

Immigration Issues in Georgia 2008



Submitted by the Georgia Association of Chiefs of Police
Ad Hoc Committee on Immigration

Ad Hoc Committee on Immigration

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Georgia Association of Chiefs of Police
Immigration in Georgia 2008 – Role of the police

Review and Recommendations for Local Law Enforcement Executives

I. Introduction: Formation and Purpose of the Ad Hoc Committee

In response to a growing number of immigration issues facing Georgia Chiefs of Police, in February 2008, Georgia Association of Chiefs of Police President Dwayne Orrick formed an ad hoc committee (“Committee”) to evaluate current issues concerning the impact of immigration on Georgia law enforcement. The Committee was charged with developing recommendations to guide local law enforcement executives as they address immigration-related issues that impact public safety, public health and security in their respective communities.

The Committee reviewed contemporary literature, discussed local Chiefs’ recent experiences, and conducted a workshop forum with a cross section of immigrant community leaders and professionals in order to understand a variety of stakeholder perspectives regarding the impact of immigration. Following is a composite of the committee’s findings and recommendations.

II. Immigrants in the U.S. and Georgia 2008

There are two distinct categories of immigrants; those who have complied with U.S. immigration regulations, i.e., legal immigrants, and those who have not complied and are therefore referred to as unauthorized or illegal immigrants.

An estimated 11.8 million unauthorized immigrants were living in the United States in January 2007 compared to 8.5 million in 2000. Between 2000 and 2007, the unauthorized population increased 3.3 million; the annual average increase during this period was 470,000. An estimated 7.0 million (59 percent) were from Mexico.¹

“Hispanics are the nation’s largest minority group, numbering 47 million (about 15.5% of the total U.S. population). About a quarter of Hispanic adults are unauthorized immigrants.”²

¹ U.S. Department of Homeland Security, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2007*,

http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2007.pdf

² Pew Hispanic Center, *2007 National Survey of Latinos: As Illegal Immigration Issue Heats Up, Hispanics Feel a Chill.*, <http://pewhispanic.org/reports/report.php?ReportID=84>

Mexico is the leading source of unauthorized immigration to the United States. The estimated unauthorized immigrant population from Mexico increased from 4.7 million in 2000 to 7.0 million in January 2007. The average annual increase in Mexican unauthorized immigration to the United States was 330,000 during the period. The next leading source countries for unauthorized immigrants in 2007 were El Salvador (540,000) and Guatemala (500,000).³

The unauthorized immigrant population grew more slowly in the period from 2005 to 2008 than it did earlier in the decade. The inflow of immigrants who are undocumented fell below that of immigrants who are legal permanent residents, reversing a trend that began a decade ago.⁴

Georgia's unauthorized immigrant population was estimated to be 490,000 in January of 2007. While this accounted for only 4% of the total unauthorized resident population in the U.S., it increased by 120% from 220,000 to 490,000 over the 7 year period from 2000 to 2007. The average annual increase in Georgia over the 7 year period was 40,000.⁵ This percentage increase was twice the size as that of the next largest increase.

III. Law Enforcement and Community Challenges

Immigrants, legal and illegal alike, can present a variety of obstacles for law enforcement and the communities where they take up residence. A sudden influx of immigrants into any community has a tremendous impact. Long-time residents can feel that their accustomed way of life is being threatened when unfamiliar foods appear in the markets, and unusual clothing and strange languages appear in public places. Immigrants may have cultural or religious practices that, because they are different, seem out of place or even disruptive. Many people fear that which is different, and fear can lead to hostility.⁶

As the numbers and density of immigrants increases in communities, law enforcement often finds it more difficult to keep the peace due to culture and language barriers. These problems are compounded when dealing with illegal immigrants as they generally have a fear of law enforcement to begin with.

The education level and economic status of the immigrants also plays a large part in how well they fit into the community. Hispanics represent the largest immigrant group in Georgia and 36% of Hispanic workers lack a high school

³ U.S. Department of Homeland Security, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2007*, http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2007.pdf

⁴ Pew Hispanic Center, *Trends in Unauthorized Immigration*, <http://pewhispanic.org/reports/report.php?ReportID=94>

⁵ Ibid. 3

⁶ National Crime Prevention Council, *When Law and Culture Collide*, August 1999

education compared with fewer than 49% of non-Hispanic. Subsequently, the youth and education level of Hispanic workers translates into a concentration in relatively low-skill jobs.⁷

IV. The Role of Local Law Enforcement

Perhaps no law enforcement issue is more contentious, than deciding what role a local law enforcement agency should play in the enforcement of immigration laws and dealing with illegal immigrants.

At the outset, it is important to note that state, tribal and local police are *not required to enforce federal immigration laws*. The federal government and its agencies are the authorities responsible for enforcement of immigration law.⁸

However, given the insurmountable challenges Federal authorities face in controlling illegal immigration, many local communities have become frustrated and are taking matters into their own hands. This can result in demands that their local police department take an active role in eliminating illegal immigration. The State of Georgia and many local governments have also adopted laws specifically aimed at illegal immigrants.

The Committee agrees with 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 their elected officials, community leaders and citizens.⁹

The Committee believes that chiefs need look no further than the Police Officers' Oath of Office and the Law Enforcement Code of Ethics to help with this decision. The Oath of Office affirms in part that "I, _____, do swear that I will faithfully and impartially, and without fear, favor, or affection, discharge my duties..." Given that all Georgia officers have taken an oath to be, among other noble things; impartial, clearly affirms that police officers should treat immigrants like everyone else; no better – no worse – not differently. In another part of the oath, officers generally swear "I will support the Constitution of the United States and the State of Georgia.

⁷ Georgia Hispanic Chamber of Commerce, *Statistics and Information on the Hispanic Population and Market 2007*, <http://www.ghcc.org/Statistics.html>

⁸ IACP, *Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement*, <http://www.theiacp.org/Portals/0/pdfs/Publications/ImmigrationEnforcementconf.pdf>

⁹ Ibid.

The Law Enforcement Code of Ethics states “I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions.” Therefore, considering the Police Officers Oath of Office and Law Enforcement Code of Ethics, the Committee reaches its first set of conclusions and recommendations for Georgia law enforcement executives:

- **The police should not, by policy, affirmation, or practice, outright ignore federal immigration violations or refuse to cooperate with Federal immigration authorities.**

While the police do not have a duty or responsibility to pro-actively enforce Federal immigration laws per se, when they encounter clear cut immigration violations, they should notify appropriate Federal authorities. Police chiefs regularly exercise discretion on law enforcement issues – where to focus attention and to what level – for a variety of reasons.

- **The police should not, by policy, affirmation, or practice, agree to the notion of “sanctuary cities,” i.e., municipalities that affirm they will not support enforcement of immigration laws.**

To agree not to support Federal enforcement authorities clearly contradicts the Police Officer’s Oath of Office. It may also be a violation of federal law as federal law prohibits state and local laws from restricting the sharing of immigration status information with federal authorities. Similarly, Georgia law sets out circumstances in which an individual’s immigration status must be determined and if required forwarded to federal authorities.

- **Regardless of the views of a given local community, Chief of Police, Police Department or individual police officers toward immigration issues; the police should remain fair, impartial and politically neutral in statements and actions toward all immigrants.**
- **The police should pursue and investigate crimes against immigrants with the same vigor and thoroughness as any non-immigrant victim(s).**
- **Efforts taken or funds expended by police chiefs, police departments or police communications centers to enhance bilingual capabilities of employees, should not be considered special accommodations for**

immigrants, but rather measures to enhance public safety and police effectiveness for everyone. Moreover bilingual capabilities appropriate to the population in a given locale are crucial to police officer safety.

Whether during a routine traffic stop, in a high stakes homicide investigation or while answering a 9-1-1 call in a dispatch center, as a law enforcement officer you need to be able to communicate effectively to do your job.

The 2000 Census found that almost 20 percent of U.S. residents speak a language *other* than English at home, and 8 percent qualify as limited English proficient (LEP). For public safety, the challenge of communicating and building trust with these new residents can be immense. As first responders for public safety, law enforcement personnel face a special burden. Police officers cannot perform their duties well when they cannot communicate with the people they serve. When language barriers prevent individuals from reporting a crime or describing a suspect, for example, it becomes that much harder for police to gather evidence or provide protection. Language barriers can even threaten the safety of officers: being unable to communicate with an armed suspect can dangerously exacerbate a life-or-death situation.¹⁰

- **While designing enforcement operations impacting or affecting the immigrant community, Chiefs of Police should ensure that enforcement activities are based only on specific behaviors that are unlawful, detrimental or harmful to the community at large, as opposed to being based upon the national origin or ethnicity of any involved group.**

V. Bias Based Policing

When dealing with immigrants whether legal, illegal or unknown, police chiefs must take steps to prevent the mistakes of the past involving racial profiling. Community demands and pressure to do something about illegal immigration cannot justify focusing on or singling out suspected illegal immigrants. There is a substantial difference between confronting an individual on the street because he/she appears to be an immigrant and determining the ethnicity of an arrestee post arrest in a jail or correctional setting.

