



# POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES



A Project Response Publication of  
**The International Association of Chiefs of Police**

July 2007

## Key Terms

The following key terms will be used throughout this Project Response report:

<b><u>Alien</u></b>	A person who is not a national or citizen of the United States.
<b><u>Alien Absconders</u></b>	A fugitive remaining in the United States after an immigration judge has ordered them deported.
<b><u>Citizen</u></b>	A native or naturalized person who owes allegiance to a government and is entitled to protection from it.
<b><u>Criminal Alien</u></b>	Aliens who have committed crimes that make them eligible to be removed from the United States.
<b><u>Foreign National</u></b>	A person who is not a Canadian citizen or permanent United States resident.
<b><u>Illegal Alien</u></b>	The official term in legislation and the border patrol for a person who has entered the country illegally and is deportable or is residing in the United States illegally after entering legally (for example, using a tourist visa and remaining after the visa expires).
<b><u>Undocumented Immigrant</u></b>	Any person of another country who has entered or remained in the United States without permission and without legal status.
<b><u>Immigrant</u></b>	Any person who is residing in the United States as a legally recognized and lawfully recorded permanent resident.
<b><u>Sanctuary Cities</u></b>	Cities/Officials that have adopted policies prohibiting city employees, including law enforcement officials, from notifying federal authorities of the presence of illegal aliens living in their jurisdictions. Adoption of an unofficial “don’t ask” policy.
<b><u>Xenophobia</u></b>	Fear and hatred of strangers or foreigners or of anything that is strange or foreign.



July 2007

Dear Colleague:

I am pleased to provide you with this copy of a *Police Chiefs Guide to Immigration Issues* a Project Response publication by the International Association of Chiefs of Police (IACP).

Project Response reports are designed for police leaders. They focus on the core dimensions of a critical issue, summarize the contemporary response to the issue, and provide guidance concerning best policies and practices in the issue area.

This Project Response report focuses on the issue of immigration and the current issues confronting federal, state, tribal and local law enforcement agencies within the United States of America. The IACP certainly recognizes that immigration poses challenges for law enforcement agencies in many nations throughout the world. It is our hope that the issues and guidance presented in this document will prove to be a useful tool for all readers.

The IACP is well aware of the controversy surrounding the question of whether state, tribal and local law enforcement should be involved in the enforcement of federal immigration law. This document is not intended to rule on this fundamental philosophical question. It is the IACP's belief that the question of state, tribal or local law enforcement's participation in immigration enforcement is an inherently local decision that must be made by a police chief, working with his or her elected officials, community leaders and citizens.

This Project Response document provides police chiefs with an overview of the issues surrounding immigration, both legal and illegal, provides background information on the current resources available to law enforcement, and examines the concerns and obstacles that currently surround the debate over immigration enforcement by the state, tribal, and local law enforcement community. We hope it will promote informed decision making as police leaders throughout the United States continue to confront this issue.

Sincerely,

Joseph C. Carter  
President



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# I. INTRODUCTION

## A. PROJECT RESPONSE

Project Response is a periodic initiative of the IACP to supply salient information and discussion points on critical issues of current and emerging significance to law enforcement professionals. The urgency of an issue and field need for the most contemporary policy information initiate and govern selection of Project Response topics.

Project Response reports are designed for police leaders. They focus on the core dimensions of a critical issue, summarize the contemporary response to the issue, and provide guidance concerning best policy and practice in the issue area. Reports are disseminated to local, county, state, tribal and federal police agencies nationwide.

This Project Response report focuses on the issue of immigration and the current issues confronting federal, state, tribal and local law enforcement agencies within the United States of America. However, the IACP is aware that immigration, illegal and otherwise, poses challenges for law enforcement agencies in many nations throughout the world. It is our hope that the issues and guidance presented in this document will prove to be a useful tool for all readers.

## B. IMMIGRATION AND LAW ENFORCEMENT

Immigration is not a new issue; in fact, it has been an essential part of the fabric of American society since the nation's inception. The distinction of 'legal' and 'illegal' immigration has existed since 1882, when Congress passed the Chinese Exclusion Act – one of the nation's first immigration laws established to keep immigrant populations out of the United States. Additionally, police response to the immigrant community is not new either. For centuries, police agencies have sought to understand the cultures and perspectives of the growing international communities within their jurisdictions.

The scope and complexity of today's immigrant communities present local law enforcement with a host of challenges. The 2005 American Community Survey, Foreign-Born Population report of the U.S. Census makes these challenges clear:

- Of the 34.2 million persons in the 2005 U.S. Census survey, 12% were foreign-born.
- 53% of foreign-born individuals were from Latin America, 27% from Asia, 14% from Europe and 6% from other parts of the world.

To add to the complexity, these statistics translate in local communities to high growth in immigrant populations with multiple cultures, languages and often unique perspectives on, or fears of, the police. Thus, while local law enforcement desires to build strong collaborative relationships with their communities, the complexity of 21<sup>st</sup> century immigration and immigrant populations presents significant obstacles that must be addressed.

One subcomponent of immigrant communities is illegal (or undocumented) immigrants, who present an even more daunting problem. Illegal immigrants are not counted in the actual census data. Thus, the actual number of undocumented immigrants is unknown. From a police perspective, these undocumented immigrants can create a significant volume of calls for service or police action, and there is no way for the police to estimate or budget resources for this unquantifiable service demand. Additionally, when an illegal immigrant is the victim of a crime, local police must deal with several issues, the immigration status of the victim, the victimization of the individual, and the crime itself.



## **II. HISTORICAL PERSPECTIVE**

### **A. THE CHANGING PICTURE OF IMMIGRATION**

The dynamics of immigration in America are constantly changing, becoming a challenge not only for federal officials but more frequently for local police due to language and culture barriers. The influx of foreign-born individuals has always been an issue for states such as California, New York and New Jersey. When looking at 2005 U.S. Census data, 27.2% of California's total population, 21.4% of New York's total population and 19.5% of New Jersey's total population is comprised of foreign born persons. Beyond these states, other regions of the United States now have significant foreign-born populations as well, for example, Illinois with 13.6% and Arizona with 14.5%. U.S. Census Bureau statistics reveal that substantial numbers of foreign-born individuals now reside in all regions of the country: 37.3% in the west; 29.2% in the south; 22.2% in the northeast and 11.3% in the Midwest.<sup>1</sup>

Immigration patterns have also changed over time. In the 1800s and early 1900s immigrants to the United States were primarily of European descent and had seemingly similar cultural backgrounds to the individuals who founded the nation. Today, the immigration picture has changed with many individuals coming from different cultures, with different backgrounds and beliefs, and perceptions of the world. However, the reasons for their arrival remain the same: they seek protection from persecution (political or religious), they seek to join other family members who already reside in the United States, and they seek opportunities to enhance their economic situation and support families remaining in their home countries.

The educational and economic status of the foreign-born population varies widely. Some immigrants have achieved high educational and/or professional stature. Others have not achieved those statures and struggle to find low paying entry level employment. Of particular concern are the less fortunate newcomers who are often not as stabilized in the community, and often victims of exploitation.

Turning to those without legal status, the exact number of illegal immigrants in the United States is unknown, but estimates from the U.S. Census Bureau report that figure to be 8.7 million. Other non-government entities estimate that number to be as high as 20 million. Again, while no one can estimate the number of illegal immigrants entering the United States annually, several sources estimate the number to be just below 1 million. Some illegal immigrants gain entry to the U.S. independently, while others gain entry through use of criminal enterprises.<sup>2</sup>

### **B. INCONSISTENT LOCAL LAW ENFORCEMENT RESPONSE**

Reports coming into the IACP from law enforcement agencies across the country reinforce the critical nature of the immigrant issue and the challenges presented to local law enforcement that create inconsistencies in response. For example:

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<sup>1</sup> U.S. Census Bureau, Percent of People Who Are Foreign Born: 2005; 2005 American Community Survey.

<sup>2</sup> Brad Knickerbocker "Illegal immigrants in the US: How many are there?" Christian Science Monitor, May 16, 2006. <http://www.csmonitor.com/2006/0516>.

- One major city agency launched a new outreach initiative to work closely with its immigrant communities on the same day the local sheriffs department cross-deputized each deputy as a U. S. Immigration and Customs Enforcement (ICE) agent to pursue and arrest illegal immigrants.
- Some cities have been faced with divided community opinion on ‘flashpoint’ issues such as day laborer hiring sites—some calling for the police to support such locations, while others contend that most laborers at these sites are illegal and should be arrested.
- Many agencies have sought advice on balancing their local police mission with federal immigration laws and mandates and questioned their own competency to enforce federal immigration law without additional training and or policy in place.
- Selected local jurisdictions have declared themselves to be ‘Sanctuary Cities’ making it clear that they do not seek to collaborate with ICE agents in any way, while other jurisdictions welcome ICE agents and seek their assistance.
- A host of agencies recognize their lack of understanding of the international communities they police as well as their inability to effectively communicate with persons who demonstrate both language and cultural differences.

### **C. CONFLICTING COMMUNITY EXPECTATIONS**

Law enforcement agencies are sensitive to and generally desire to appropriately respond to, their community’s needs. Immigration presents a confusing picture for the police, with various elements of the community taking adversarial positions. Examples include:

- Community groups are seeking to support immigrants while other groups are focusing on undocumented immigrants and enforcement actions.
- Governing body leaders are seeking to protect undocumented immigrants and other leaders are seeking to deport them.
- Adjacent jurisdictions are taking opposite positions on various immigration issues.
- Law enforcement agencies are forging close working relationships with ICE, while neighboring jurisdictions are expressing little or no interest in engaging ICE in local immigration issues
- Some state and local law enforcement agencies are realizing the inability of ICE to consistently respond to their needs.
- Local community/political leaders are opening and operating day laborer hiring sites while some community residents are protesting against the sites.

