through an understanding that they have "inherent authority" to enforce federal immigration law as laid out in the 2002 Department of Justice ruling, police are distracted from their primary purpose, which is to protect and serve the community they work in, leaving victims of crime vulnerable. One of the most egregious examples of this trend is the case of Rita Cote. She was present when her sister called the Tavares police in Lake County, FL to her house in fear of her life as she was being beaten by her boyfriend. When the police arrived, although the victim had bruises around her neck and was pleading with the police to arrest her boyfriend, the officers on the scene instead proceeded to inquire into the immigration status of those present,

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<sup>13</sup> Major Cities Chiefs Immigration Committee Recommendations: For Enforcement of Immigration Laws by Local Police Agencies, Adopted June, 2006  
[http://www.majorcitieschiefs.org/pdfpublic/mcc\\_position\\_statement\\_revised\\_cef.pdf](http://www.majorcitieschiefs.org/pdfpublic/mcc_position_statement_revised_cef.pdf)

resulting in the arrest of Rita, the victim's sister who was present and translating for the victim. The accused batterer was left in the house with.<sup>14</sup>

The use of 287(g) agreements to target people based on their race has led to civil rights violations beyond the initial racial profiling. For example, Juana Villegas was pulled over in Nashville, TN, while driving back from a doctor's appointment. She was nine months pregnant and had her two other children in the car with her. Although the traffic violation would usually result in a citation, the police officer arrested her and took her to the police station on suspicion of being undocumented. Even though she was being held on a misdemeanor traffic violation and a civil immigration infraction, she was forced to give birth while shackled and in police custody, then separated from her newborn and not allowed to nurse or use a breast pump for the next two days.<sup>15</sup>

These violations are not limited to immigrant communities; they also affect US citizens. No case illustrates this better than that of Pedro Guzman, a U.S. citizen born in California who was deported to Mexico because an employee of the Los Angeles County Sheriff's Office determined that Mr. Guzman was a Mexican national. Mr. Guzman, cognitively impaired and living with his mother prior to being deported, ended up being dumped in Mexico – a country where he had never lived – forced to eat out of trash cans and bathe in rivers for several months. His mother, also a U.S. citizen, took leave from her job to travel to Mexico to search for her son in jails and morgues. After he was located and allowed to reenter the U.S., Mr. Guzman was so traumatized that he could not speak for some time. The illegal deportation of Mr. Guzman occurred pursuant to an INA §287(g) MOA between Los Angeles County and ICE. Mr. Guzman and his mother have filed a lawsuit against ICE.<sup>16</sup>

### Recommendations

In sum, the 287(g) agreements are not being implemented as advertised by ICE and, in fact, are violating the rights of both immigrants and U.S. citizens. The agreements have led to widespread profiling by local law enforcement, terrorized communities, and increased threats to public safety. LCCR and RWG strongly urge the Department of Homeland Security to

- Mandate a thorough independent review of current agreements and similar programs during which time no new INA §287(g) agreements should be entered into;
- Actively enforce anti-discrimination civil rights protections and implement policies and funding that support community policing and effective law enforcement;

<sup>14</sup> "ACLU Of Florida Demands The Release Of Illegally Detained Woman In Lake County," 2-23-2009, <http://www.aclu.org/immigrants/dejention/38814prs20090223.html>

<sup>15</sup> Tennessee Immigrant and Refugee Rights Coalition, "Immigrant Mother Suffers at Hands of Nashville Law Enforcement," July 14, 2008, available at <http://www.tnimmigrant.org/news.php?viewStory=153>; see also, "Immigrant, Pregnant, Is Jailed Under Pact," Julia Preston, New York Times, July 20, 2008, available at [http://www.nytimes.com/2008/07/20/us/20immig.html?\\_r=1](http://www.nytimes.com/2008/07/20/us/20immig.html?_r=1).