¹⁰ Office of Community Oriented Policing Services, USDOJ, *Overcoming Language Barriers*, 2007, http://www.cops.usdoj.gov/files/RIC/Publications/vera_translating_justice_final.pdf

All departments should have a clear and unequivocal departmental policy prohibiting racial profiling and promoting bias-free policing. Such a policy directive should include a clear and unambiguous departmental definition of racial profiling and related terminology. It must also clearly convey that behavior and evidentiary standards – not race or ethnicity – shall guide police stop-and-search decisions. The policy should be sufficiently restrictive so that it prohibits the use of race-motivated pretext stops (stopping a car for a minor traffic violation when the real motive for the stop is the race or ethnicity of the driver).¹¹

Clearly demonstrating intolerance for racial profiling at every turn is critical for limiting acts of racial profiling by individual officers, curbing the community's perceptions of racial profiling, and sustaining trust throughout all segments of a diverse community.¹²

The GACP developed a new SOP for Bias Based Policing in 2007. It is included in the appendix section.

VI. Areas of Concern

In accordance with the recommendation that the police should focus only on specific behaviors rather than an immigrant group itself, the Committee has identified the following behaviors or activities that are often ascribed to immigrant groups in Georgia. While the Committee understands that this is not an all-inclusive list and additional activities may arise in the future, we concur that these are fairly common. Thus, it is our intention to address each activity and provide individual recommendations and guidance for local law enforcement executives:

A. Human Trafficking:

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.¹³

¹¹ IACP, *Protecting Civil Rights, A Leadership Tool for State, Local, and Tribal Law Enforcement*, September 2006

¹² Ibid.

¹³ IACP, *The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation*.

<http://www.theiacp.org/LinkClick.aspx?fileticket=W7b9hV6wn%2bA%3d&tabid=372>

Human trafficking can happen anywhere and police officers should be prepared for the potential of human trafficking in their community. It often presents itself as domestic violence, labor disputes, or prostitution.¹⁴

Ga Code 16-5-46 “Trafficking of persons for labor or sexual servitude” became law on July 1, 2007.

A list of reference materials on the subject is included in the bibliography.

B. Unlicensed Drivers:

Unlicensed driving is illegal and problematic insofar as unlicensed drivers have not proven their competence to drive and observe motor vehicle safety laws. Thus they pose a threat to the motoring public. Moreover, there is a tendency for unlicensed immigrant drivers who become involved in traffic crashes to leave the scene for fear of having their immigration status questioned by authorities. In addition, there is a tendency of unlicensed drivers who are illegal immigrants, failing to appear in court for fear of deportation.

The Georgia Legislature recently passed legislation severely increasing the penalty for driving without a valid Ga. drivers’ license.

C. Day Laborers:

Views related to day laborers vary considerably. Some people view them as valuable resources providing cheap labor that others will not do. Others see them as illegal immigrants and transients who take jobs, commit crimes, and cause community disorder. How communities view day laborers largely depends on how intrusive day-laboring activities become on citizens’ daily lives. Most communities will be ambivalent to day laborers until their presence leads to problems, some criminal and some not.¹⁵

Day labor sites usually form in busy parking lots and near roadways. They can create traffic safety problems to the extent vehicles stop in

¹⁴ IACP, *The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation*.

<http://www.theiacp.org/LinkClick.aspx?fileticket=W7b9hV6wn%2bA%3d&tabid=372>

¹⁵ Office of Community Oriented Policing Services, USDOJ, *Disorder at Day Labor Sites*, October 2006, <http://www.cops.usdoj.gov/files/RIC/Publications/e09061311.pdf>

traffic lanes to pick them up and to the extent that laborers run through traffic to be first to be picked up by potential employers.

A list of reference materials on the subject is included in the appendix.

D. Dwelling Overcrowding:

In a search for low-cost housing, it is common for groups to cram into dwelling units designed for much smaller numbers of occupants. Numerous jurisdictions are approaching this issue with ordinances governing maximum occupancy based upon the size of the dwelling as well as a limit on the number of unrelated occupants. Public health concerns with regard to overwhelmed plumbing systems, transmission of disease in crowded quarters and fire hazards should be referred to the appropriate agency when discovered. Parking problems also arise due to the large number of occupants per dwelling.

Illegal boarding houses can also be a problem and will usually have beds in rooms other than bedrooms, sleeping bags, locks on interior doors and even lists of house rules posted.

E. False Identification and Fraudulent Documents:

The need for false identification by illegal immigrants has led to a substantial criminal enterprise to produce the documents. With the computer technology readily available today, the quality of the false identification can be remarkably good and hard to detect.

DHS, Immigration and Customs Enforcement created Document and Benefit Fraud Task Forces in April 2006, to combat this problem and the organizations involved. Atlanta was among the cities where a task force was initially launched.

F. Demonstrations and Protests:

Demonstrations and protests by groups representing both sides of the illegal immigration issue frequently occur in Georgia. While those demonstrating rarely represent the mainstream views of their purported constituents, demonstrations can give rise to civil disorder and violence. Nevertheless, demonstrators have a constitutional right to demonstrate and the police have a duty to ensure that they are permitted to peacefully do so. Therefore it is important for the police

to remain impartial and avoid being drawn into a situation in which the police become the focal point of any demonstration.

VII. Immigrants as Victims

A. Robbery

Illegal immigrants commonly work for cash but do not use banks for fear of having their immigration status detected. Many also fear leaving their cash at home, so they carry substantial amounts of cash around with them. Meanwhile, the criminal element knows that illegal immigrants carry cash, and if victimized are afraid and unlikely to report it to the police, again for fear of having their illegal status detected. The end result is that there is a high incidence of robbery against illegal immigrants. Depending upon the trust and confidence level they have in local law enforcement, many of these robberies will go unreported.

This is particularly problematic; given that robbers tend to be serial in nature and historically their use of violence escalates over time as they become bolder with each successful robbery.

B. Fraud:

A fraud trend that has surfaced in Georgia concerns unscrupulous insurance companies that sell automobile insurance policies to immigrants who do not have driver's licenses. Immigrants buy the policies so they will be able to register vehicles. The problem develops when the immigrant becomes involved in a traffic accident and the company refuses to pay claims on the basis that the driver was operating the vehicle in violation of the law, i.e., by being an unlicensed driver. The end result is that if the immigrant was at fault in the accident, the victim has no recourse for recovering damages.

When the police uncover such schemes, they should take appropriate enforcement action and notify State Insurance authorities

VIII. Community Perspectives – Key issues in Georgia (from forum)

A. Non- Immigrant Citizens:

Notwithstanding the elements of the business and industrial communities who employ illegal immigrants, non-immigrant

citizens have a general disdain for illegal immigrants, not only for illegally entering the Country, but also for bringing family members who undeservedly consume tax-funded resources for education, health, and transportation. In addition, non-immigrant citizens are frustrated with Federal government inaction with regard to immigration policy and immigration law enforcement.

B. State and Local Government:

State and local government officials are often in a difficult position with regard to illegal immigration. While they must be responsive to anti-immigration sentiment of many of their constituents they must also face the desires of many business and industrial constituents who hire the immigrants.

C. Conflicting Interests:

There were conflicting interests and opinions among the various participants in the forum, particularly on the subject of illegal immigration. The various advocacy groups had strong opinions regarding the positive impact of all immigration and, not surprisingly, would prefer to see no enforcement against illegal immigration. On the other hand, the government and law enforcement officials recognized the rule of law and the requirement to enforce it.

D. Communication:

Communication in all directions was identified as a substantial problem. It was also agreed that the press does not always get it right. The misinformation circulating about immigration enforcement serves to increase the fear among the illegal immigrants. A couple of exaggerated press reports about someone having been arrested and then being held for deportation while in jail fuels the fear of a large immigration roundup in the works.

A number of law enforcement agencies have experienced success in working with the media to foster public understanding and alleviating fear, suspicion and anger in immigrant communities. This is particularly important when undertaking enforcement actions dealing with illegal immigration.

IX. New Immigration Related Legislation in Georgia

A. Senate Bill 529 “Georgia Security and Immigration Compliance Act”

Senate Bill 529 became law on July 1, 2007, and provided the following:

1. A new code section 13-10-91 entitled “Verification of new employee information; applicability; rules and regulations”

This code section requires every public employer to register and participate in the federal work authorization program to verify information on all new employees.

The work authorization program referred to is called E-Verify. Information regarding the program is available on the U.S. Citizenship and Immigration Services web site at www.uscis.gov

2. A new code section 16-5-46 entitled “Trafficking of persons for labor or sexual servitude”

This code section created a state law to deal with Human Trafficking.