- Constituents expressing concern that state, local and tribal agencies may be wasting valuable resources while working at cross purposes with federal responsibilities.

Faced with these kinds of conflicting positions, local police leaders across the United States are attempting to strike a balanced position and make carefully thought out policy decisions on all aspects of immigration and immigrant communities. In addition, police and political leaders struggle with federal immigration laws and requirements as they determine an appropriate relationship with federal immigration enforcement.

## **D. OPPORTUNITIES AND CHALLENGES FOR LOCAL LAW ENFORCEMENT**

It is important that police become familiar with and competent in responding to their growing international populations. However, that familiarity requires additional educational and training efforts that translate into significant commitments of time and resources—scarce commodities, especially for smaller police organizations.

Immigrant communities present a challenge to the police, because while the largest proportion of the immigrant population has legal status in the United States, a smaller portion are illegal/undocumented entrants into the country. Police agencies and their officers are faced with a primary dilemma—how much focus to place on the smaller, illegal component of the immigrant community vs. the larger, legal one.

Looking at immigration, particularly illegal immigrants, from the perspective of crime and victimization causes yet another set of problems for the police—when crime occurs, the legal status of the perpetrator or the victim may become a critical concern. Research has shown that immigrants are more likely to be victimized than other members of the general population. In particular, illegal immigrants are often afraid to report crime to local authorities, making them easy targets for those with criminal intentions. Questions the police may face include:

- Should the police even inquire as to immigration status when dealing with a victim of a violent crime?
- If the victim is an illegal immigrant, should ICE be contacted?
- Is the offender a legal or illegal immigrant?
- What steps should be taken with an illegal immigrant offender?
- When and how should ICE be involved?
- Will ICE have the capacity to respond?

One example of how difficult these issues become is in the area of human trafficking. When police determine that a trafficking situation exists, the victims of these crimes are likely to be illegal. Police must be extremely well trained in such complicated crimes in order to avoid responses that will revictimize the victims and decrease their willingness to serve as witnesses to build strong cases against the traffickers.

The remainder of this Project Response report addresses the set of complex issues surrounding immigration and immigrant communities and provides law enforcement officials with information that can help them make informed decisions as they craft their own policies. The IACP views law enforcement response to immigration issues as a local issue requiring a locally developed approach. This report simply seeks to inform those approaches.

### III. LEGAL UPDATE ON IMMIGRATION LAW

Due to the continuing complexity and changes in immigration law, it is critical for all law enforcement agencies to fully understand existing law on how federal, state, local or tribal police agencies should or can respond to legal or illegal immigrants. The IACP recommends reviewing its Legal Officer Section (LOS) Update (Appendix A) on all current law and legislation. Law enforcement executives are also encouraged to seek legal advice in interpreting their authority as it exists in their jurisdictions.

The following is a summary of the key points within the LOS update focusing on: (a) federal law, (b) local restrictions on enforcement, and (c) illegal vs. legal immigrants. The full text explaining each of these points is found in Appendix A of this report:

#### A. FEDERAL LAW

- State and local officers may have inherent authority under federal law to enforce criminal immigration violations, if they are authorized by local law to make arrests for federal crimes.
- There is no general agreement as to whether state and local law enforcement officers have the authority to make arrests for federal civil offenses related to the Immigration and Naturalization Act.
- Federal law does not mandate state or local law enforcement immigration efforts.
- State and local law must be taken into account on any state or local effort to enforce immigration law.
- Most immigration violations are civil (being in the United States illegally, failure to depart after expiration of a visa and some violations related to stowaways) and not criminal (illegally entering the United States, alien smuggling and willfully disobeying an order of removal).
- National Crime Information Center (NCIC) entries contain both civil and criminal immigration violators. Officers should be careful to determine the nature of the underlying offense resulting in the NCIC entry. An entry into NCIC does not guarantee the state or local officer has actual authority to take the person into custody.
- A federal immigration “warrant” may be an administratively issued document. Before taking a person into custody solely on the basis of an NCIC entry based on an immigration “warrant,” officers should verify whether the warrant has been issued for a criminal or civil violation.
- The power to detain is ultimately derived from the authority to arrest. What constitutes “probable cause” in immigration matters may not be easy to discern.

- Congress has specifically authorized local law enforcement in selected enforcement areas, such as the Anti-terrorism and Effective Death Penalty Act of 1996 and certain U.S. codes under Title 8.
- The U.S. Supreme Court has recently indicated that state and local officers may question criminal suspects and detainees about their immigration status.
- State and local officers retain the ability to enforce state law violations even if their ability to enforce federal immigration law is restricted or non-existent. If, during the course of an investigation violations of federal immigration laws are uncovered, law enforcement may contact federal authorities.

## **B. LOCAL RESTRICTIONS ON IMMIGRATION ENFORCEMENT (SANCTUARY POLICIES)**

Sanctuary Cities or “non-cooperation policies” started during the 1980s religious sanctuary movement by American churches. These churches provided sanctuary to thousands of undocumented Central American immigrants fleeing civil war in their native countries. Recently, many cities have adopted “don’t ask-don’t tell” policies that do not require government/city employees including law enforcement to report to federal officials on illegal immigrants who may be living or working in their jurisdictions.

- Federal law prohibits state and local laws from restricting the sharing of immigration status information with federal authorities.
- Locally adopted sanctuary policies can be found nationwide. For example: Baltimore, MD, Takoma Park, MD, Los Angeles, CA, Detroit, MI, and New York, NY.

## **C. THE DIFFERENCE BETWEEN LEGAL AND ILLEGAL IMMIGRANTS**

There are several legal issues, when taken as a whole that are complicated and create immense challenges for local law enforcement agencies as they seek to fully understand and respond appropriately to federal, state, and/or locally enacted laws. The complete LOS Update in Appendix A of this report provides a starting point for agencies to address each issue.

- Determining the difference between legal and illegal status is complex and carries with it significant responsibilities.
- Effective training will likely be lengthy, requiring an extraordinary commitment of agency resources.
- Failure to train effectively carries significant ramifications, risks and liability.
- All agencies must conform to “consular notification” obligations whenever any foreign national is detained or arrested – even if the officers are not engaged in immigration enforcement.

# IV. IMMIGRATION AND COMMUNITY ISSUES

## A. UNDERSTANDING AND MANAGING THE POLITICS OF IMMIGRATION

As would be expected with any contentious public policy issue, there is little consensus on the issue of immigration and how local communities should respond. This Project Response report has already highlighted any number of immigration policy areas where local agencies - even agencies in the same county - disagree on the proper response. Thus immigration policy has become an overwhelming issue for any police leader in America. To complicate matters further, police leaders must fully understand the position of their governing bodies to provide a consistent message to their communities.

The majority of police leaders report to a governing body or authority. State police and highway patrol directors report to the governor, county police chiefs report to a county board, municipal chiefs report to either a mayor or council, while sheriffs are elected and respond to their constituents. It is often these governing authorities that arrive at the immigration policy the police leader must concur with and implement as necessary. Unfortunately, governing authorities may not arrive at policies that please all members of the community, placing the police leader in the middle of political policy. Sanctuary Cities, overcrowding in housing and day laborer hiring sites are examples of policy issues that are fraught with controversy for law enforcement.

There is no simple solution to the problem of immigration politics; however, police leaders can work successfully within the political environment. The most required skill is awareness—in particular, awareness of conflicting positions of those entities that the police must constantly relate to:

- Community residents
- Community associations
- Governing body officials
- Educational leaders
- Business leaders
- Police union leaders
- Sworn officers
- Federal officials
- Civilian police employees
- Immigration advocacy groups
- Media

It is highly unlikely that all of the above entities will agree on immigration policy. Thus, knowledge of the conflicts among these constituent groups is a powerful tool for the police leader. Being aware of the sensitivity of any one group can allow the police leader to address or engage that group with a level of sensitivity that will diffuse anger, even if the police must support or enforce an unpopular policy.

## **B. DAY LABORER HIRING SITES**

One of the most highly charged immigration issues that has sparked community uproar and political rhetoric is the establishment of day laborer hiring sites. Initially confined to large city sweat shops and agricultural seasonal crop work, the growth in need for workers in the meat processing industry, construction, landscaping and assembly-line has dramatically increased the number of pick up sites for unskilled, low - wage, daily laborers. The majority of people who respond to these sites are immigrants who want to work, with studies showing that up to 84% are illegal immigrants.<sup>3</sup> However, some agencies have reported that out - of - work United States citizens also attempt to gain employment at these sites.

The problems identified with the day laborer sites include: (a) congregating of the laborers in the streets causing traffic disturbances, (b) complaints from businesses of public urination in parking lots and alleys due to a lack of sanitary facilities and (c) complaints about public drunkenness and harassment of pedestrians. Conversely, many businesses have admitted that these same persons have made purchases in their establishments.

Advocates of immigrant rights have worked diligently to get local governments to establish formal hiring sites that would allow employers to hire workers from a centralized location. Some day laborer sites offer English language classes as well as job training and assist with securing housing and recognizing and reporting domestic violence.

Immigrant advocates would like to see the establishment of an orderly hiring process by establishing legitimate employer lists and matching workers with those employers. There have been many reported cases of employers not paying the workers after they have performed their duties. With an established list, if there is a complaint of non-payment, there would be a procedure to identify and investigate the registered employer.

Conversely, many anti-immigration groups and citizen groups have demanded that their tax dollars not be spent on establishing sites for immigrants and/or employers who are breaking the law. Even in light of this

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<sup>3</sup> Abel Valenzuela Jr., "Day Laborers as Entrepreneurs? Mexican Immigrants in Los Angeles Area." *Journal of Ethnic and Migration Studies*, April 1, 2001.



opposition, some areas have established additional sites to accommodate the numbers and, therefore, are encouraging more workers to come to the sites.