<sup>16</sup> Paloma Esquivel, "Suit Filed Over Disabled U.S. Citizen's Deportation Ordeal," Los Angeles Times, February 28, 2008, available at <http://articles.latimes.com/2008/feb/28/local/me-guzman28>.

- Re-assert federal authority over national immigration laws and policies and reject the authority of states and localities to enforce these federal responsibilities;
- Train state and local officials about their proper role in the enforcement of criminal laws related to immigration rather than civil immigration enforcement.

Thank you again for the opportunity to express our views regarding today's important hearing. We would be happy to answer any post-hearing follow-up questions you may have.



March 30, 2009

The Honorable John Conyers, Jr.  
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The Honorable Zoe Lofgren  
102 Cannon House Office Building  
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The Honorable Jerrold Nadler  
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Washington, DC 20515

Dear Chairmen and Madam Chairwoman,

Thank you for taking the time to learn more about the abuses of the Maricopa County Sheriff's Office, under the auspices of the 287(g) agreement.

My name is Bertha Perez. I am a US citizen and a native of Arizona. My family's ancestors have been living here since before Arizona was a state, back when this land was a territory of Mexico. My family was divided along with the land and my direct ancestors chose to stay in the United State. I now live in Tonapah, Arizona.

The incident that I had with one of the Maricopa County Sheriff's deputies left my family and I very upset. Last year, on November 5, 2008, I was driving, when suddenly one of my dashboard lights came on, indicating a potential problem with my car. I pulled over to the side of the road and opened the hood of my car. Another car pulled over as well, too close to me. It was a Sheriff's car, who stopped very close to my own, which I felt was an intimidation tactic, much like the attitude with which he treated me and the fact that he assumed that I did not speak English because of my skin color. When he spoke to me in Spanish, I asked him, in English, "Why are you speaking to me in Spanish?" Once he heard my English and noticed that I was upset by his attitude, the Deputy's attitude towards me changed and he only asked about my car; he did not ask me for any documents, nor attempt to give me a ticket.

All of my brothers are in law enforcement; one of them is even an ICE official. When I shared my experiences with them, they were upset and told me that the Deputy's behavior was unacceptable. It shouldn't be that you are questioned only because of your skin color or because you aren't driving a new car.

Thank you again for your attention to the abuses of Latino residents of Maricopa County at the hands of the Sheriff's Office.



Bertha Perez



March 31, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman,

I am writing to say that I am glad that you have decided to hold a hearing to investigate the harm to our community caused by the 287(g) agreements held by our local law enforcement officials.

In January 2009, I was driving in Mesa, Arizona; I had a passenger with me, my friend, Juanita. I was pulled over by a Mesa Police Officer. To this day, I don't know why they stopped me and the officer never gave a reason.

When they asked for my license, registration and insurance, I provided it all to them. When they checked my information on their system, they found that there was an arrest warrant for me, that I didn't know about. The officer told me that it was for a "dog at-large," but I didn't understand what he was saying. I asked him what it meant and told him that I didn't understand, but he said that I did, that I was just pretending not to understand. They immediately began the process of arresting me. They asked my friend for her identification as well, and she provided it.

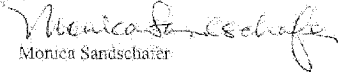
I was arrested in Mesa, AZ, but the officers took me to the 4<sup>th</sup> Ave jail, run by the Maricopa County Sheriff's Office. There they processed me and I was questioned about my citizenship status. I told the officer that I was a naturalized citizen, but he did not believe me. He began to ask me questions such as: If you are a citizen, what were the questions they asked you in your interview? The officer even suggested that I was lying and that I was not a citizen.