3. A new code section 42-4-14 entitled “Determination of nationality of person charged with felony and confined in a jail facility”

This code section created a new state law requiring the keeper of the jail to make a reasonable effort to determine the nationality of any individual jailed for any felony charge, DUI, or convicted of driving without being licensed in violation of subsection (a) of Code Section 40-5-20.

If the prisoner is a foreign national, the keeper of the jail or other officer is required to make a reasonable effort to verify if the individual was lawfully admitted to the United States and if so, that the lawful status has not expired.

If verification of lawful status can not be made from documents in the possession of the prisoner, verification shall be made within 48 hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United

States Department of Homeland Security. If the prisoner is determined not to be lawfully admitted to the United States, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

Information on the Law Enforcement Support Center (LESC) can be found in the appendix section.

4. A change to code section 40-5-121 “Driving while license suspended or revoked”

This code section was modified to substantially increase the penalty for driving without a valid Georgia drivers’ license. It also requires fingerprinting upon conviction of driving without a license.

Second and third violations within a 5 year period are now high and aggravated misdemeanors. Fourth and subsequent convictions within a 5 year period become a felony.

X. Conclusion

It is the Committee’s hope that the information provided in this report will be useful in helping police chiefs determine an appropriate and effective course of action for dealing with immigration issues in their communities. As the numbers continue to increase, it is almost certain that community resistance to illegal immigration will increase and likewise the pressure will increase on local law enforcement to do something about it.

In the appendixes you will find a variety of supplemental information and resources. One of those resources is the IACP document entitled “Police Chiefs Guide to Immigration Issues.” The IACP released this document at the same time that this committee was formed. It is an outstanding source of information on the subject and rather than re-create the wheel we chose to include it as a reference.

One of our greatest resources is our fellow law enforcement executives. Immigration is not a new issue for the country even if it seems to be so for your community. Many of your fellow chiefs have considerable firsthand experience dealing with immigration issues. All of the GACP Immigration Committee members come from jurisdictions with large immigrant populations including large numbers of illegal immigrants. We are more than willing to share our successes. The same goes for our failures so that mistakes are not repeated in other communities.

Bibliography and Resources

A Police Chiefs Guide to Immigration Issues

<http://www.theiacp.org/Portals/0/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf>

Major Cities Chiefs Immigration Position Statement

http://www.majorcitieschiefs.org/pdfpublic/mcc_position_statement_revised_cef.pdf

Enforcing Immigration Law:

The Role of State, Tribal and Local Law Enforcement

<http://www.theiacp.org/Portals/0/pdfs/Publications/ImmigrationEnforcementconf.pdf>

Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement

<http://www.cops.usdoj.gov/files/RIC/Publications/e06064100.pdf>

(Available as a book or on line)

Racially Biased Policing: A Principled Response

<http://www.cops.usdoj.gov/files/RIC/Publications/RaciallyBiasedPolicing.pdf>

(Available as a book or on line)

The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation.

<http://www.theiacp.org/LinkClick.aspx?fileticket=W7b9hV6wn%2bA%3d&tabid=372>

(Available as a pamphlet or on line)

The Exploitation of Trafficked Women

<http://www.cops.usdoj.gov/files/RIC/Publications/e02061007.pdf>

(Available as a pamphlet or on line)

Overcoming Language Barriers: Solutions for Law Enforcement

http://www.cops.usdoj.gov/files/RIC/Publications/vera_translating_justice_final.pdf

(Available as a pamphlet or on line)

Protecting your Community from Terrorism Volume 2, Working with Diverse Communities

http://www.cops.usdoj.gov/files/RIC/Publications/protect_comm_terror_v2.pdf

(Available as a pamphlet or on line)

Disorder at Day Laborer Sites

<http://www.cops.usdoj.gov/files/RIC/Publications/e09061311.pdf>

(Available as a pamphlet or on line)

When Law and Culture Collide

National Crime Prevention Council. 2005

Appendixes

Appendix A	IACP Police Chiefs Guide to Immigration Issues
Appendix B	Major City Chiefs Immigration Committee Recommendations for Enforcement of Immigration Laws By Local Police Agencies
Appendix C	GACP Sample SOP for Bias Based Policing
Appendix D	Ga Code 13-10-91 Verification of new employee information
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Appendix K	ICE Human Trafficking and Smuggling Fact Sheet
Appendix L	ICE Criminal Alien Program Fact Sheet

APPENDIX A



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:

<u>Alien</u>	A person who is not a national or citizen of the United States.
<u>Alien Absconders</u>	A fugitive remaining in the United States after an immigration judge has ordered them deported.
<u>Citizen</u>	A native or naturalized person who owes allegiance to a government and is entitled to protection from it.
<u>Criminal Alien</u>	Aliens who have committed crimes that make them eligible to be removed from the United States.
<u>Foreign National</u>	A person who is not a Canadian citizen or permanent United States resident.
<u>Illegal Alien</u>	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).
<u>Undocumented Immigrant</u>	Any person of another country who has entered or remained in the United States without permission and without legal status.
<u>Immigrant</u>	Any person who is residing in the United States as a legally recognized and lawfully recorded permanent resident.
<u>Sanctuary Cities</u>	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.
<u>Xenophobia</u>	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 21st 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.¹

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.²

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:

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

² 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.³ 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

³ 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.⁴ 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.

⁴ 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 2002.⁵ 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.

⁵ 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.⁶

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.

⁶ 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.⁷ 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.⁸

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.

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

⁸ 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.

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.⁹

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

⁹ "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). 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 (9th CA, 1983), overruled in part on other grounds, Hodgers-Durgin v. De La Vina, 199 F.3d 1037 (9th Cir. 1999). The other, the 10th 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 (10th CA, 2001) and U.S. v. Salinas Calderon, 728 F.2d 1298 (10th 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."¹⁰ 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 misdemeanor¹¹ and asserts the case has limited applicability to immigration considerations.¹²

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

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

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

¹² 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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶ 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

¹³ 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.

¹⁴ ¹⁴ 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.

¹⁵ “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.

¹⁶ 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.”¹⁷

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.”¹⁸

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.¹⁹

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

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

¹⁸ S.Rep. No. 104-249, at 19-20 (1996).

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

policies.²⁰ 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

²⁰ 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

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APPENDIX B

M.C.C. IMMIGRATION COMMITTEE RECOMMENDATIONS

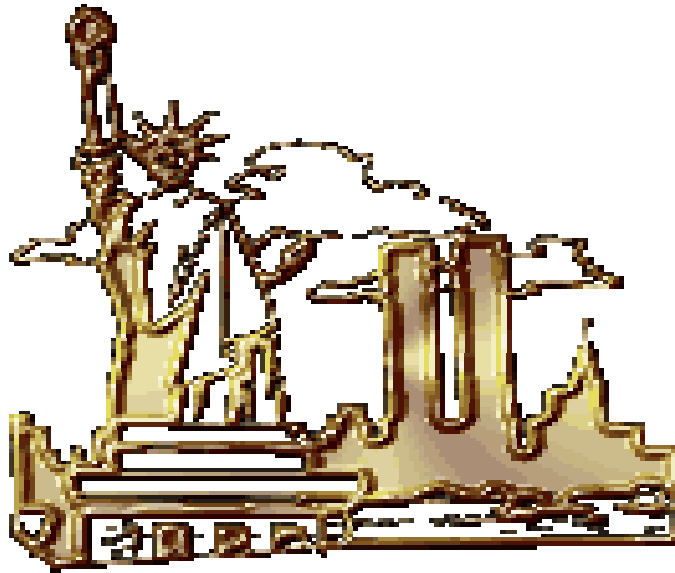
**For Enforcement of
Immigration Laws By Local
Police Agencies**



**Adopted by:
Major Cities Chiefs
June 2006**

Prepared By:

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M.C.C. NINE (9) POINT POSITION **STATEMENT**

ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES

A. STATEMENT OF ISSUE

Illegal immigration is a problem that faces our nation and society as a whole and one, which must be dealt with at the national level. It is absolutely critical that our country develop a consistent unified national plan to deal with immigration and this plan must include the critical component of securing our borders to prevent illegal entry into the United States.

Since the horrendous attacks of September 11, 2001, local law enforcement has been called upon to do its part in protecting the nation from future terrorist attacks. The response of local law enforcement to the call to protect the homeland has been tremendous. Today, local police agencies stand as the first line of defense here at home to prevent future attacks. Local law enforcement's unending efforts include providing additional training and equipment to officers, increasing communication and coordination with federal agencies, gathering, assessing and sharing intelligence, modifying patrol methods and increasing security for potential targets such as power plants, airports, monuments, ports and other critical facilities and infrastructure. Much of these efforts have been at a high cost to local budgets and resources.

The federal government and others have also called upon local police agencies to become involved in the enforcement of federal immigration laws as part of the effort to protect the nation. This issue has been a topic of great debate in the law enforcement community since September 11. The call for local enforcement of federal immigration laws has become more prominent during the debate over proposed immigration reform at the national level.