Hiring *illegal* immigrants at a day laborer center is illegal under the 1986 Immigration Reduction and Control Act (IRCA). Employers who hire illegal workers often avoid the legal standards under the state and local labor departments, such as paying less than the minimum wage, failing to withhold taxes and avoiding paying into the unemployment fund and other expenses. By hiring illegal workers, the earning capacity of the legal workers may be undercut because the illegal workers will accept much lower wages.

Some jurisdictions have established Anti-Solicitation laws that define where and when employers are allowed to solicit employees. Many citizens have challenged the legality of these laws, most recently in Gaithersburg, MD and Herndon, VA. However, most law enforcement agencies only enforce these or other ordinances, such as loitering and no trespassing, if they receive a complaint.

### **C. OVERCROWDING IN HOUSING**

When immigrants come to the United States whether legally or illegally, they are generally not in a position to pay the high cost of housing. So, they seek other immigrants of the same nationality who have gained housing and will rent space with them (i.e., living room, dining room, shared bedrooms). As the immigration population has grown so have the incidences of overcrowding in housing. One local jurisdiction contacted by the IACP reported that in 2002, there were 80 complaints of overcrowding reported and by 2006, that rate had more than tripled.

Housing complaints are generally called in by neighbors and neighborhood watch groups who notice an influx of persons and/or cars. Local police agencies responding to calls for service (loud parties or domestic calls) have been trained to notice the conditions of the living space (sleeping bags, futons, blankets in non-bedrooms, second kitchens installed). Housing inspectors on routine business can also identify overcrowding issues. The violations that the owner/landlord could be charged with typically include, "Transient Lodging" or "Running a Boarding House without a License."

Generally, law enforcement officials will take no immediate police action unless a criminal violation is observed and instead will refer any housing violations to the local housing authority. Law enforcement officials have in many cases been instrumental in detecting human trafficking events as well as cases of child neglect, where parents have left underage minors in the home unattended while they go out to look for employment or to go to work.

The number one issue of overcrowding in housing is safety. Many of the homes do not have working fire/smoke detectors. Also, the makeshift kitchens that have been added have not been properly inspected and generally have faulty wiring and venting. Additionally, in cold weather insufficient heat in the homes causes the inappropriate use of space heaters and other non-conventional devices not intended for heating, for example, ovens, stoves and space heaters. Having so many persons in a home the issue of egress during an emergency situation rises exponentially. A second issue is that many unscrupulous landlords know this practice is taking place, but simply collect the rent (at a higher rate) and seldom make repairs as needed. Because they are not abiding by the law, the immigrants feel they have no recourse to report the landlord/owner.

Police agencies should note living conditions when responding to calls for service and report any situations out of the ordinary to the local housing authority, if available. Police officers should work with neighborhood watch or other community groups and become more aware of the changes in the neighborhoods that they patrol. Many agencies in conjunction with the local fire department have for example gone door to door in poorer neighborhoods handing out smoke detectors.

## **D. ANTI-IMMIGRANT GROUPS**

A feature of all countries with substantial immigration patterns is opposition to immigration. In the context of United States immigration issues, anti-immigration or “nativism” infers a distinction between Americans born in the United States and individuals who have immigrated or are “first generation.” Nativism is based on fears that immigrants do not share American values. This concept is not new in American history and politics. Complaints by British settlers against non-English speaking German immigrants in the late 1700s prompted English-only legislation; religious differences in the Northeast during the early 1800s led to the formation of the Know-Nothing political party, representing strong anti-immigrant and especially anti-Roman Catholic sentiment.<sup>4</sup> Chinese, Irish and Italian immigrants were victims of xenophobia during the Western expansion of the mid-to late 1880s.

In more recent times, many groups have linked security concerns with illegal immigration, since the attacks of September 11. While groups like these advocate patriotism and national security, intelligence reports suggest that increasing numbers of former and current members of hate groups, which advocate violence against immigrants (right wing militia, Neo-Nazi and KKK members), have joined these efforts. Frequently, the main sources of communication for members of these organizations are Internet homepages, chat rooms and email.

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<sup>4</sup> Encyclopedia Britannica, “Know-Nothing party.” 2007. Encyclopedia Britannica online. <http://www.britannica.com/eb/article-9045808>

Anti-immigrant sentiments tend to originate out of fear that immigrants:

- Consume jobs that should be held by Americans.
- Diminish a sense of community and nationality.
- Drain precious community resources and welfare systems.
- Lead to overpopulation and eventually replace existing cultures with their own.

Anti-immigration issues tend to also serve as political distractions from real social, political and economic problems.

Those seeking fair treatment for immigrants point out that arguments like “isolation” (immigrants tend to isolate themselves in their own communities and refuse to learn the local language) and “swamping” (too many immigrants arriving at one destination) have racist overtones as they tend to be targeted toward immigrants of developing countries, who account for the majority of immigrants in the United States. Typically, they are employed in lower-paid, more menial jobs “natives” generally do not wish to perform. Proponents further argue that immigration tends to improve economic conditions of communities because immigrants spend money on products and services as well. Lastly, proponents point out that immigrants fill a future need in a declining, aging workforce. Anti-immigrant groups rarely accept these arguments.

## **E. TRAFFIC SAFETY**

Immigrants, both legal and illegal, are believed to contribute to a wide variety of traffic safety concerns identified below.

Individuals who are unable to understand spoken or written directions in the English language can be a danger not only to themselves, but to the motoring public and police officers. The need to understand traffic signs, warnings and safety directions can be critical in the operation of a motor vehicle and in coping with emergency conditions, such as crashes, inclement weather or tactical emergencies.

Regarding driver’s licenses, in many, if not most areas of jurisdiction throughout the United States, operation of a motor vehicle is virtually essential, if one wishes to work, conduct routine business or the activities of daily life. In addition, the driver’s license has, by default, become the standard means of identification for virtually every business transaction from cashing a check to boarding a commercial aircraft. In recent years, especially since the

September 11 attacks, states have tightened the requirements for obtaining operator and commercial vehicle licenses, in some cases requiring proof of “legal presence” before issuing licenses.

These practices have resulted in two very common circumstances:

- Persons in the United States illegally operate motor vehicles without benefit of a license, in the hope that they will not be stopped or otherwise required to display a license, or
- These persons obtain licenses by fraud or misrepresentation either through state licensing authorities, or obtain counterfeit licenses.

In either of the above scenarios, unqualified individuals are operating motor vehicles without first complying with testing or background identification requirements.

Persons in the United States illegally who need to operate motor vehicles, yet have no legitimate means of obtaining a driver’s license or other identifying documentation are also unable to obtain liability insurance on the vehicles they operate. When these individuals become involved in crashes they are unable to make financial restitution in cases where they are at fault, thus shifting financial liability to other insured motorists. Ultimately, the financial burden is shifted to all other motorists through higher insurance rates in areas where this practice is prevalent.

# V. CHALLENGES FACING LAW ENFORCEMENT

## A. POLICING DIVERSE COMMUNITIES

### 1. Trust vs. Fear

Immigrants in the United States come from different parts of the world; the majority now entering are from developing countries, where the image of law enforcement is drastically different than that within the United States. Often the police in some of these countries are perceived as violent, corrupt and ineffective. These perceptions are often transferred to the immigrants' perception of the American police as well, creating a general reluctance to seek law enforcement assistance. These tenets also influence crime underreporting within immigrant communities, particularly domestic violence, sexual assault and gang activities.

Ethnic minorities are often afraid of the perceived potential for racial profiling and prejudice towards them by the police and the communities they reside in. This dynamic results in fear and distrust in the immigrant community and a general lack of cooperation with law enforcement.

A lack of trust towards government and public institutions, particularly banks, is shared by many immigrant groups. Because of the sometimes corrupt and unstable situations in their native countries, immigrants oftentimes do not trust banks to safeguard and protect their money. As a result, many immigrants keep their money and valuables at home or at their businesses, thus making them vulnerable to crime.

The law enforcement experience relating to immigrant issues shows that language barriers and a lack of knowledge about local and federal laws can often lead to a misunderstanding of police directions by the foreign-born.

Through daily contact and many outreach programs, local agencies have been working to change the negative image of police and build trust and confidence in immigrant neighborhoods. Research demonstrates that people who believe in officers' good motives are more likely to cooperate and obey, perceiving police as a legitimate authority.

One of the central benchmarks of a well-commanded police department is establishing good relationships with the local communities, including those composed of immigrants. Working with these communities is critical in preventing and investigating crimes. Communication has been identified as a major concern. Police departments can significantly enhance their capability by hiring bilingual officers, professional interpreters or volunteers from the community. Some local agencies have introduced pocket translators for their officers. Holding meetings with immigrant community members supported by

training materials (videotapes and brochures in foreign languages) provides mutual understanding of cultural differences and can be a great opportunity to acquaint newcomers with local laws and ordinances.

## **2. Language Barriers**

One area identified as the strongest obstacle in building cohesive relationships with the immigrant community has been a lack of understanding because of different language barriers. U.S. Census 2002 Supplementary Survey data reports that 20% of the U.S. population speaks a language other than English at home. Additionally, one fifth of American school age children speak a language other than English at home, with 7 out of 10 primarily speaking Spanish at home. Many newly arrived immigrants are from Central America, China and the Middle East. The majority of police departments are neither equipped nor staffed to meet these language needs.

When an immigrant population does not understand the predominant culture, speak the language and distrusts the government, they will not or simply cannot report crimes and thus their victim status remains largely unknown to the police. Some agencies have hired bilingual staff for community outreach and have attempted to recruit bilingual officers to address this growing language gap.