Finally, they finished processing me and they put me in heavy chains, on both my wrists and ankles, and put me in a cell. I was able to get a translation of "at-large" and finally understood that this had to do with my dog having escaped from our yard without a leash. I was surprised at how I was treated for such a minor infraction, like a criminal. I was put in a cell with more than 34 women, although the posted capacity was only for 26 people. I spoke to the detention officers, requesting that they split us up, so that we wouldn't be so crowded. Another problem was the lack of communication with the outside world. When I asked to make a call, they put me in a cell where there was a telephone that didn't work, because it didn't have a handset. I was in jail for more than 24 hours before I was finally able to communicate with my family, who were able to pay the \$500 fine.

From this experience, I learned that in Maricopa County, you can be detained at any time, for no reason at all, treated like a criminal for a minor infraction, and then get lost inside the County jails for as long as they want to keep you.

Sincerely,  
  
Gabriela Castro

I am competent to translate the contents of this letter, and have translated it to the best of my knowledge and belief for Gabriela Castro.

  
Moruen Sandschafer

March 30, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman;

Thank you for giving me the opportunity to tell my story.

I was driving home from work on 16th st and Grant and I was pulled over. My tags, insurance and registration were all up to date. The officer said he was pulling me over for invalid registration which was not true. He then demanded I show him my license which I did. He was acting as if I was some kind of criminal. What he was really doing was racial profiling me. He was trying to see if I was a US citizen. As I tried to convince him that I was, he was getting rude with me and told me to shut up. What respectable person does that? I was treated like a criminal when I hadn't done anything wrong. He couldn't even give me a ticket for anything because I was not breaking any laws. The only thing I was doing was going home to my family. I told him to ticket me or let me go. He gave me a ticket for no registration. How is that possible when I showed him my paper work? I contested this and wrote a letter to the court explaining how I was treated and they dropped the ticket. This was a violation of my constitutional rights.

Sincerely,



Mr. Antonio Regalado Sr.

March 28, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman,

Thank you for giving me the opportunity to tell my story. My name is Candido de la Torre and I am a resident of Queen Creek, AZ located in Maricopa County.

On March 14, 2009 my sister in law and I were going to Phoenix and were stopped by a Maricopa County deputy. I was asked for my proof of citizenship and told them that I was a citizen but did not have documents with me. The deputy told me I was lying, handcuffed and detained me. The deputy used foul language when talking to me. Another deputy asked my sister in law the same questions and told her she was lying. The deputy kept n harassing my sister in la and did not believe what she was saying. I am a U.S. citizen and feel like I cannot drive to work without fearing Sheriff Officers.

Thank You,

Candido de la Torre

March 28, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, D.C. 20515

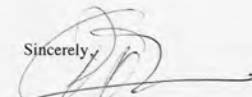
The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman,

My name is Dante Castillo I was stopped by the Sheriff Department Officers while taking down an ice chest from my car. The officer asked me for any proof of my U. S. Citizenship and followed me inside the apartment where he subsequently asked my wife for her documentation. I think this is a clear case of racial profiling. I had done nothing wrong to warrant this interrogation by MCSO Officers.

Thank you again for your attention.

Sincerely,



Dante Castillo

March 31, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman,

Thank you for holding a hearing to investigate the harm to our community caused by the 287(g) agreements held by the Maricopa County Sheriff's Office.

Maricopa County Sheriff's Office deputies knocked on my door with an arrest warrant, for someone who didn't live in our home; they came to our house by mistake. When they knocked, I opened the door a little bit, and the deputies pushed on the door to open it all the way. I am pregnant, and they pushed hard on my abdomen to get in. The deputies then started to ask for my identification, and not only mine, but that of a friend of mine who was visiting me at the time. We both showed our Arizona IDs. By coincidence, the last name of our landlord was the same as that of the person named on the arrest warrant. They handcuffed me and started to treat me like a criminal, searching the house and going through my purse and my friend's purse too. They started questioning us about our immigration status and since we did not have any additional proof of our citizenship status, they threatened us with deportation. My youngest son is only 5 years old; he was terrified, crying loudly, but this didn't seem to matter to the sheriff's. Finally, they took the handcuffs off me. They told me that I had 30 days to leave the country or they would return for me. They took our IDs and took pictures of the license plates of the cars that were parked in our driveway.