Major city police departments have a long undeniable history of working with federal law enforcement agencies to address crime in the United States whether committed by citizens, visitors, and/or illegal immigrants. Local police agencies have not turned a blind eye to crimes related to illegal immigration. They have and continue to work daily with federal agencies whenever possible and to the extent allowable under state criminal law enforcement authority to address crimes such as human trafficking and gang violence which have a nexus with illegal immigration.

How local agencies respond to the call to enforce immigration laws could fundamentally change the way they police and serve their communities. Local enforcement of federal immigration laws raises many daunting and complex legal, logistical and resource issues for local agencies and the diverse communities they serve. Some in local law enforcement would embrace

immigration enforcement as a means of addressing the violation of law represented by illegal immigration across our borders. Many others recognize the obstacles, pitfalls, dangers and negative consequences to local policing that would be caused by immigration enforcement at the local level.

It is important for Major Cities Chiefs [M.C.C.] as a leader and representative of the local law enforcement community develop consensus on this important subject. The purpose of this position statement is to evaluate and address the impact and potential consequences of local enforcement of federal immigration laws and highlight steps, which if taken might allow local agencies to become involved in immigration enforcement. It is hoped that this statement will help to draw attention to the concerns of local law enforcement and provide a basis upon which to discuss and shape any future national policy on this issue. In this regard it is absolutely critical that M.C.C. be involved in all phases of this debate from developing this official position statement to demanding input and involvement in the development of any national initiatives.

B. OVERVIEW OF IMMIGRATION AND IMMIGRANT STATUS

The federal government has the clear authority and responsibility over immigration and the enforcement of immigration laws. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act (INA), that regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration. The federal government has given federal agencies such as Immigration and Customs Enforcement [I.C.E.] the specific authority to investigate a person's immigration status and deport individuals who have no legal status or authority to be in the United States.

Under the current immigration laws there exists various immigration status classifications. The immigration status of any particular person can vary greatly. The most common status classifications include the following:

- 1) **Legal Immigrants** are citizens of other countries who have been granted a visa that allows them to live and work permanently in the United States and to become naturalized U.S. citizens. Once here, they receive a card, commonly referred to as a "green card" from the federal government indicating they are permanent residents. Some legal immigrants are refugees who fear persecution based on race, religion, nationality, membership in a particular social group, or political opinion in their home countries. Refugees are resettled every year in the United States after their requests for asylum have been reviewed and granted.
- 2) **Nonimmigrant Visa Holders** are persons who are granted temporary entry into the United States for a specific purpose, such as visiting, working, or studying. The U.S. has 25 types of nonimmigrant visas, including A1 visas for ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the U.S. to work under NAFTA. Visa Holders are allowed to stay in the U.S. as long as they meet the terms of their status.

- 3) **Illegal Immigrants** are citizens of other countries who have entered or remained in the U.S. without permission and without any legal status. Most illegal immigrants cross a land or sea border without being inspected by an immigration officer. Some person falls into illegal status simply by violating the terms of a legal entry document or visa.
- 4) **Absconders** are persons who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States.

Currently there are between 8-12 million illegal immigrants living in the U.S., with another estimated 800,000 illegal immigrants entering the country every year. These immigrants by their sheer numbers have become a significant part of local communities and major cities in our nation. Some major urban areas estimate that their immigrant communities, regardless of immigration status, comprise 50%-60% of the local population and other areas report similar trends. The reality for major local police agencies throughout the nation is that the communities they serve and protect are diverse and include significant immigrant communities including documented and undocumented immigrants.

C. CONCERNS WITH LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS

Local police agencies must balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities, while taking into account: limited resources; the complexity of immigration laws; limitations on authority to enforce; risk of civil liability for immigration enforcement activities and the clear need to foster the trust and cooperation from the public including members of immigrant communities.

1) Undermine Trust and Cooperation of Immigrant Communities

Major urban areas throughout the nation are comprised of significant immigrant communities. In some areas the immigrant community reaches 50-60 percent of the local population. Local agencies are charged with protecting these diverse populations with communities of both legal and illegal immigrants. The reality is that undocumented immigrants are a significant part of the local populations major police agencies must protect, serve and police.

Local agencies have worked very hard to build trust and a spirit of cooperation with immigrant groups through community based policing and outreach programs and specialized officers who work with immigrant groups. Local agencies have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant, whether documented or undocumented, is the victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety, and security in the whole community. Local

police contacts in immigrant communities are important as well in the area of intelligence gathering to prevent future terroristic attacks and strengthen homeland security.

Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that they will be deported or subjected to an immigration status investigation, then they will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.

2) Lack of Resources

The budgets and resources of local police agencies are not unlimited. Local police agencies struggle every year to find the resources to police and serve their respective communities. Since the events of September 11, local agencies have taken on the added duty of serving as the first line of defense and response to terrorist attacks for our country. These efforts on the local level to deter and prevent another terrorist attack and to be prepared to respond to the aftermath of an attack have stretched local resources even further. Since the creation of the Homeland Security Department, federal funding for major city police departments has been greatly reduced. Local agencies have also had to take on more responsibilities in areas that have traditionally been handled by the F.B.I. whose investigative resources are now more focused on counter-terrorism efforts. Local agencies are forced to fill the gap left by the shift of federal resources away from investigating white-collar crimes and bank robberies; areas traditionally handled by federal agencies.

Enforcement of federal immigration laws would be a burden that most major police agencies would not be able to bear under current resource levels. The cost in terms of personnel, facilities and equipment necessary for local agencies to address the 8-12 million illegal immigrants currently living in the United States would be overwhelming. The federal government which has primary authority to enforce immigration laws has itself failed to provide the tremendous amount of resources necessary to accomplish such enforcement to its own agencies specifically charged with that responsibility. Local communities and agencies have even fewer resources to devote to such an effort than the federal government given all the numerous other demands on local police departments.

Local police agencies must meet their existing policing and homeland security duties and can not even begin to consider taking on the added burden of immigration enforcement until federal assistance and funding are in place to support such enforcement. Current calls for local police agencies to enforce immigration come with no clear statement or guarantee to provide

adequate federal funding. Local agencies also fear that the call for local enforcement of immigration laws signals the beginning of a trend towards local police agencies being asked to enter other areas of federal regulation or enforcement.

3) Complexity of Federal Immigration Law

Federal immigration laws are extremely complicated in that they involve both civil and criminal aspects. The federal government and its designated agencies such as I.C.E. and the Department of Justice have clear authority and responsibility to regulate and enforce immigration laws. It is these federal agencies who have the authority to determine if a person will be criminally prosecuted for their violations of immigration laws or be dealt with through a civil deportation process. Based on their authority, training, experience and resources available to them, these federal agencies and the federal courts are in the best position to determine whether or not a person has entered or remained in the country in violation of federal regulations and the applicability of criminal sanctions.

Immigration violations are different from the typical criminal offenses that patrol officers face every day on their local beats. The law enforcement activities of local police officers revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters they handle on a regular basis. The specific immigration status of any particular person can vary greatly and whether they are in fact in violation of the complex federal immigration regulations would be very difficult if not almost impossible for the average patrol officer to determine. At this time local police agencies are ill equipped in terms of training, experience and resources to delve into the complicated area of immigration enforcement.

4) Lack of Local Authority and State Law Limitations of Authority

The federal government has clear authority over immigration and immigration enforcement. Federal law does not require the states or local police agencies to enforce immigration laws nor does it give the states or local agencies the clear authority to act in the area of immigration.

Laws in their respective states define the authority of local police officers. The authority of local police officers to act to enforce against criminal acts is clear and well established. However, federal immigration laws include both civil and criminal process to address immigration violations. It is within the authority of federal agencies such as I.C.E. and the Department of Justice to determine if an immigration violation will be dealt with as a criminal matter or through a civil process. Given the complexity of the immigration laws, it would be difficult for local police agencies to determine if a particular violation would result in criminal charges or purely civil proceedings and regulation. This duality in immigration law creates a gap in authority for local police officers who generally are limited to acting only in criminal matters.

In addition state laws may restrict a local police officer's authority to act even in criminal matters in such a way that it would prevent or hinder the officer's ability to investigate, arrest or detain a person for immigration violations alone. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police

officers may be constrained by local laws that deal with their general police powers such as the ability to arrest without a warrant, lengths of detention and prohibitions against racial profiling.

An example of this conflict between the civil nature of immigration enforcement and the established criminal authority of local police exists in the federal initiative of placing civil immigration detainer notices on the N.C.I.C. system. The N.C.I.C. system had previously only been used to notify law enforcement of strictly criminal warrants and/or criminal matters. The civil detainees being placed on this system by federal agencies notify local officers that the detainees are civil in nature by including a warning that local officers should not act upon the detainees unless permitted by the laws of their state. This initiative has created confusion due to the fact that these civil detainees do not fall within the clear criminal enforcement authority of local police agencies and in fact lays a trap for unwary officers who believe them to be valid criminal warrants or detainees.