## **3. Recruitment and Retention Issues**

The almost 18,000 state, local and tribal police agencies across the United States have, for the last decade, sought to diversify their agencies, seeking gender and ethnic balance so that their organizations more accurately reflect the communities they serve. Strides in gender and ethnic diversity have been made over the past two decades, particularly in urban areas, where African-American, Latino and Asian officers have joined their white counterparts.

Unfortunately, many ethnic immigrant populations continue to have little or no representation on most law enforcement agencies. For example, while Haitian immigrant communities have grown in many urban areas over the past decade, few Haitians have been assimilated into policing ranks. Thus, agencies attempting to respond to an incident in a Haitian neighborhood have little understanding of the culture and typically no command of the French-Haitian language. While this is just one example, it underscores the need for local police agencies to continue to broaden diversity within their ranks or seek the necessary skills to communicate with non-English speaking residents.

Recruitment within newly emerging immigrant communities presents significant challenges for law enforcement. Historically, police agencies have relied upon traditional means of marketing their organizations and seeking

recruits-posters, newspaper or TV ads, etc. In many cases, traditional outreach will not reach communities who may read papers or watch television in their native languages. Police agencies seeking diversification of their workforce must use nontraditional means (recruiting in immigrant neighborhoods by immigrants and advertising in local immigrant newspapers) to reach immigrant populations within their communities.

Beyond recruitment, retention becomes an even more daunting issue for many agencies. When a very small number of any ethnic group joins a largely non-diverse force, issues of assimilation and acceptance loom large. Agencies that aggressively seek to diversify through recruitment must simultaneously ensure that their agencies and officers are receptive to, and supportive of, these new officers or civilian employees.

#### **4. Resource Limitations For Law Enforcement**

##### **State and Local Police Agencies**

More than 76% of all U.S. police agencies have 25 or fewer sworn officers serving populations up to 25,000. IACP research revealed that federal funding for local law enforcement has been significantly cut since 2002.<sup>5</sup> The impact on local policing has been devastating. Simultaneously, over the past several years, immigrant populations have grown considerably in smaller and rural communities where entry-level jobs are available. However, police funding and resources have not kept pace with the growth of their service populations, and the resulting impact that this problem has on police operations.

Policing immigrant communities is a unique role for local law enforcement. While the cost of policing immigrant communities cannot be quantified, the following discussion highlights these areas of resource demand that law enforcement agencies face on a continuing basis. Challenges to law enforcement agency hiring practices, policies, and training for officers, dispatchers, support staff and command personnel include the following:

- Recruitment of bilingual sworn and civilian staff persons with language proficiency.
- Creation of volunteer or paid interpreter lists for police and the courts.
- Cultural competence training to teach officers about possible behavior characteristics of an immigrant suspect from another country and culture during interviews. In most instances, signs that detect deception in current interview training do not apply to other cultures.

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<sup>5</sup> International Association of Chiefs of Police, "Executive Summary, The Impact of the Proposed FY 2008 Budget on State and Local Law Enforcement," 2007.

Example: Many cultures feel that it is a sign of disrespect to look someone directly in the eyes when speaking, however, in the U.S. we interpret not having eye contact as a sign of deception.

- Accessing types of services provided by ICE/Homeland Security to assist local police agencies in identifying international suspects or victims, such as determining ports of entry and deportation information and providing training for officers, dispatchers and others.
- Information and training on what is an acceptable ID card (for example, a foreign consulate ID Card) and recognizing fraudulent documents.
- The rules and laws on notification of foreign consulates when foreign nationals are detained.
- Technology development and procurement for translation devices for various languages.
- Information/criminal intelligence sharing to ensure that information flows between agencies.

In addition to the resources and training challenges, review of police policy and practices is necessary. Relationship building must also occur between the police and the leaders of immigrant communities. This process takes time and effort and political support from city or county councils and mayors. Law enforcement simply cannot function adequately without the support and cooperation of the populations it serves. An adequate law enforcement outreach and response to prevent fear, crime and disorder requires cooperation and understanding of all citizens at all levels.

### **Tribal Law Enforcement**

Within the continental United States and Alaska there are 561 federally recognized Indian tribes - a population of over 4.5 million. More than 200 tribal police departments provide law enforcement services for the land-based tribes. Tribal lands represent more than 267 miles of the United States border and are patrolled by tribal police departments and the agencies with which they have intergovernmental agreements. Patrolling tribal lands to prevent illegal immigration, especially along the Southwest border between the United States and Mexico, is a constant and expensive challenge for tribal law enforcement.

Resource issues are a major concern to the tribal police departments that patrol the vast area of Indian Country, both for day-to-day operations as well as illegal immigration interdiction. The tribe that patrols the largest Southwest border area, the Tohono O'odham, expends more than 2 million dollars per



year to interdict illegal trafficking of drugs and of humans. Due to the fact that all felonies on Indian land are federal offenses, U.S. attorneys must try these cases. The backlog of federal prosecutions causes significant delays in case processing and adjudication.

Since 2005, the U.S. Border Patrol has improved patrol and interdiction in and around Indian land by cross-deputizing tribal police officers that serve as both police officers and border patrol officers. The St. Regis Mohawk tribe on the United States/Canadian border is an example of cross-deputation to allow patrolling of tribal lands and waterways to interdict illegal trafficking in drugs and persons.

## **B. LOCAL AGENCY COLLABORATION WITH ICE**

Some local law enforcement agencies welcome a partnership with ICE to address illegal immigration problems. Other agencies decline such collaboration for a variety of reasons (sanctuary policies). In either case, it is important for local law enforcement to fully understand the role of ICE in federal law enforcement and what resources exist.

ICE was established on March 1, 2003, as part of the Department of Homeland Security (DHS). ICE represents the largest investigative force within DHS. ICE's principal duties and responsibilities include enforcing the nation's immigration and customs laws and protecting federal facilities. ICE is comprised of four integrated divisions:

- **Office of Investigations** – responsible for investigating a wide range of domestic and international activities arising from the movement of people and goods that violate immigration and custom laws and threaten national security.
- **Office of Detention and Removal Operations** – responsible for public safety and national security by ensuring the departure from the United States of all removable aliens and by enforcing the nation's immigration laws.
- **Federal Protective Service** – responsible for policing, securing and ensuring a safe environment in which federal agencies can conduct their business by reducing threats posed against more than 8,800 federal government facilities nationwide.
- **Office of Intelligence** – responsible for the collection, analysis, and dissemination of strategic and tactical intelligence data for use by the operational elements of ICE and DHS.

The Law Enforcement Support Center (LESC) located in Williston, VT is administered by ICE. The center operates 24 hours a day, 365 days a year, to supply real-time assistance to federal, state and local law enforcement officers who are either investigating or have arrested foreign-born individuals involved in criminal activity. The telephone number to contact the LESL is (802) 872-6050.

ICE has indicated that they want to work closely with local law enforcement on immigration issues, however, given the increased demands of state and local law enforcement agencies in addressing those issues, ICE has been severely hampered by the limited amount of special agents assigned compared to the approximately 18,000 state and local law enforcement agencies who may need their assistance. Further, ICE response can vary by state, by region and even time of day – with few resources available when local agencies seek support after normal business hours.

Section 287(g) of the Immigration and Nationality Act authorizes the Secretary of DHS to enter into agreements with state and local law enforcement agencies to permit specially trained officers to enforce immigration law enforcement functions. Under this provision, the states must sign a Memorandum of Agreement (MOA) and officers must receive specialized training and function under the supervision of ICE. In September 2002, Florida was the first state to enter into an agreement with ICE and trained 35 law enforcement officers, who were dispersed among 7 regional task forces across the state to perform immigration enforcement functions that pertain to domestic security and counterterrorism needs. Additionally, only the following jurisdictions have entered into these agreements since its inception: Alabama, Arizona, California, North Carolina, Tennessee and Virginia.

Criteria for officers to be selected include:

- U. S. Citizen.
- Current background investigation completed.
- Minimum 2 years experience in current position.
- No disciplinary actions pending.

ICE offers 2 training programs—a 5 week program for field-level law enforcement officers and a 4 week program for correctional personnel. The ICE academy sets the standard for testing and uses certified instructors to conduct the training.

The initiatives under this program have had a successful impact on illegal immigration and have garnered hundreds of leads, arrests and convictions for a variety of federal and state violations.

A recent ICE operation in conjunction with a local police agency yielded 43 illegal aliens, including 35 who had criminal histories, 13 with prior DUI-related charges, 4 with convictions for indecent liberties with children and 1 person with multiple convictions including kidnapping, robbery and DUI. Since April of 2006, the task force has arrested more than 250 illegal aliens. ICE removed more than 186,600 illegal aliens from the United States in FY 2006, a 10% increase over the number from the prior fiscal year.<sup>6</sup>

In November 2005, The Department of Homeland Security instituted the *Secure Border Initiative* in an effort to secure America's borders and reduce illegal immigration. ICE is approaching these efforts by expanded fugitive operations and criminal alien programs and an expedited removal process. This process enables ICE to quickly remove "other than Mexican" illegal aliens to their home countries. Since the initiative was implemented, approximately 4,000 non-Mexican aliens have been turned over to ICE for detention under expedited removal, with close to 3,000 being removed.

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<sup>6</sup> U.S. Immigration and Customs Enforcement, "Executive Summary, ICE Accomplishments FY 2006," October 30, 2006. <http://www.ice.gov/pi/news/factsheets/2006accomplishments.htm>

# VI. IMMIGRATION AND CRIME

## A. VICTIMS OF CRIME

### 1. Victim Vulnerability

People within immigrant populations are extremely vulnerable to crime. Many immigrant crimes are not reported; these crimes occur more often by immigrant perpetrators against their own than U.S.-born perpetrators. Criminals tend to operate in language environments they know and understand, which complicates criminal detection by law enforcement and increases the potential for retaliation by a perpetrator should a victim come forward to report a crime.