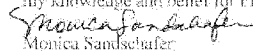
Thank you again for your attention to this issue.

Sincerely,

**Florincanto Rodriguez**

Florincanto Rodriguez

I am competent to translate the contents of this letter, and have translated it to the best of my knowledge and belief for Florincanto Rodriguez.

  
Monica Sandschafer

March 28, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, D.C. 20515

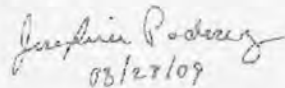
The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman,

Thank you for giving me the opportunity to tell my story. My name is Josefina Paderez and I live in Guadalupe, Arizona. On April 3, 2008 I was walking on Avenida del Yaqui in Guadalupe when I was stopped by a Maricopa County Sheriff Officer Hawkens. He asked me for an identification and I produced my Pascua Yaqui tribal Identification the only ID I had. He then took it from me and told me "This ID is not acceptable, we cannot accept it! You need to get in the car so we can check you downtown."

I told him that I would not get in the car, but my grandmother lives down the street and that someone there could tell him that "I'm from here". I then walked away and went to my grandmothers, leaving the officer behind. Later they went to my grandmothers to verify my story.

Thank you.



Josefina Paderez

March 28, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman:

Thank you for giving me the opportunity to tell my story. My name is Manuel Valenzuela. I am a member of the Pascua Yaqui Indian Tribe and am a United States Citizen. I live in the town of Guadalupe, Arizona.

In April, I borrowed Andrew Sanchez's car (Andrew is my brother-in-law). I was taking my wife to have dinner.

I was driving when deputies from the Maricopa County Sheriff's Office turned on their lights and I pulled into my mother's yard. As soon as I stopped the car, the deputies came out of their car with their guns ready to fire at me. Then they handcuffed and arrested me.

The deputies said that I was stopped because my high beam headlights were on. I think that they stopped me and pointed their guns at me because of the color of my skin. They have targeted my family and me because we stood up to him.

Since then I had resolved the ticket by paying the fine, but the Arpaio's deputies would not leave me alone. On February 4, 2009, I was walking out of a store in Guadalupe when I was again handcuffed and arrested. They said that it was because I had an outstanding warrant. It turned out that the warrant was because I owed \$0.40 (forty cents!) of a \$135.00 ticket I thought I had paid off.

The Sheriff's treatment of my family and me is clearly an attack because of the color of our skin and the fact that we spoke out against him. Please help stop these abuses.

Sincerely,



Manuel Valenzuela



March 28, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman,

Thank you for giving me the opportunity to tell my story. My name is Elaine Sanchez. I am a 32 year-old Yaqui Indian and American citizen born and raised in Guadalupe, Arizona. On May 28, 2008, as I drove home, deputies from the Maricopa County Sheriff's Office followed my van for almost a mile at a close distance without their lights. I was terrified.

As I arrived home, I drove my van into the back yard and was knocking on the back door for my mother to answer when I was surrounded and violently taken to the ground by a number of deputies. While my children watched one deputy kneeed me in the back while handcuffing me -- all because they allege that the light for the license plate was not working. How could they have seen that my light was out when the sheriff's first saw me? I was driving south on the Avenida del Yaqui and they were driving North. They couldn't have seen my tail light was out. I wasn't cited for the light violation but I was charged with disorderly conduct. The charge was ultimately dismissed.

As I was being handcuffed one of the deputies acknowledged that he recognized me. This is one reason I feel that my family and I are being targeted by the Maricopa County Sheriff.

Thank you again for your attention to this issue.