5) Risk of Civil Liability

In the past, local law enforcement agencies have faced civil litigation and liability for their involvement in immigration enforcement. For example, the Katy, Texas Police Department participated in an immigration raid with federal agents in 1994. A total of 80 individuals who were detained by the police were later determined to be either citizens or legal immigrants with permission to be in the country. The Katy police department faced suits from these individuals and eventually settled their claims out of court.

Because local agencies currently lack clear authority to enforce immigration laws, are limited in their ability to arrest without a warrant, are prohibited from racial profiling and lack the training and experience to enforce complex federal immigration laws, it is more likely that local police agencies will face the risk of civil liability and litigation if they chose to enforce federal immigration laws.

D. M.C.C. NINE (9) POINT POSITION STATEMENT

Based upon a review, evaluation and deliberation regarding the important and complex issue of local enforcement of federal immigration laws, the members of M.C.C., who are the 57 Chief Executive Officers of police departments located within a metropolitan area of more than 1.5 million population and which employs more than 1,000 law enforcement officers, hereby set forth our consensus position statement, which is comprised of nine crucial components.

1) SECURE THE BORDERS

Illegal immigration is a national issue and the federal government should first act to secure the national borders to prevent illegal entry into the United States. We support further and adequate funding of the federal agencies responsible for border security and immigration enforcement so they can accomplish this goal. We also support consideration of all possible solutions including construction of border fences where appropriate, use of surveillance technologies and increases in the number of border patrol agents. Only when the federal government takes the necessary steps to close the revolving door that exists at our national borders will it be possible for local police agencies to even begin to consider dedicating limited local resources to immigration enforcement.

2) ENFORCE LAWS PROHIBITING THE HIRING OF ILLEGAL IMMIGRANTS

The federal government and its agencies should vigorously enforce existing immigration laws prohibiting employers from hiring illegal immigrants. Enforcement and prosecution of employers who illegally seek out and hire undocumented immigrants or turn a blind eye to the undocumented status of their employees will help to eliminate one of the major incentives for illegal immigration.

3) CONSULT AND INVOLVE LOCAL POLICE AGENCIES IN DECISION MAKING

Major Cities Chiefs and other representatives of the local law enforcement community such as the International Association of Chiefs of Police and local district attorneys and prosecutors should be consulted and brought in at the beginning of any process to develop a national initiative to involve local police agencies in the enforcement of federal immigration laws. The inclusion of local law enforcement at every level of development would utilize their perspective and experience in local policing, address their concerns and likely result in a better program that would be more effectively implemented.

4) COMPLETELY VOLUNTARY

Any initiative to involve local police agencies in the enforcement of immigration laws should be completely voluntary. The decisions related to how local law enforcement agencies allocate their resources, direct their workforce and define the duties of their employees to best serve and protect their communities should be left in the control of state and local governments. The decision to enter this area of enforcement should be left to the local government and not mandated or forced upon them by the federal government through the threat of sanctions or the withholding of existing police assistance funding.

5) INCENTIVE BASED APPROACH WITH FULL FEDERAL FUNDING

Any initiative to involve local police agencies in the enforcement of immigration laws should be an incentive based approach with full federal funding to provide the necessary resources to the local agencies that choose to enforce immigration laws. Federal funds should be available to participating local agencies to cover the costs associated with enforcement such as expenditures on equipment and technology, training and educational programs and costs of housing, caring for and transporting immigrants prior to their release to federal authorities.

6) NO REDUCTION OR SHIFTING OF CURRENT ASSISTANCE FUNDING

The funding of any initiative to involve local police agencies in the enforcement of immigration laws should not be at the detriment or reduction directly or indirectly of any current federal funding or programs focused on assisting local police agencies with local policing or homeland security activities. Local police agencies are currently working on strained budgets and limited resources to meet local policing needs and strengthening homeland security and in fact need increased funding and grant assistance in these areas. Merely shifting or diverting federal funding currently available for local policing and homeland security activities to any new immigration enforcement initiative would only result in a detrimental net loss of total resources available to local police agencies to police their neighborhoods and strengthen homeland security.

7) CLARIFICATION OF AUTHORITY AND LIMITATION OF LIABILITY

The authority of local police agencies and their officers to become involved in the enforcement of immigration laws should be clearly stated and defined. The statement of authority should also establish liability protection and an immunity shield for police officers and police agencies that take part in immigration enforcement as authorized by clear federal legislation.

8) REMOVAL OF CIVIL IMMIGRATION DETAINEES FROM THE N.C.I.C. SYSTEM

Until the borders are secured and vigorous enforcement against employers who hire illegal immigrants has taken place and the concerns regarding lack of authority and confusion over the authority of local agencies to enforce immigration laws and the risk of civil liabilities are adequately addressed, M.C.C. strongly requests that the federal agencies cease placing civil immigration detainees on N.C.I.C. and remove any existing civil detainees currently on the system. The integrity of the system as a notice system for criminal warrants and/or criminal matters must be maintained. The inclusion of civil detainees on the system has created confusion for local police agencies and subjected them to possible liability for exceeding their authority by arresting a person upon the basis of a mere civil detainee.

M.C.C. would encourage the federal agencies to seek federal criminal warrants for any person they have charged criminally with violations of immigration laws and submit those criminal warrants on the N.C.I.C. system so the warrants can be acted upon by local police officers within their established criminal enforcement authority and training.

9) COMMITMENT OF CONTINUED ENFORCEMENT AGAINST CRIMINAL VIOLATORS REGARDLESS OF IMMIGRATION STATUS

M.C.C. member agencies are united in their commitment to continue arresting anyone who violates the criminal laws of their jurisdictions regardless of the immigration status of the perpetrator. Those immigrants, documented and/or undocumented, who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of the law within any major city but will instead face the full force of criminal prosecution.

APPENDIX C



GEORGIA ASSOCIATION OF CHIEFS OF POLICE
SAMPLE LAW ENFORCEMENT OPERATIONS MANUAL

S.O.P. 20-1 BIAS BASED POLICING (NEW 2007)

I. PURPOSE

The purpose of this policy is to prohibit the use of race, ethnicity, gender, or national origin as a reason to restrict liberty, or exercise any other police power upon an individual, except in those cases where one of the classifications above is a descriptive factor concerning a suspect.

II. POLICY

The policy of this department is to respect the rights of all persons who officers come into contact with during any law enforcement operation.

III. DEFINITIONS

A. Biased-Based Policing-using race, ethnicity, gender or national origin as a reason to restrict a person's liberty where race, ethnicity, gender or national origin is not a descriptive factor relating to a suspected criminal event.

IV. PROCEDURE

A. All contacts made by members of this agency with any person must meet the requirements of the United States and Georgia Constitutions.

B. Preventing Perception of Bias

1. Officers should act with courtesy and professionalism on all stops and contacts. At the outset of a contact, where feasible, officers should introduce themselves and inform the person of the reason for the stop. This introduction is not required where the introduction would compromise the safety of the officer or any other person.

2. Officers should continue the contact for only that time which is necessary to meet the objectives of that which justified the stop to begin with. i.e. if the stop is for a traffic violation, officers should not prolong the stop beyond the time it takes to write a citation. Where reasonable delays occur, the officer should keep the person informed of the reason for the delay.

3. Officers should answer questions posed by the persons stopped to the extent that is possible.

4. Provide his or her name and identification number when requested.
- C. Complaints regarding bias: All complaints regarding bias, as defined by this policy shall be handled in accordance with the Citizen Complaints and Administrative Investigations Policy of this agency.
 - D. The agency shall conduct training for all personnel on this policy.

APPENDIX D

13-10-91. Verification of new employee information; applicability; rules and regulations.

(a) On or after July 1, 2007, every public employer shall register and participate in the federal work authorization program to verify information of all new employees.

(b) (1) No public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the federal work authorization program to verify information of all new employees.

(2) No contractor or subcontractor who enters a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all new employees.

(3) Paragraphs (1) and (2) of this subsection shall apply as follows:

(A) On or after July 1, 2007, with respect to public employers, contractors, or subcontractors of 500 or more employees;

(B) On or after July 1, 2008, with respect to public employers, contractors, or subcontractors of 100 or more employees; and

(C) On or after July 1, 2009, with respect to all public employers, contractors, or subcontractors.

(c) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Except as provided in subsection (e) of this Code section, the Commissioner shall prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section and publish such rules and regulations on the Georgia Department of Labor's website.

(e) The commissioner of the Georgia Department of Transportation shall prescribe all forms and promulgate rules and regulations deemed necessary for the application of this Code section to any contract or agreement relating to public transportation and shall publish such rules and regulations on the Georgia Department of Transportation's website.

(Code 1981, § 13-10-91, enacted by Ga. L. 2006, p. 105, § 2/SB 529.)

APPENDIX E

16-5-46. Trafficking of persons for labor or sexual servitude.