Human rights violations within immigrant communities are the most common form of victimization, but vulnerabilities can and do extend into the economic and social fabric of a community. “Ethnic protection societies” run by criminals provide their “members” with jobs, housing and other necessities and can serve as venues for extortion, robberies, identity thefts and business scams. For instance, criminals may believe immigrants tend to carry cash instead of relying upon bank accounts; therefore these immigrants are more likely to be targets of robberies.

Immigrant women may be less likely to report abuse than nonimmigrant women due to language barriers, cultural differences, varying perceptions of law enforcement response, and a fear of deportation if they are not legally documented to live within the United States. Many immigrant families are a combination of documented and undocumented individuals, which may account for a reluctance to report a crime if a victim/witness believes it may lead to a family member’s deportation.

Victims may also have limited information about how to recognize and report a crime, may concede to “social pressure” by not involving outsiders in “family matters,” or they might even be afraid of authorities. For example, they may not be aware domestic violence is a crime or might possibly believe religious doctrine supports corporal punishment of wives. Additionally, they may not recognize law enforcement will help them, regardless of immigrant status, or even be aware that services exist in their own language or how to access them. If an independent interpreter is not available during a call for service, law enforcement should refrain from having the victim’s family member interpret for the victim, as the interpreter may be known to the victim or even be the perpetrator.

## 2. Violence Against Women

We are only beginning to understand the dynamics of power and control and the barriers that face victims of crimes and violence against women especially immigrant women, such as domestic violence and sexual assault. These barriers are compounded for immigrant women living in the United States due to a number of reasons, including immigration status and concerns, language barriers, social isolation, community perceptions and economic disparities.

Perpetrators of domestic abuse will often use their partner's immigration status, fear of law enforcement and misinformation about the U.S. legal system as tools to exert power and coerce the partner into staying in the situation. Specific provisions of the Violence Against Women Act (VAWA) of 1994 are aimed at reducing violence and providing relief for immigrant women in situations of domestic violence. Before the Act was passed, an immigrant woman who was a victim of domestic violence would face deportation if she left the marriage and her legal status was dependent upon conditional residency with a spouse who was a citizen or who had permanent status. The VAWA allowed women to file on their own behalf and on behalf of their children without relying on an abusive partner.

### "T" Visas

Recognizing that victims of human trafficking should be protected rather than punished for crimes they are forced to commit, the federal government created the "T" visa to assist victims who are undocumented foreign nationals gain legal stay in the United States.

The "T" visa is available for victims who self-petition to stay in the United States for up to 4 years if they can show that they:

1. Have been a victim of a severe form of trafficking.
2. Have complied with reasonable requests to assist in the investigation or prosecution of their case (or are not yet 18 years of age).
3. Are physically present in the United States on account of trafficking.
4. Would suffer severe hardship if repatriated.

Under the law, local, state and federal law enforcement officers can assist victims with their application for a "T" visa by completing the I-914B form as part of the victim's application to the Department of Homeland Security. The form requests that you indicate the following:

1. Whether the individual is a victim of a severe form of trafficking.
2. Whether the victim complied with a reasonable request to assist in the investigation or prosecution.

Form I-914B can be sent at any point during the investigation. It does not create a sponsorship relationship nor hold law enforcement responsible for future acts of the individual. The form is reviewed by federal authorities, along with the victim's application, in determining whether to issue or deny the visa.

The reauthorization of VAWA in 2000 provided for further assistance for non-citizens through the creation of the “U” visa, or “U-nonimmigrant status,” allowing immigrant women who have suffered severe mental or physical abuse while in the United States as a result of crimes committed against them to stay in the United States and receive assistance benefits. Since the inception of the U visa in 2000, there have been no regulations created to clarify the application procedure. Women who meet the criteria for a U visa should not be deported; however, many victims of severe violence and abuse have been known to be deported or have not received adequate services due to the lack of official regulation.

### 3. Human Trafficking Victims

Human trafficking, commonly referred to as “modern day slavery,” is a global phenomenon that involves obtaining or maintaining the labor or services of another through the use of **force, fraud or coercion** in violation of an individual’s human rights. Generating billions of dollars in profit each year, human trafficking is one of the world’s fastest growing criminal activities, operating on the same scale as the illegal trade of guns and drugs.<sup>7</sup> Unlike the trade in drugs and weapons, those who traffic in humans can sell and resell their “commodity” forcing each victim to suffer repeatedly. Fueled by global economic conditions and increased international mobility, the market for and trade of human beings continues to expand rapidly.

Although actual figures are difficult to determine due to the underground nature of the trade, the U.S. State Department’s 2006 *Trafficking in Persons Report* estimates that up to 900,000 people are trafficked per year internationally, with 17,000 of these victims trafficked into the United States. It is estimated that 80% of those who are trafficked are women and children.<sup>8</sup>

Traffickers prey upon the vulnerabilities of their victims. In order to coerce and control victims, traffickers will often:

- Confiscate papers and legal documents.
- Misrepresent U.S. laws and consequences for entering the country illegally.
- Threaten victims with arrest or deportation.

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<sup>7</sup> U.S. Department of Justice, *The Exploitation of Trafficked Women*, by G. Newman (Washington, D.C: 2006) p5.

<sup>8</sup> U.S. Department of State, *Trafficking in Persons Report* (Washington, D.C: 2006) p 6.

- Threaten to harm or kill family in the victim's homeland.
- Use debt and other fines in order to create an insurmountable "peonage" situation in which the victim must work off a debt or face punishment. Debts commonly include the initial smuggling fee, charges for food, housing, clothing, medical expenses or fines for failing to meet daily quotas.
- Move victims from location to location or trade them from one establishment to another resulting in a situation where victims may not know which town or state they are in and are less able to locate assistance.
- Create a dependency using tactics of psychological and emotional abuse in much the same way batterers behave toward their intimate partner in a dynamic of domestic violence.
- Dictate or restrict movement.
- Isolate victims who do not speak English, as they rely on the trafficker as a translator and their only source of information.

Victims are taught to mistrust law enforcement by the traffickers, due to immigration status and the crimes that the individual may have been forced to commit. With the creation of the Trafficking Victims Protection Act of 2000, victims of human trafficking are protected, rather than punished, for the crimes that they were forced into.

#### **4. Identify Theft Crimes/Fraudulent Identification Scams**

*"Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are, and to check whether they are terrorists."*

-- 9/11 Commission

In 2001, the then-Immigration and Naturalization Service reported over 100,000 fraudulent passports, visas, alien registration cards and entry permits. According to ICE leadership, illegal aliens are buying genuine documents with real identities, stolen from unwitting victims. The proliferation of fraudulent identification, and resulting identity theft and/or crime, poses a significant challenge to our national and hometown security.

Identity crime results from crimes committed utilizing personal identifiers that have been stolen, compromised, altered or are synthetic (not based on an actual person's identity) and ensue from the initial theft of an identity.

According to the Better Business Bureau, approximately 9 million people in the United States were victims of identity crime in 2005. Compounding this already complex issue, barely one-third of identity crime victims contacted police. Identity crime can facilitate larger criminal enterprises including terrorist, drug, gangs and other criminal activity as reported by the Federal Trade Commission.

While these policy issues are national in scope, local law enforcement is faced with the unenviable task of investigating and assisting the victims of these very complex crimes. Many of the perpetrators and/or victims are immigrants.

Many of the 'purposes' for identity crime (*The Police Chief*, February 2005) are relevant to illegal immigration. Among the victims surveyed:

- 11% state identifying information was used to obtain employment.
- 8% report government benefits or forged or obtained government documents were acquired in the victim's name.
- 2% report a driver's license was obtained using the victim's name.

Additional information on identity crimes can be found within the IACP's Identity Crime Project, co-sponsored by the Bank of America, at [www.IDSafety.org](http://www.IDSafety.org).

## **B. PERPETRATORS OF CRIME**

### **1. Gangs**

"The most dangerous gang in America," a recent Newsweek magazine headline proclaimed about the gang identified as Mara Salvatrucha or "MS-13," believed to be active in at least 33 U.S. cities and growing. MS-13 is considered the fastest growing, most violent and least understood of the gangs known in the states.

The MS-13 gang initially began in the 1980s in Los Angeles, CA, by natives from El Salvador fleeing that country's civil war. These immigrants (mostly illegal) banded together against other gangs who preyed on them. MS-13 is estimated now to have between 8,000 and 10,000 members across the United States with tens of thousands living in Central America. The MS-13 members are notorious for vicious attacks, extortion, car thefts and drug and



human trafficking. They are believed to be the major supplier of illegal drugs out of Mexico.

Authorities have conceded that with major resources focused on the war on terror, gangs like MS-13 have been able to gain stronger footholds in illegal activities in communities across the United States. Latin community activists have expressed a strong desire to rid their communities of these dangerous gangs. They admit to living in constant fear of retribution and reprisal if they report any issues to the local police. It is important to note that gang behavior is not reflective of the immigrant communities that gang members emigrate from. In fact, only a very small percentage of immigrants are actually involved with gangs, even remotely.

Law enforcement officials have been unable to identify a clearly defined hierarchy or structure within MS-13. However, recent evidence has surfaced that MS-13 is seeking to create a national command structure similar to the command structure in El Salvador, where the gang is reputed to be highly organized and disciplined. Reportedly, in the United States, east coast members of MS-13 may be heavily involved in vicious gang-on-gang attacks, car thefts and drug trafficking; however, west coast members are more involved in drug and human trafficking.<sup>9</sup>

Gang culture and assimilation are not limited to MS-13. Other Latino gangs and Asian gangs have grown dramatically over the last few years. Membership tends to center on males between the ages of 14–25 who have most likely dropped out of school. Recent evidence has shown a trend towards young females being inducted into gang culture.