Sincerely,

x 

Elaine Sanchez

AZ Coalition for Immigrant Rights  
Testimony Statement of Reyna Polanco regarding Maricopa County Sherriff's Department Operations and the 327 G Agreement  
For the House Subcommittee on Immigration, citizenship, Refugees, Border Security and International Law and the House Subcommittee on the Constitution, civil Rights, and Civil Liberties  
Joint Hearing on the Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws

April 2, 2009

My name is Reyna Polanco, I am a naturalized U.S. citizen and a resident of Phoenix, AZ. I am 44 years old, an am a mother of 3 high school aged children and am married to a natural born U.S. citizen. I have served as an elected official in the capacity of a Governing School Board Member for the Roosevelt School District in South Phoenix, AZ. My husband served in the United States Armed Forces; United States Army and then developed a career in law enforcement.

In April of 2008, I witnessed a Maricopa county Sherriff Office operation in North Phoenix, AZ. I witnessed a check point set up by Maricopa County deputies. I noticed that they were only pulling over work trucks or work related vehicles, however, I also saw them pull over the vehicle in front of me, in which a Hispanic woman was the driver, her passengers were two children (2 girls). The woman was asked to step out of her vehicle, at which point I pulled over as well. I proceeded to ask why there was a check point and as to why the woman was being pulled over. She was being asked for her legal status. Her daughters were crying and being pulled away from her mother. There were some minute men protesters and some Immigrant rights advocates. I was trying to figure out what was happening to the family when a Sherriff deputy grabs me by my left arm and shakes me while using excessive force. I am a respectable member of my community and am only 5'1 and weigh about 115 lbs. I was not being a menace or threat.

I was asking why he was grabbing me, fearing for my life, at that point, as I was experiencing a lot of physical pain, not to mention panic and nerves. I didn't understand why I was being treated the way that I was. I can only state that I have a heavy accent as my native language is not English and my physical appearance is very brown and jet black hair. The deputy didn't respond to my question and released me due to a lot of protesters yelling at him. I quickly proceeding to find a supervisor in order to file a complain and or police officer to get a report taken only to find no one willing to do it not even the supervisors on the scene. An ambulance was called as I was distressed and hurt and I was taken to a local hospital. I was released with contusions to my left arm, it later bruised and most of my arm was swollen and painful for days to follow. Phoenix Police Supervisors came to take my report later in the days that followed the incident and then turned over the report to the Federal Bureau of Investigation department of Internal Affairs.

That day that I pulled over to help in a situation that I was witnessing to be aggressive and mean spirited and not a representation of what I believe the true spirit of the law, the Maricopa county Sherriff's office was showing its excessive force and abuse of power over a people. I witnessed the aggressive, demeaning and discriminating actions used against people of Hispanic decent. I was treated the way that I was treated due to my physical appearance. I was fortunate that there were eye witnesses and a by stander that caught the situation on tape. The filmed piece can be found on U tube, the bystander, was a member of the community and placed it there to show the Maricopa County Sherriff's office actions that he states is supported through the 327g policy that he has with Department of Homeland Security.

On behalf of the US Hispanic born community in Arizona, I ask for your intervention on what appears to be the most deplorable display of law enforcement abuse that uses the 327 g as a tool to discriminate and control a community by instilling fear in the worst sense of the word. Please help us keep our communities together and safe.

Sincerely,

Reyna Polanco  
South Phoenix resident

March 31, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman,

Thank you for holding a hearing to investigate the harm to our community caused by the 287(g) agreement held by the Maricopa County Sheriff's Office.

Last September, I stopped at the gas station, Quick-Trip. As I was parking, two Maricopa County Sheriff's Office patrol cars pulled up alongside me. They asked first for my driver's license, then for registration and insurance, but didn't tell me what I had done to get their attention. I didn't have up-to-date proof of my registration and insurance in the car, for which they gave me a ticket, which I accepted and signed for. They returned to their patrol cars, but then came back to me again, this time to ask me for my social security number. I showed them my social security card. The Sheriff's deputies then left.