(a) As used in this Code section, the term:

(1) "Coercion" means:

(A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person;

(B) Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule;

(C) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or

(D) Providing a controlled substance, as such term is defined by Code Section 16-13-21, to such person.

(2) "Deception" means:

(A) Creating or confirming another's impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt; or

(C) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this Code section.

(3) "Labor servitude" means work or service of economic or financial value which is performed or provided by another person and is induced or obtained by coercion or deception.

(4) "Sexual servitude" means:

(A) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code Section 16-12-100 for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which

conduct is induced or obtained from a person under the age of 18 years; or

(B) Any sexually explicit conduct as defined in paragraph (4) of subsection (a) of Code Section 16-12-100 which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

(b) A person commits the offense of trafficking a person for labor servitude when that person knowingly subjects or maintains another in labor servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of labor servitude.

(c) A person commits the offense of trafficking a person for sexual servitude when that person knowingly subjects or maintains another in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude.

(d) Any person who commits the offense of trafficking a person for labor or sexual servitude shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years. Any person who commits the offense of trafficking a person for labor or sexual servitude against a person who is under the age of 18 years shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than ten nor more than 20 years.

(e) Prosecuting attorneys and the Attorney General shall have concurrent authority to prosecute any criminal cases arising under the provisions of this Code section and to perform any duty that necessarily appertains thereto.

(f) Each violation of this Code section shall constitute a separate offense and shall not merge with any other offense.

(g) A corporation may be prosecuted under this Code section for an act or omission constituting a crime under this Code section only if an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of his or her employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

(Code 1981, § 16-5-46, enacted by Ga. L. 2006, p. 105, § 3/SB 529.)

Effective date. - This Code section became effective July 1, 2007.

APPENDIX F

42-4-14. Determination of nationality of person charged with felony and confined in a jail facility.

(a) When any person charged with a felony or with driving under the influence pursuant to Code Section 40-6-391 or convicted of driving without being licensed in violation of subsection (a) of Code Section 40-5-20 is confined, for any period, in the jail of the county, any municipality or a jail operated by a regional jail authority, a reasonable effort shall be made to determine the nationality of the person so confined.

(b) If the prisoner is a foreign national, the keeper of the jail or other officer shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and if lawfully admitted, that such lawful status has not expired. If verification of lawful status can not be made from documents in the possession of the prisoner, verification shall be made within 48 hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the prisoner is determined not to be lawfully admitted to the United States, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

(c) Nothing in this Code section shall be construed to deny a person bond or from being released from confinement when such person is otherwise eligible for release.

(d) The Georgia Sheriffs Association shall prepare and issue guidelines and procedures used to comply with the provisions of this Code section.

(Code 1981, § 42-4-14, enacted by Ga. L. 2006, p. 105, § 5/SB 529; Ga. L. 2008, p. 1137, § 4/SB 350.)

Effective date. - This Code section became effective July 1, 2007.

APPENDIX G

40-5-121. Driving while license suspended or revoked.

(a) Except when a license has been revoked under Code Section 40-5-58 as a habitual violator, any person who drives a motor vehicle on any public highway of this state without being licensed as required by subsection (a) of Code Section 40-5-20 or at a time when his or her privilege to so drive is suspended, disqualified, or revoked shall be guilty of a misdemeanor for a first conviction thereof and, upon a first conviction thereof or plea of nolo contendere within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall be fingerprinted and shall be punished by imprisonment for not less than two days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than \$500.00 nor more than \$1,000.00; provided, however, that at the time of the hearing such person shall not be guilty of such offense if he or she presents the court with proof of a valid driver's license issued by this state. Such fingerprints, taken upon conviction, shall be forwarded to the Georgia Crime Information Center where an identification number shall be assigned to the individual for the purpose of tracking any future violations by the same offender. For the second and third conviction within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, such person shall be guilty of a high and aggravated misdemeanor and shall be punished by imprisonment for not less than ten days nor more than 12 months, and there may be imposed in addition thereto a fine of not less than \$1,000.00 nor more than \$2,500.00. For the fourth or subsequent conviction within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, such person shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, and there may be imposed in addition thereto a fine of not less than \$2,500.00 nor more than \$5,000.00.

(b) The department, upon receiving a record of the conviction of any person under this Code section upon a charge of driving a vehicle while the license of such person was suspended, disqualified, or revoked, including suspensions under subsection (f) of Code Section 40-5-75, shall extend the period of suspension or disqualification for six months. The court shall be required to confiscate the license, if applicable, and attach it to the uniform citation and forward it to the department within ten days of conviction. The period of suspension or disqualification provided for in this Code section shall begin on the date the person is convicted of violating this Code section.

(c) For purposes of pleading nolo contendere, only one nolo contendere plea will be accepted to a charge of driving without being licensed or with a suspended or disqualified

license within a five-year period as measured from date of arrest to date of arrest. All other nolo contendere pleas in this period will be considered convictions. For the purpose of imposing a sentence under this subsection, a plea of nolo contendere shall constitute a conviction. There shall be no limited driving permit available for a suspension or disqualification under this Code section.

(d) Notwithstanding the limits set forth in Code Section 40-5-124 and in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishment for a misdemeanor or misdemeanor of a high and aggravated nature as applicable and provided for in this Code section upon a conviction of a nonfelony charge of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section.

(Code 1933, § 68B-402, enacted by Ga. L. 1975, p. 1008, § 1; Ga. L. 1979, p. 1049, § 1; Ga. L. 1983, p. 1000, § 10; Ga. L. 1984, p. 22, § 40; Ga. L. 1988, p. 897, § 5; Ga. L. 1989, p. 350, § 1; Ga. L. 1989, p. 519, § 15; Ga. L. 1990, p. 2048, § 4; Ga. L. 1991, p. 1886, § 5; Ga. L. 1992, p. 1128, § 1; Ga. L. 1999, p. 391, § 6; Ga. L. 2000, p. 951, § 5-49; Ga. L. 2004, p. 631, § 40; Ga. L. 2006, p. 449, § 12/HB 1253; Ga. L. 2008, p. 1137, § 3/SB 350.)

APPENDIX H



U.S. Immigration
and Customs
Enforcement

FACT SHEET

November 19, 2008

Law Enforcement Support Center

The Law Enforcement Support Center (LESC) is a national enforcement operations facility administered by U.S. Immigration and Customs Enforcement (ICE), the largest investigative agency in the Department of Homeland Security (DHS). LESG is a single national point of contact that provides timely customs information and immigration status and identity information and real-time assistance to local, state and federal law enforcement agencies on aliens suspected, arrested or convicted of criminal activity.

Located in Williston, Vt., LESG operates 24 hours a day, 7 days a week, 365 days a year. The primary users of LESG are state and local law enforcement officers seeking information about aliens encountered in the course of their daily enforcement activities.

LESC also receives queries from federal, state and local correctional and court systems seeking information about individuals in custody or encountered elsewhere in the criminal justice system. Law enforcement officers have immediate access to alien records entered with the National Crime Information Center (NCIC) and immigration information from every alien file maintained by DHS—approximately 100 million records—by using the formatted Immigration Alien Query (IAQ) screen incorporated within each state's law enforcement communications system.

LESC Services

In addition to providing immigration and identity information on suspected criminal aliens, LESG offers other vital services, including:

- **National Crime Information Center (NCIC)**—LESC administers and controls all ICE criminal and administrative records in this nationwide law enforcement consortium and criminal database. There are now over 250,000 ICE records in NCIC.
- **Communications Center**—LESC operates a communications center that provides NCIC Hit Confirmations (within 10 minutes) to law enforcement agencies 24 hours a day, 7 days a week. In addition, the command center agents and officers place immigration detainers on aliens wanted by ICE. The command center also provides assistance on immigration alien queries, instant immigration status checks for ICE Officers, and answers the dedicated law enforcement phone lines. Other services provided by the command center include contacting ICE duty agents for ICE field responses, and handles ICEPIC/LEISS requests for information. A public affairs unit is also available to handle media calls during normal business hours.
- **Special Response Tasks**—LESC is the central point of contact for a number of special information requests. For example, LESG conducts “Brady checks” for the FBI's National Instant Criminal Background Check System (NICS), screening the immigration status of foreign-born, non-citizen firearm permit applicants before authorizing purchase or possession of a weapon. Since March 2003, LESG has performed 338,404 Brady checks for the FBI. LESG also provides daily assistance to the

U.S. Secret Service by assisting in the screening of persons seeking to visit or work on the White House grounds. LESC has helped USSS screen 253,358 individuals over the last six fiscal years.