Within the Asian communities, gangs are very well organized and highly feared. Asian gangs are allegedly involved with robberies, burglaries, extortion, kidnapping, drug trafficking, aggravated assaults, gun running, auto theft/chop shops and vandalism.

Both Asian and Latino communities suffer with a large number of incidents of robberies and extortion because of the general distrust of banking and government institutions, including police. Immigrants tend to have and carry large sums of cash and valuables making them vulnerable to crime and extortion.

The Federal Bureau of Investigation (FBI) recently formed a new national task force with the Drug Enforcement Administration (DEA) and ICE to combat the escalating growth of criminal activities by gangs such as MS-13. The task force will serve as a national repository for MS-13 intelligence gathering. The task force is exchanging intelligence information with their counterparts in

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<sup>9</sup> "MS-13." Newsweek.2007.Newsweek National News, 28 March 2007.  
<http://www.msnbc.msn.com/id/7244879/site/newsweek>.

Central America in an effort to mount an international attack against the gang. However, officials of the task force have stated that no single law enforcement action is really going to be able to dismantle gangs. In fact, they admit that any successful program is going to require the assistance of state and local police agencies cooperating with each other and working within the communities in which the activities are taking place.

Law enforcement officials must fully understand and address gang crime, and in particular be aware of the impact on gang membership when immigration trends change in their communities.

## VII. CONCLUSION

Achieving a successful local law enforcement response to immigration issues is not easy. Immigration issues, as detailed in this report, are complex in nature and difficult to address. Further, positions on these issues vary radically among citizens, governing body leaders and even law enforcement agencies themselves.

The IACP does not, through publication of this document, intend to direct a course of action for state, tribal or local law enforcement agencies. The intent of this publication has been to define and discuss each major area of immigration for the benefit of local law enforcement leaders so they can craft informed and rational local immigration approaches.

Immigration patterns and projected growth throughout the United States will cause the issue of immigration to be one of continuing importance to all local law enforcement agencies. The IACP believes that agencies armed with solid, reliable information on the complex set of immigration issues can surely arrive at just and effective local policies to respond to these issues in their respective jurisdictions.

The IACP's overarching concern in writing this guide is the pressure that immigration issues place on local law enforcement. This national issue is really a very local one, and local police leaders face a growing set of immigration - related duties in the face of scarce and narrowing resources. It is critically important for local agencies to avoid being caught in the middle of endless battles over immigration policy. Rather, we hope local law enforcement leaders will use this report to craft reasonable approaches that can be accomplished in collaboration with governing bodies and community residents.

## VIII. APPENDIX A

### Legal Update on Immigration Law

*This is a summary of a very complex area of the law and is not intended as an exhaustive analysis. State and local law enforcement executives are cautioned to seek legal advice interpreting their authority as it exists in their jurisdiction.*

#### A. Federal Law

##### **1. State and local officers may have inherent authority under federal law to enforce criminal immigration violations, if they are authorized by local law to make arrests for federal crimes.**

There is no overall consensus among legal authorities regarding the role that state and local law enforcement should perform in immigration enforcement. In the last decade, the United States Department of Justice Office of Legal Council has taken two opposing positions on the issue (compare, the U.S. Department of Justice Office of Legal Counsel memorandum issued February 6, 1996 published and available at <http://www.usdoj.gov/olc/immstopo1a.htm> with the U.S. Department of Justice Office of Legal Counsel memorandum issued in April, 2002, unpublished and available in redacted form at [aclu.org/FilesPDFs/ACF27D8.pdf](http://aclu.org/FilesPDFs/ACF27D8.pdf)). The 1996 opinion holds “subject to the provisions of state law, state and local police may constitutionally detain or arrest aliens who have violated the criminal provisions of the Immigration and Naturalization Act (“INA”).” On the other hand, the 2002 opinion holds that “[s]tates have inherent power, subject to federal preemption, to make arrests for violations of federal law.”

Only two of the United States Circuit Courts of Appeal have directly addressed the issue. One, the Ninth Circuit Court of Appeals, has taken a position consistent with the OLC’s 1996 opinion, and has held that state and local officers are authorized, if authorized by state and local law, to make arrests for violations of immigration laws that are criminal offenses, but have no authority to arrest for any violations which are civil in nature. Gonzales v. City of Peoria, 722 F.2d 468 (9<sup>th</sup> CA, 1983), overruled in part on other grounds, Hodgers-Durgin v. De La Vina, 199 F.3d 1037 (9<sup>th</sup> Cir. 1999). The other, the 10<sup>th</sup> Circuit Court of Appeals, has held that state and local officers have inherent authority to enforce immigration laws, whether the violations in question are criminal or civil in nature. See, e.g. and U.S. v. Santana-Garcia, 264 F.3d 1188, 1194 (10<sup>th</sup> CA, 2001) and U.S. v. Salinas Calderon, 728 F.2d 1298 (10<sup>th</sup> CA, 1984) for a sampling of judicial discussions of the issue.

That the legal issues remain unresolved is perhaps most clearly demonstrated by recent proposals in Congress such as the CLEAR Act (H.R. 3137) and the Homeland Security Enhancement Act (S. 1362) introduced in 2005, which attempted to specifically authorize state and local enforcement efforts. These proposals would have mandated that states authorize their officers to enforce immigration law or lose federal funds. The proposals were not adopted. A new Congress is in place, but to date, no specific “CLEAR Act” type of authorization or mandate has been enacted.

Many legal authorities believe state and local police who are authorized by local law to do so can enforce the criminal immigration laws. However, there are some who maintain state and local officers must be specifically authorized by Congress to do so. The question of state and local law enforcement’s authority to enforce the civil provisions of immigration law is under greater debate and remains generally unresolved. Agencies that find they have the authority to enforce criminal immigration laws may nevertheless find they lack authority to enforce the civil immigration

provisions. Any state or local effort to enforce any aspect of immigration law should be prepared to address challenges for those claiming that there is no federal or local authorization to do so.

**2. There is no general agreement as to whether state and local law enforcement officers who have the authority under local law to do so may make arrests for federal civil offenses of the Immigration and Naturalization Act.**

As noted above, the legal authorities are split on this issue. Relying upon the 2002 OLC memo, Attorney General John Ashcroft wrote in a 2003 letter to William Casey, Deputy Superintendent, Boston Police Department, that the inherent authority for state and local officers to arrest aliens extended to "...aliens whose names have been entered into the NCIC database that have both (1) violated *civil* provisions of the federal immigration laws that render them deportable and (2) been determined by federal immigration authorities to pose special risks, either because they present national security concerns or because they are absconders who have not complied with final orders of removal or deportation."<sup>10</sup> The position stated in the 2002 OLC memo and Ashcroft's letter remains the position of federal authorities, but it is not accepted by all. In particular, advocates such as the American Civil Liberties Union (ACLU) who are inclined to aggressively challenge local immigration law enforcement efforts reject the legal analysis in the OLC memo. The ACLU criticizes the DOJ position, noting it reverses previous policies and conclusions of the Department of Justice, including an opinion issued by the Office of Legal Counsel in 1996. The ACLU argues that Congress has specifically authorized certain types of local immigration enforcement efforts, and that these specific authorizations would not be needed if there is a general "inherent" authority. The ACLU notes that the OLC analysis relies heavily on a prohibition-era case not addressing immigration but instead involving whether a state trooper had authority to arrest for a federal prohibition misdemeanor<sup>11</sup> and asserts the case has limited applicability to immigration considerations.<sup>12</sup>

**3. Federal law does not mandate state or local law immigration enforcement efforts:**

Regardless of whether one believes state or local law enforcement agencies do or do not possess inherent authority to enforce immigration law, there is no federal requirement to do so. Ultimately, the extent to which state or local law enforcement officers will or will not enforce federal immigration provisions remains a local policy and political decision.

**4. State and local law must be taken into account on any state or local effort to enforce to immigration law:**

Arrests by state peace officers for federal violations are "...to be determined by reference to state law." *Miller v. U.S.*, 357 U.S. 301, 305 (1958). The authority under various state laws to enforce immigration laws may not be clear-cut. Some states may limit such authority in the manner in which they define "felony" or "misdemeanor" as referring to state violations or violations of other jurisdictions that are "equivalent" violations. Since states have no "immigration violations," there may be no state "equivalent violation" of a federal immigration violation. While some states may explicitly authorize immigration enforcement, other states may specifically restrict it. Some jurisdictions may be prohibited from engaging in immigration enforcement by reason of a consent decree, injunction, or local ordinance "sanctuary" prohibitions.

Even if agency administrators accept the proposition that state and local officers have "inherent authority" to enforce immigration law, they must still determine whether under applicable state

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<sup>10</sup> Letter of Attorney General John Ashcroft to William Casey, Chair, Criminal Justice Information Services Advisory Policy Board, dated May 13, 2003 at page two.

<sup>11</sup> *Marsh v. U.S.*, 29 F.2d 172 (2<sup>nd</sup> CA, 1928).

<sup>12</sup> The ACLU has issued a memo summarizing its criticisms of the OLC memo, which is available at the ACLU's web site.

and local law their own officers have actual authority to do so. Just because federal law may permit such enforcement does not mean state and local officers have authority in their jurisdiction to engage in such enforcement. The laws across the nation are not uniform and care should be taken not to engage in actions simply because officers in another jurisdiction have done so.