Days later, I went to the Maricopa County offices to check on the status of the tickets I had been given. I looked up my information according to my address, as listed on my driver's license. There, I was surprised to find out that there were no tickets listed. That's when it became clear to me that the intention of these agents had been to handcuff me, put me in jail and, finally, deport me, but since I had presented evidence of my legal status, they didn't take any interest in me, nor in processing the tickets they had given me.


Thank you again for your attention to this issue.

Sincerely,



Ramiro German

I am competent to translate the contents of this letter, and have translated it to the best of my knowledge and belief for Ramiro German.



Monica Sandschafer

March 31, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

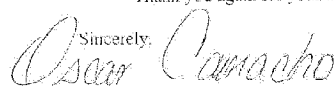
Dear Chairmen and Madam Chairwoman,

I am writing to say that I am glad that you have decided to hold a hearing to investigate the harm to our community caused by the 287(g) agreements held by our local law enforcement officials.

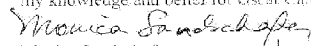
My name is Oscar Camacho and I am a naturalized citizen. I was driving south on 19<sup>th</sup> Avenue near Buckeye, when a car pulled into the lane to the right of me and slightly behind me. I was concerned about the way he was driving, because his car was too close to mine. In order to avoid an accident, I changed lanes to the left. However, he changed lanes too, continuing to drive too closely to me in the next lane. So, I slowed down in order to address him, to signal him to slow down. Right then, a Maricopa County Sheriff's Office deputy in an unmarked car turned on his lights to pull me over. I pulled over and then asked him why he had stopped me. He told me that it was prohibited to drive this way in Arizona. I asked him why he had stopped me and not the other driver, who was white. He didn't answer me, but asked for my insurance, registration and driver's license. After he walked back to his vehicle, I looked in the rearview mirror and saw him hit his steering wheel with my documents. Then, he returned my documents and let me go without a warning or ticket, telling me to remember that these kind of abrupt maneuvers are prohibited in Arizona.

I was frustrated and upset by the unfairness of the situation. It was the other driver, who was white, who was driving recklessly, but I was the one who was stopped and questioned. I feel like I was treated differently by the officer because I am Latino and was not born in the United States.

Thank you again for your attention to this issue.

Sincerely,  
  
Oscar Camacho

I am competent to translate the contents of this letter, and have translated it to the best of my knowledge and belief for Oscar Camacho.

  
Monica Sandsehafer

March 30, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman,

Thank You for listening to my story. One that is repeated many times a day by people that many times is afraid to speak.

Several Deputies surrounded the car I was in with two other passengers. I asked the deputies "can I help you?" and they responded, "we heard some noise and came to check it out." The deputies asked us what we were doing there and I told them that I was dropping off my girlfriend. The deputies didn't believe me therefore barged inside the house and brought out my girlfriend to verify my story after she verified what I had told them they let her back in into the house. The MCSO deputies then proceeded to interrogate the other two passengers asking if they had ID or if they were here illegally. The passengers defended themselves by asking, "why do we have to show you our ID? We weren't driving," the deputies responded with "We won't leave until you show us a form of I.D." The guys didn't want any problems so they showed their I.D. The deputies finally left, no citation was issued. They scared my girlfriend, my friends, and me just because of the color of our skin. I believe that I was racially profiled thanks to a Sheriff that thinks he will clean out Maricopa County of so called "illegal aliens." They use the excuse of looking for "illegals" to harass any one that looks brown, they create distrust among the law-abiding citizens, and violate of our civil rights and human rights at their whim.

Thank you for taking hearing my experience with Sheriff Arpaio's deputies.

Sincerely

Marco Ibarra

A handwritten signature in black ink, appearing to read 'Marco Ibarra', written over a light blue horizontal line.

March 30, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington D.C. 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington D.C. 20515

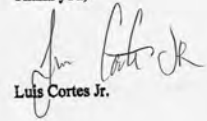
The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington D.C. 20515

Dear Chairmen and Madam Chairwoman,

Thank you for giving me the opportunity to tell my story. My name is Luis Cortes Jr., United States Citizen. I reside in Phoenix, AZ located in Maricopa County.