- **Law Enforcement Training**—To help the law enforcement community make better use of information LESC provides, the center offers an on-site training and outreach program that provides instruction on how to access LESC information and on ICE's role and responsibilities. ICE 287(g) training includes an LESC training module presented by an LESC officer.
- **ICE Tip Line, 1-866-DHS-2ICE**—LESC maintains an around-the-clock toll-free tip line for the public to report suspicious activity to ICE. Tip line callers provide information concerning a broad array of ICE investigative interests, including criminal and administrative immigration violations, child pornography, sex tourism, commercial and intellectual property crimes, contraband, smuggling, financial crimes, human trafficking/smuggling, identity and benefits fraud, and national security threats.

Significant Accomplishments for FY 2008

- The number of requests for information sent to LESC increased from 4,000 in FY 1996 to 807,106 in FY 2008, setting a new record for assistance to other law enforcement agencies.
- During FY 2008, special agents at LESC placed 16,423 detainees on foreign nationals wanted by ICE for criminal and immigration violations.
- The records of more than 250,000 previously deported aggravated felons, immigration fugitives and wanted criminals are now in the NCIC system.
- Special agents at LESC confirmed 8,440 NCIC hits during FY 2008.

Some LESC accomplishments since DHS and ICE were created in March 2003 include:

- Over the past six fiscal years, LESC has responded to a combined total of 4,135,104 electronic queries.
- In FY 2008, queries were received from nearly 12,000 distinct ORIs (electronic addresses) representing law enforcement agencies in all 50 states, the District of Columbia, two U.S. Territories and Canada.
- Since November 2004, LESC has received 637,081 telephone calls on its dedicated law enforcement lines from law enforcement officers around the country seeking ICE information or assistance.
- The ICE special agents assigned to LESC have lodged 79,450 ICE immigration detainees against criminal and wanted aliens over the last five fiscal years. Of those, 36,969 detainees were placed on criminals or fugitives who were NCIC hits.
- LESC has received more than 534,000 calls on the ICE tip-line, 1-866-DHS-2ICE, since October 2003.
- Viable leads are sent electronically to ICE field offices for action or investigation within 24 to 48 hours of the call.

ICE

U.S. Immigration and Customs Enforcement (ICE) was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of five integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities.

APPENDIX I

ICE ACCESS

Fact Sheet

ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) provides local law enforcement agencies an opportunity to team with ICE to combat specific challenges in their communities. ICE developed the ACCESS program based on experience gained in responding to widespread interest from state and local law enforcement agencies in the Delegation of Immigration Authority—287(g) program. ICE ACCESS coordinates an umbrella of services and programs.

ICE agents and officers will meet with agencies requesting ICE ACCESS assistance to assess local needs and to draft appropriate plans of action. Based upon these assessments, ICE and local agencies will determine which type of partnership is most beneficial and sustainable before entering into an official agreement.

Law enforcement agencies interested in reviewing the enforcement programs under the ICE ACCESS program are encouraged to call their local ICE office or visit www.ice.gov for more information.

ICE ACCESS Support and Programs

Asset Forfeiture/Equitable Sharing. Asset Forfeiture is a powerful tool used by ICE and other law enforcement agencies to seize assets used by criminal organizations in their illicit enterprises or acquired through criminal activity. Under the related equitable sharing program, federal, state and local law enforcement partners and foreign governments working with ICE in joint investigations can be eligible to receive a portion of the proceeds of a federal forfeiture, fostering greater partnership and cooperation among agencies.

Border Enforcement Security Task Forces (BESTs).

BESTs work cooperatively with other law enforcement entities to develop a comprehensive approach to identify, disrupt and dismantle criminal organizations posing significant threats to border security. BEST forces are currently located in Arizona, California, Texas and Washington. Plans include expansion to Buffalo, New York.

Criminal Alien Program (CAP). CAP focuses on identifying criminal aliens who are incarcerated within federal, state and local facilities, securing a final order of removal prior to the termination of their sentences so that they will not be released into the community.

Customs Cross-designation. Section 1401 (I) of Title 19 United States Code enables federal, state, local and foreign law enforcement officers who participate in ICE task force operations to be cross-designated as customs officers with authority to enforce U.S. customs law. These officers supplement ICE's investigative mission to disrupt and dismantle transnational criminal organizations by combating narcotics smuggling; money laundering; human smuggling and trafficking; and fraud related activities.

Delegation of Immigration Authority—287(g). The 287(g) program cross-designates state and local officers to enforce immigration law as authorized through section 287(g) of the Immigration and Nationality Act. Scores of state, county and municipal agencies nationwide have requested 287(g) memorandums of agreement with ICE and hundreds of officers have been trained under the program.



U.S. Immigration
and Customs
Enforcement

Report Suspicious Activity:

1-866-DHS-2-ICE

1-866-347-2423

www.ice.gov

06/2008

Document and Benefit Fraud Task Forces (DBFTFs). DBFTFs target, dismantle and seize illicit proceeds of criminal organizations that exploit the immigration process through fraud. DBFTFs provide an effective platform from which to launch anti-fraud initiatives using existing manpower and authorities. Through DBFTFs, ICE partners with other federal agencies, state and local law enforcement. DBFTFs are located in Atlanta, Baltimore, Boston, Chicago, Dallas, Denver, Detroit, Los Angeles, Miami, New York, Newark, Philadelphia, Phoenix, St. Paul, San Francisco, Tampa and Washington, D.C.

Fugitive Operation Teams (FOTs). FOTs identify, locate, apprehend, process and remove fugitive aliens from the United States with the highest priority placed on those fugitives who have been convicted of crimes. Further, the FOTs' goal is to eliminate the backlog of fugitives and see that the number of aliens deported equals the number of final orders of removal issued by immigration courts in any given year. ICE relies on the assistance of all federal, state and local law enforcement agencies in this endeavor.

Intellectual Property Rights (IPR). The ICE-led National Intellectual Property Rights Coordination Center is the government's central point of contact in the fight against IPR violations and the flow of counterfeit goods into U.S. commerce. The center operates as a multi-agency facility responsible for coordinating a unified response regarding IPR enforcement issues. Core staffing is provided by investigative and intelligence personnel from ICE. Particular emphasis is given to protecting the public health and safety of consumers, investigating major criminal organizations engaged in transnational intellectual property crimes, and pursuing the illegal proceeds derived from the manufacture and sale of counterfeit merchandise.

Law Enforcement Support Center (LESC). The LESL provides timely, accurate information and assistance to the federal, state and local law enforcement, corrections and court system communities on immigration status and identity information on aliens suspected, arrested or convicted of criminal activity. Electronic access to LESL records is available through the Immigration Alien Query screen on the International Justice and Public Safety Network.

Operation Community Shield. In February 2005, ICE launched Operation Community Shield, a national law enforcement initiative that brings all of ICE's law enforcement powers to bear in the fight against violent gangs that threatening the public safety of our communities. Operation Community Shield is part of a comprehensive approach of working with our law enforcement partners at the federal, state and local level to combat transnational gangs. Under this initiative, ICE is using its broad authorities, both criminal and administrative, against gangs and gang members. This authority includes conducting investigations involving narcotics and human smuggling, money laundering and racketeering violations.

Operation Firewall. The smuggling of bulk currency out of the U.S. has become a preferred method of moving illicit proceeds across our borders. To combat the increasing use of Bulk Cash Smuggling (BCS) by criminal organizations, the ICE Financial, Narcotics and Public Safety Division and the U.S. Customs and Border Protection Office of Field Operations, Tactical Operations Division, developed a joint strategic BCS initiative referred to as Operation Firewall, which began in August 2005, and has expanded through FY06 and FY07. Operation Firewall has resulted in the seizure of more than \$80 million in U.S. currency and negotiable instruments.

Operation Predator. Operation Predator is a program designed to identify, investigate and, as appropriate, administratively deport child predators. ICE routinely coordinates and integrates investigative efforts with law enforcement partners, in order to identify, arrest and prosecute those involved in international pedophilic groups or who derive proceeds from commercial child exploitation ventures.

Secure Communities. Secure Communities is an ICE initiative that focuses federal resources on assisting local communities by identifying and removing high-risk criminal aliens held in state and local prisons through the use of technology and information sharing among law enforcement agencies. The cornerstone of the initiative is the sharing of biometric data between federal, state, and local law enforcement agencies to ensure time-sensitive screening of all foreign-born detainees and identification of criminal aliens. Secure Communities brings together the expertise and commitment from all parts of ICE, the interagency community, and state and local law enforcement agencies.

APPENDIX J



U.S. Immigration
and Customs
Enforcement

FACT SHEET

November 19, 2008

The ICE 287(g) Program: A Law Enforcement Partnership

U.S. Immigration and Customs Enforcement (ICE), the largest investigative agency in the Department of Homeland Security, is responsible for enforcing federal immigration laws as part of its homeland security mission. ICE works closely with federal, state and local law enforcement partners in this mission.

The 287(g) program, one of ICE's top partnership initiatives, allows a state and local law enforcement entity to enter into a partnership with ICE, under a joint Memorandum of Agreement (MOA), in order to receive delegated authority for immigration enforcement within their jurisdictions. The 287(g) program has emerged as one of the agency's most successful and popular partnership initiatives as more state and local leaders have come to understand how a shared approach to immigration enforcement can benefit their communities.