Further, even among those who accept the proposition that state and local officers have “inherent authority” to take enforcement actions against criminal immigration law violators, there is great concern about taking enforcement action against those who have only violated the civil immigration provisions. Most state statutes granting officers the ability to make arrests are couched in terms of criminal law violations. However, many immigration violations are civil in nature. While federal officers are specifically empowered to take civil immigration violators into custody, state and local officers may not have corresponding authority at the state or local level.<sup>13</sup> While the position of the Department of Justice is that the “inherent authority” extends to civil immigration violators, unless a local officer’s jurisdiction provides clear authority to take people in custody for a non-criminal (civil) violation, such actions by officers may be illegal notwithstanding the fact that they could make criminal arrests.<sup>14</sup>

##### **5. Many immigration violations are not criminal.**

Civil violations of immigration laws include being illegally present in the United States, failure to depart after expiration of a visa or a grant of voluntary departure, and some violations related to stowaways. Some criminal violations include illegally reentering the United States, alien smuggling, and “willfully” disobeying an order of removal. Determining what type of offense, if any, is encountered requires careful analysis and an understanding of the complex immigration provisions. State and local officers must not assume that every immigration violation is a crime.

##### **6. NCIC entries contain both civil and criminal immigration violators. Officers should be careful to determine the nature of the underlying offense resulting in the NCIC entry.**

Until August, 2003, the National Crime Information Center (NCIC) database immigration entries included only persons who had been deported from the United States. When officers “ran” a person, they would only discover if he or she had committed the specific felony of re-entry after deportation.<sup>15</sup> Since August, 2003, civil immigration information has been added to the NCIC. For example, the federal “Alien Absconder Initiative” lists absconders—those who have defied a final order of removal or deportation—in the NCIC system. However, “absconders” may be civil or criminal violators. In general, those who can be proven to be “willful” absconders are criminal violators, while those for whom the government cannot establish “willfulness” are civil violators. The larger number of “absconders” are civil violators.<sup>16</sup> Both are listed in NCIC. As noted, the authority for state or local officers to take civil violators into custody is questionable. That is why every immigration pickup request noted in NCIC is predicated by some modifier such as “if authorized by local law.” An entry into NCIC does not guarantee the state or local officer has

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<sup>13</sup> See, e.g. New York Attorney General Informal Opinion 2000-1 that opines that New York law enforcement officials may make warrantless arrests for criminal immigration violations, but a reasonable belief of a civil immigration violation does not provide a basis for arrest.

<sup>14</sup> <sup>14</sup> Some immigration law scholars, such as Kris W. Kobach, Former Counsel to the Attorney General, suggest Congress has never sought to preempt the states’ “inherent authority to make immigration arrests for both criminal and civil violations...” but this addresses only the federal half of the equation. State and local officers must have specific authority under their local law to do so. Congress has not specifically provided state and local officers such civil arrest authority under a grant of federal authority that would supplement the absence of any state or local authority. To review Ms. Kobach’s position, see, e.g. “Testimony of Kris W. Kobach” before the Senate Committee on the Judiciary on 4/22/2004.

<sup>15</sup> “Forcing Our Blues Into Gray Areas: Local Police and Federal Immigration Enforcement-A Legal Guide For Advocates” a report by Appleseed, Nebraska Appleseed, New Jersey Appleseed, Texas Appleseed, and Washington Appleseed.

<sup>16</sup> Anecdotal information from federal authorities suggests that civil absconders constitute 90-95% of the absconders being entered into NCIC.

actual authority to take the person into custody. In addition, an officer's reliance upon a NCIC entry will not "cover" an illegal arrest on a civil violation if the officer has no civil arrest authority.

#### **7. A federal immigration "warrant" may be an administratively-issued document.**

Officers are trained that they can take people into custody when they confirm a "warrant" for the person's arrest has been issued. However, the "warrant" in immigration matters is not necessarily the "warrant" officers normally encounter. Civil absconders have not committed a criminal offense. An administrative document, referred to as a "warrant" is issued to authorize taking the civil absconder into custody. However, the "warrant" is not issued by a detached and neutral magistrate and does not comply with the traditional Fourth Amendment requisites for warrants. Most state statutes authorize officers to take a person into custody upon confirmation that a "warrant" for the person is outstanding in either the state or in another jurisdiction. However, it is unlikely that the administrative "warrant" authorizing taking civil absconders into custody is the type of "warrant" contemplated by state statutes. Before taking a person into custody solely on the basis of an NCIC entry suggesting some sort of immigration "warrant" is outstanding, officers should verify whether the warrant has been issued for a criminal or civil violation. Even if state law authorizes taking a person into custody for a criminal violation, it is possible—even likely—that state law does not authorize taking a person into custody for a civil immigration violation.

#### **8. The power to detain is ultimately derived from the authority to arrest. What constitutes "probable cause" in immigration matters may not be easy to discern.**

The purpose of a reasonable suspicion-based detention is to determine whether probable cause to arrest can be developed. If an officer has no ultimate authority to arrest the person for an immigration violation, then what basis does he or she have to detain the person for the purpose of discerning whether an immigration violation has occurred? State and local officers who clearly have authority to arrest for federal criminal immigration violations have authority to detain persons upon reasonable suspicion; those who do not have immigration arrest authority have questionable authority to detain persons even upon the reasonable suspicion that an immigration violation has occurred.

Even for officers having clear criminal immigration arrest authority, arrest authority may not extend to civil immigration violators. These officers likely have no authority to detain a person solely on suspicion of a civil immigration violation.

For officers with arrest authority, determining whether an immigration offense has occurred may be difficult. Immigration law is complex. For example, under 8 USC Section 1325, making an illegal entry into the United States is a misdemeanor absent evidence of a prior illegal entry. However, at least one federal court has indicated that lack of documentation and even an admission of illegal entry may not provide probable cause. Under many state laws, officers can make warrant less arrests for misdemeanors only if committed in the officers' presence. However, some courts have held that an "illegal entry" is not a continuing offense, meaning that unless an officer views the entry or encounters the person very soon after that entry, it probably is not a misdemeanor committed in the officer's presence.

While "border searches" are under a relaxed Fourth Amendment criteria for having suspicion justifying stopping individuals, officers are still required to comply with the applicable law related to constitutional stops of persons. Concerns about racial profiling remain current any time persons in an identifiable ethnic group are stopped by law enforcement.

Cities such as Chandler, Arizona and Katy, Texas have been sued when their local officers became involved in immigration "sweeps" that resulted in United States citizens and legal immigrants being taken into custody under the belief they were present in the country illegally. Given the complexity of immigration law, it is likely that state and local officers could make a

mistaken assessment of one's immigration status, with the predictable lawsuits following on the heels of the actions.

No agency should authorize its state or local officers to engage in any detention or arrest for immigration violations until it has satisfied itself that clear local authority to do so exist. Even if one agrees state and local officers have "inherent authority" to enforce immigration laws, officers must act within the express grants of authority under state and local law. Those officers authorized to do so must conform to requirements of Constitutional and other law, and they must understand clearly what constitutes probable cause to believe a criminal immigration violation has occurred.

#### **9. Congress has specifically authorized local enforcement in a few areas:**

Regardless of one's position on whether state and local officers have "inherent authority" and express local authority to enforce immigration law, there are some specific grants of authority available to state and local officers.

--The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) specifically authorizes—to the extent permitted by "relevant State and local law"—arrest by state and local officers of non-citizens who have committed the federal crime of illegal re-entry and of previously-deported felons (deported or left country after felony conviction). Arresting officers must confirm with immigration authorities the subject's status, and the subject can be held only for such time as it takes for federal authorities to respond and take the person into custody.

--Title 8, United States Code Section 1324(c) allows "all...officers whose duty it is to enforce criminal laws" to make arrests for smuggling, transporting, or harboring criminal aliens.

--Title 8, U.S.C. Section 1103(a) (10) allows the U.S. Attorney General to authorize any State or local law enforcement officer to enforce immigration laws when "an actual or imminent mass influx of aliens..." is occurring. The federal government has entered into an agreement with Florida implementing this provision and providing for training of officers who would be called into service in case of any such declared "influx."

--Title 8, U.S.C. Section 1357(g) sets forth a procedure for entering into a written agreement for immigration enforcement by state and local officers who have received specialized training in immigration law. All such officers work under direction and supervision to some degree of federal immigration officers. Those involved in such agreements include the Florida Department of Law Enforcement, the State of Alabama, the Los Angeles County Sheriff's Department, the Arizona Department of Corrections, and numerous other sheriffs departments. The main focus of many of the recent agreements is on training those involved in the booking process at jails or prisons on how to evaluate prisoners' immigration status, with detainees being lodged to assure the prisoners are taken into federal custody when their state or local detention time expires.

#### **10. The U.S. Supreme Court has recently indicated state and local officers may question criminal suspects and detainees about their immigration status.**

In Muehler v. Mena, 125 S.Ct. 1465 (3/22/2005), the Supreme Court found that questioning regarding the immigration of Mena (who was in handcuffs for several hours during a search of the premises where she resided) during her detention did not violate the Fourth Amendment. The Court indicated, "... (t)he officers did not need reasonable suspicion to ask Mena for her name, date and place of birth, or immigration status." This case should not be interpreted as allowing the random questioning of persons regarding their immigration status. Mena was lawfully detained on other matters when the questioning occurred. She was not independently "seized" solely to allow the immigration questioning.



**11. State and local officers retain the ability to enforce state law violations even if their ability to enforce federal immigration law is restricted or non-existent. Referrals to federal authorities of suspicions may occur.**

Nothing in this review of federal law diminishes the underlying authority of state and local officers to enforce their own jurisdiction's criminal laws. Even if a state or local officer has no authority to arrest for immigration violations, if an independent state violation has occurred, the officer can make an arrest based on state law. If questioning during a detention or arrest based on state or local law violations uncovers suspected immigration violations, the state or local officer can contact federal officers and relay the concerns. Federal officers may respond and, if immigration violations are confirmed, take appropriate federal action.