Arpaio and the Maricopa County Sheriff Office (MCSO) set up a command center near where I live at the intersection of Cave Creek Rd. and Bell Rd. in April 2008. My cousin, Jesus Hernandez asked me to give him a ride so that he could pay his auto-insurance. I was pulled over because I believe was racially profiled. They asked for my driver's license, registration, and insurance. I was released. The MCSO also asked my cousin, a passenger in the car for identification. I was allowed to go, but he was arrested for an invalid identification. I believe the reason I was pulled over was because I was racially profiled.

Thank you,



Luis Cortes Jr.

March 31, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515


Dear Chairmen and Madam Chairwoman,

I am writing to say that I am glad that you have decided to hold a hearing to investigate the harm to our community caused by the Maricopa County Sheriff's Office 287(g) agreements with the federal government.

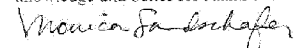
I am a naturalized citizen. I was driving in my truck, in Scottsdale on my way home from work, when deputies of the Maricopa County Sheriff's Office stopped me. When I asked why they had stopped me, they responded that it was a routine stop. They asked me for my driver's license, registration and insurance, which I gave them. I then asked again why I had been stopped, because I wasn't satisfied with their previous answer. I asked the deputy if I had been stopped because I am Hispanic, but the deputy didn't answer. I was let go without a ticket.

Thank you again for your attention to the abuses of racial profiling that are happening in Maricopa County.

Sincerely,

  
Juan Puebla

I am competent to translate the contents of this letter, and have translated it to the best of my knowledge and belief for Juan Puebla.

  
Monica Sandschafer

March 30, 2009

2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, D.C. 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Madam Chairwoman,

My name is Jose Luis Lozada Sanchez I was racially profiled and mistreated by the Maricopa County Sheriff's Department. On November 25<sup>th</sup> of 2008 I was pulled over in Fountain Hills a neighborhood of Phoenix Arizona. The excuse the officer gave me to why he pulled me over was because I had no seat belt. When I was asked for identification, I gave them my California identification. This identification was never returned to me. I have been living in the United States for 20 years and had never been subjected to this kind of treatment. When I was parked I attempted to get out of my vehicle, and I was forced back in at gun point. Eight officers would then arrive at the scene and they all began to question me about my legality in this country, they were all trying to make me admit that I was here without permission. I was asked for my social security numerous times, my English is not that good, and I had a hard time communicating with the officers. The officers told me that I was going to be deported, after being detained for a while the officers could not find anything to continue holding me, so they released me. Because of this incident I do not trust the police and would rather deal with difficult situations on my own and not call for help. Please help stop the Abuses that are going on in Maricopa County.

Thank You,



Jose Luis Lozada Sanchez



March 29, 2009

The Honorable John Conyers, Jr.  
2426 Rayburn House Office Building  
Washington, DC 20515

The Honorable Zoe Lofgren  
102 Cannon House Office Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
2334 Rayburn House Office Building  
Washington, DC 20515

Thank you for the opportunity to provide this testimony. My name is Andrew Sanchez and I reside in Guadalupe, AZ located in Maricopa County.

On April 3 2009, I went to pick up my sister, Elaine, from work. As we passed the Family Dollar store and drove by Arpaio's Command post for his "crime suppression," I honked my horn in support of the people that were against Arpaio.

I was promptly pulled over by deputies and after producing registration, license, and proof of insurance, I was interrogated. I was given a ticket for honking my horn.

Even though the judge tossed the complaint, I believe strongly that Arpaio's deputies have targeted me and my family because I dared to speak out. Several of my relatives have been stopped and harassed by deputies.

We hope that you will be able to bring justice back to our community.

Thank you.

  
Andrew Sanchez