**Conclusion regarding federal law:**

- State and local officers have the authority under federal law to enforce criminal immigration violations, if they are authorized by local law to make arrests for federal crimes;
- State and local officers may have authority under federal law to enforce civil immigration violations, but there is less support for this proposition than with regard to enforcing criminal immigration violations;
- Federal law does not mandate state and local law enforcement of immigration law. It remains a local policy and political decision.
- State and local law may not grant officers immigration arrest authority. Legal analysis under applicable local law should be done before engaging in any enforcement action. There is no national "rule" or standard. Local law will define and prevail.
- Ultimately, the power to detain is based on the power to arrest.
- NCIC "hits" may be indicating civil violations for which no local arrest authority is provided.
- Immigration "warrants" may be administrative (civil) rather than the traditional Fourth Amendment criminal warrant issued upon probable cause by a detached and neutral magistrate. Reliance upon verification of a "warrant" in NCIC for an immigration offense may not provide a basis for detention or arrest for a criminal violation.
- During the course of an otherwise legitimate detention, officers may inquire about the detainee's immigration status.
- Detention or arrest upon suspected state violations remain options for state and local officers. If immigration violations are developed during the course of an independent state or local law detention or arrest, federal authorities can be contacted so that they can take appropriate federal intervention steps.

**B. Local Restrictions on Immigration Enforcement**

**1. Federal law prohibits state and local laws from restricting the sharing of immigration status information with federal authorities.**

On August 22, 1996, the President signed the Welfare Reform Act into law. Section 434, entitled "Communication between State and Local Government Agencies and the Immigration and Naturalization Service," provides that no state or local government entity may be restricted from exchanging information with the INS regarding the immigration status, lawful or unlawful, of an alien in the United States. The Conference Report accompanying the bill explained: "The conferees intend to give State and local officials the authority to communicate with the INS regarding the presence, whereabouts, or activities of illegal aliens.... The conferees believe that immigration law enforcement is as high a priority as other aspects of Federal law enforcement,

and that illegal aliens do not have the right to remain in the United States undetected and unapprehended.”<sup>17</sup>

On September 30, 1996, the Immigration Reform Act was signed into law. Section 642, entitled “Communication between Government Agencies and the Immigration and the Naturalization Service,” expands Section 434 (above) by prohibiting any government entity or official from restricting any other government entity or official from exchanging information with the INS about the immigration or citizenship status of any individual. It further provides that no governmental agency-federal, state, or local-may be prohibited from: (i) exchanging such information with the INS; (ii) maintaining such information; or (iii) exchanging such information with any other federal, state, or local government entity. The Report of the Senate Judiciary Committee accompanying the Senate Bill explained that 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>18</sup>

The City of New York challenged both laws as being in violation of the Tenth Amendment on the general principle that the federal government cannot directly compel states to perform duties. In *City of New York v. U.S.*, 179 F.3d 29 (2nd CA, 1999), the Court ruled that in the case of Sections 434 and 642, Congress had not compelled state and local governments to enact or administer any federal regulatory program. Nor had it affirmatively conscripted states, localities, or their employees into the federal government's service. The Court found that the New York City executive order was improper in that it prevented voluntary disclosure of immigration information by city employees unless special conditions were met. The city failed to establish a basis for compelling passive resistance to the federal immigration enforcement efforts. The U.S. Supreme Court denied a petition for cert (review) of the 2nd Court of Appeals' decision, thereby letting the opinion stand.

## **2. Locally adopted sanctuary policies are widespread.**

Notwithstanding these federal provisions, throughout the nation, states and local governments have imposed and maintained policies that prohibit their employees from seeking information regarding immigration status. These sanctuary policies effectively prevent a person's citizenship status from becoming known during local law enforcement efforts. Some of these policies are arguably in violation of the federal provisions discussed above. Communities implementing such policies believe they promote the free exchange of important information between members of the community who are not in the country legally and local law enforcement, health, education, and other social service representatives. They fear that if it was known that a person's illegal immigration status would be passed by local authorities to federal immigration officials, that person would not cooperate with local information-gathering efforts such as obtaining witness statements, securing the cooperation of victims, and similar tasks involving the person.

For example, in Los Angeles, Special Order 40 prohibits officers from questioning or apprehending someone only for an immigration violation or from notifying the immigration service (now known as Immigration and Customs Enforcement) about a person who is in the country illegally. Only if the person has been booked for a non-immigration felony or multiple misdemeanors may officers even inquire about immigration status.<sup>19</sup>

According to a 2004 Congressional report, Alaska and Oregon prohibit or restrict state and local officers' involvement in federal immigration enforcement and 31 cities or counties had sanctuary

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<sup>17</sup> H.R. Conf. Rep. No. 104-725, at 383 (1996).

<sup>18</sup> S.Rep. No. 104-249, at 19-20 (1996).

<sup>19</sup> Los Angeles Times, “Sanctuary Laws Stand In Justice's Way” (1/19/2004).

policies.<sup>20</sup> Oregon's sanctuary law says "no law enforcement agency ... of the state of Oregon or any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation is that they are in the United States in violation of federal laws." Since 2004, other states and communities have enacted various sanctuary provisions and policies.

Some communities' sanctuary policies are very broad, such as the one renewed in 2006 in Cambridge, Massachusetts that called for a moratorium on immigration raids by federal authorities pending comprehensive reform, affirmed the human rights of undocumented immigrants, and condemned legislation passed by the US House in December, 2005 that would crack down on illegal immigration.

### **3. Some negative response to sanctuary policies has occurred.**

In some communities, there has been a backlash to sanctuary policies including enactment of at least one state law prohibiting sanctuary policies. In May, 2006, a Colorado law became effective prohibiting Colorado communities from declaring themselves as sanctuaries. It enforces the ban by prohibiting the administration of grants by the Department of Local Affairs to any community with such a ban. The Colorado law also requires police to notify U.S. Immigration and Customs Enforcement if a person arrested for a crime is a suspected illegal immigrant. It requires cities and counties to notify local law enforcement officers in writing of their obligation to comply with the law. The law does not apply to those arrested for minor traffic infractions or for suspicion of domestic violence. It does require notification if the suspect is convicted of domestic violence. Cities and counties must file an annual report regarding how many illegal aliens they report to immigration officials. Failure to report suspected illegal aliens also makes the city or county ineligible for state grants.

### **4. Sanctuary policies are likely to continue until national immigration reform occurs.**

Congressional efforts to strengthen sanctions against communities with sanctuary policies have failed to produce legislation. Despite the fact that some sanctuary policies are likely forbidden by federal law, they remain popular in many communities and are unlikely to be abandoned voluntarily. The end of sanctuary cities is not in sight and until Congress enacts substantial immigration reform there is no clear signal from the federal government as to what its posture on such policies will be. Law enforcement executives must operate within the policies established by state or local governing bodies, and may have to deal with these policies even though they run afoul of federal law and policy.

## **C. Determining the difference between legal immigrants and illegal immigrants is complex and carries with it significant responsibilities.**

### **1. Determining immigration status is not an easy task.**

Local and state law enforcement officers called upon to enforce immigration law face a very complex task. Immigration law is very detailed and complex, with both criminal and civil sanctions, and with one's immigration status not always being easily ascertained. Immigration documents are unusual, and are often counterfeited. One can enter the United States legally, and then by reason of not conforming to visa requirements, or over-staying an authorized visit, become an illegal immigrant. If federal immigration reform includes any form of "amnesty" or "forgiveness" for illegal aliens, determining one's current immigration status will become even

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<sup>20</sup> Congressional Research Service Report, "Enforcing Immigration Law: The Role of State and Local Law Enforcement." (3/11/2004).

more complex. Specialized training is required to equip state and local officers with the basic ability to determine whether persons they have encountered are legal or illegal immigrants.

## **2. Effective training will likely be lengthy, requiring extraordinary commitment of agency resources.**

When the Florida Department of Law Enforcement implemented the nation's first agreement allowing state and local officers to enforce federal immigration provisions (under 8 USC §1357(g)), the state and local officers received six weeks of intense immigration training and were required to successfully complete a major examination testing their comprehension of what they had been trained. Participants in the Florida training characterized immigration law as "more complex than tax law" and indicated the training was as tough as any training the officers had received in their various law enforcement careers. The State of Alabama required similar intensive training of its troopers before they received authorization to enforce immigration law under that state's agreement.

Immigration law does not lend itself to short "roll call" training videos or short-term orientation training. Officers simply cannot comprehend the complex immigration categories, legal provisions and sanctions without intensive training. If officers are to become involved in immigration enforcement, law enforcement administrators must accept the fact that significant time and effort in training—lasting weeks rather than hours or days—will likely be required to assure their officers are equipped with the basics to perform the task assigned to them. Even if the focus of local or state officers is the "booking function," lengthy specialized training regarding how to identify and validate immigration documents will be required.

## **3. Failure to train effectively carries significant ramifications.**

Failure to comprehend immigration law can result in mistakes being made by officers attempting to enforce immigration provisions. These types of mistakes easily can damage the public's perception of law enforcement efforts. Since the mistakes usually mean that persons who are either U.S. citizens or are legal immigrants are subjected to some sort of enforcement action such as detention or arrest, the mistakes will almost always result in lawsuits. The prospect of damages because of negligent training, or the deprivation of civil rights under the color of state law should be enough to give all responsible law enforcement administrators motivation to assure that if immigration enforcement efforts are to be done, the agency's officers are completely and appropriately trained.

## **4. All agencies must conform with "consular notification" obligations whenever any foreign national is detained or arrested—even if agency officers are not engaged in immigration enforcement.**

As a final note, all agencies are reminded that under national law, when a foreign national is detained or arrested—whether under state law or while enforcing immigration provisions—the agency taking such action must determine whether consular notification is mandated or made available to the detained or arrested foreign national as an option. For more information on this obligation that applies to all state and local agencies, consult the U.S. Department of State's web site at: [http://travel.state.gov/law/consular/consular\\_636.html](http://travel.state.gov/law/consular/consular_636.html)

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