ICE ACCESS: A Partnership Approach

The 287(g) program is one component of the ICE ACCESS (Agreements of Cooperation in Communities to Enhance Safety and Security) program, which provides local law enforcement agencies an opportunity to team with ICE to combat specific challenges in their communities.

The 287(g) program is only one component under the ICE ACCESS umbrella of services and programs offered for assistance to local law enforcement officers.

ICE developed the ACCESS program in response to the widespread interest from local law enforcement agencies who have requested ICE assistance through the 287(g) program, which trains local officers to enforce immigration law as authorized through section 287(g) of the Immigration and Nationality Act.

Terrorism and criminal activity are most effectively combated through a multi-agency/multi-authority approach that encompasses federal, state and local resources, skills and expertise. State and local law enforcement play a critical role in protecting our homeland because they are often the first responders on the scene when there is an incident or attack against the United States. During the course of daily duties, they will often encounter foreign-born criminals and immigration violators who pose a threat to national security or public safety.

History of 287(g)

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act. This authorizes the secretary of DHS to enter into agreements with state and local law

enforcement agencies, permitting designated officers to perform immigration law enforcement functions, provided that the local law enforcement officers receive appropriate training and function under the supervision of ICE officers.

The cross-designation between ICE and state and local patrol officers, detectives, investigators and correctional officers allows these local and state officers necessary resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering. In addition, participating entities are eligible for increased resources and support in more remote geographical locations.

Memorandum of Agreement

The MOA defines the scope and limitations of the authority to be designated. It also establishes the supervisory structure for the officers working under the cross-designation and prescribes the agreed upon complaint process governing officer conduct during the life of the MOA. Under the statute, ICE will supervise all cross-designated officers when they exercise their immigration authorities. The agreement must be signed by the ICE Assistant Secretary, and the governor, a senior political entity, or the head of the local agency before trained local officers are authorized to enforce immigration law.

Officer Selection Requirements

Participating officers in the 287(g) program must meet the following requirements:

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

Training Requirements

ICE offers a four-week training program now held at the Federal Law Enforcement Training Center (FLETC) ICE Academy (ICEA) in Charleston, SC conducted by certified instructors.

287(g) Results and Participating Entities

Since January 2006, the 287(g) program is credited with identifying more than 79,000 individuals, mostly in jails, who are suspected of being in the country illegally. More than 950 officers have been trained and certified through the program under 67 active MOAs, as follows:

State	MOA Name	Type	Signed
AL	AL State Police	TFO	9/10/2003
AL	Etowah County Sheriff's Office	JEO	7/8/2008
AR	Benton County Sheriff's Office	JEO/TFO	9/26/2007
AR	City of Springdale Police Department	TFO	9/26/2007
AR	Rogers Police Department	TFO	9/25/2007
AR	Washington County Sheriff's Office AR	JEO/TFO	9/26/2007
AZ	AZ Department of Corrections	JEO	9/16/2005
AZ	AZ Department of Public Safety	TFO	4/15/2007

AZ	City of Phoenix Police Department	TFO	3/10/2008
AZ	Maricopa County Sheriff's Office	JEO/TFO	2/7/2007
AZ	Pima County Sheriff's Office	JEO/TFO	3/10/2008
AZ	Pinal County Sheriff's Office	JEO/TFO	3/10/2008
AZ	Yavapai County Sheriff's Office	JEO/TFO	3/10/2008
CA	Los Angeles County Sheriff's Office	JEO	2/1/2005
CA	Orange County Sheriff's Office	JEO	11/2/2006
CA	Riverside County Sheriff's Office	JEO	4/28/2006
CA	San Bernardino County Sheriff's Office	JEO	10/19/2005
CO	CO Department of Public Safety	TFO	3/29/2007
CO	El Paso County Sheriff's Office	JEO	5/17/2007
FL	Bay County Sheriff's Office	TFO	6/15/2008
FL	Brevard County Sheriff's Office	JEO	8/13/2008
FL	Collier County Sheriff's Office	JEO/TFO	8/6/2007
FL	FL Department of Law Enforcement	TFO	7/2/2002
FL	Jacksonville Sheriff's Office	JEO	7/8/2008
FL	Manatee County Sheriff's Office	JEO	7/8/2008
GA	Cobb County Sheriff's Office	JEO	2/13/2007
GA	GA Department of Public Safety	TFO	7/27/2007
GA	Hall County Sheriff's Office	JEO/TFO	2/29/2008
GA	Whitfield County Sheriff's Office	JEO	2/4/2008
MA	Barnstable County Sheriff's Office	JEO	8/25/2007
MA	Framingham Police Department	TFO	8/14/2007
MA	MA Department of Corrections	JEO	3/26/2007
MD	Frederick County Sheriff's Office	JEO/TFO	2/6/2008
MN	MN Department of Public Safety	TFO	9/22/2008
MO	MO State Highway Patrol	TFO	6/25/2008
NC	Alamance County Sheriff's Office	JEO	1/10/2007
NC	Cabarrus County Sheriff's Office	JEO	8/2/2007
NC	Cumberland County Sheriff's Office	JEO	6/25/2008
NC	Durham Police Department	TFO	2/1/2008
NC	Gaston County Sheriff's Office	JEO	2/22/2007
NC	Henderson County Sheriff's Office	JEO	6/25/2008
NC	Mecklenburg County Sheriff's Office	JEO	2/27/2006
NC	Wake County Sheriff's Office	JEO	6/25/2008
NH	Hudson City Police Department	TFO	5/5/2007
NJ	Hudson County Department of Corrections	JEO	8/11/2008
NM	NM Department of Corrections	JEO	9/17/2007
NV	Las Vegas Metropolitan Police Department	JEO	9/8/2008
OH	Butler County Sheriff's Office	JEO/TFO	2/5/2008
OK	Tulsa County Sheriff's Office	JEO/TFO	8/6/2007
SC	Beaufort County Sheriff's Office	TFO	6/25/2008
SC	York County Sheriff's Office	JEO	10/16/2007

TN	Davidson County Sheriff's Office	JEO	2/21/2007
TN	TN Department of Safety	TFO	6/25/2008
TX	Carrollton Police Department	JEO	8/12/2008
TX	Farmers Branch Police Dept.	TFO	7/8/2008
TX	Harris County Sheriff's Office	JEO	7/20/2008
UT	Washington County Sheriff's Office	JEO	9/22/2008
UT	Weber County Sheriff's Office	JEO	9/22/2008
VA	City of Manassas Police Department	TFO	3/5/2008
VA	Herndon Police Department	TFO	3/21/2007
VA	Loudoun County Sheriff's Office	TFO	6/25/2008
VA	Manassas Park Police Department	TFO	3/10/2008
VA	Prince William County Police Department	TFO	2/26/2008
VA	Prince William County Sheriff's Office	TFO	2/26/2008
VA	Prince William-Manassas Adult Detention Center	JEO	7/9/2007
VA	Rockingham County Sheriff's Office	JEO/TFO	4/25/2007
VA	Shenandoah County Sheriff's Office	TFO	5/10/2007

JEO = Jail Enforcement Officers

TFO = Task Force Officers

ICE

U.S. Immigration and Customs Enforcement was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of five integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities.

APPENDIX K



U.S. Immigration
and Customs
Enforcement

FACT SHEET

November 19, 2008

Human Trafficking and Smuggling

U.S. Immigration and Customs Enforcement (ICE), the largest investigative agency, has responsibility for enforcing a wide range of crimes related to border security, including investigations of human trafficking and human smuggling. In fact, ICE is the federal government's lead agency with responsibility for combating human trafficking.

An estimated 800,000 men, women and children are trafficked across international borders each year, according to the U.S. Department of State. Victims are trafficked into the international sex trade and into forced labor situations throughout the world. Many of these victims are lured from their homes with false promises of well-paying jobs; instead, they are forced or coerced into prostitution, domestic servitude, farm or factory labor or other types of forced labor.

Victims often find themselves in a foreign country and cannot speak the language. Traffickers often take away the victims' travel and identity documents, telling them that if they attempt to escape, the victims or their families back home will be harmed, or the victims' families will assume the debt. We recognize that men, women and children that are encountered in brothels, sweat shops, massage parlors, agricultural fields and other labor markets may be forced or coerced into those situations and potentially are trafficking victims.

Trafficking vs. Smuggling

Trafficking vs. Smuggling: What's the Difference?

"Human trafficking" and "human smuggling" are distinct criminal activities, and the terms are not interchangeable. Human trafficking centers on exploitation and is generally defined as:

- Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- Recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

Human smuggling centers on transportation and is generally defined as:

- Importation of people into the United States involving deliberate evasion of immigration laws. This offense includes bringing illegal aliens into the country, as well as the unlawful transportation and harboring of aliens already in the United States.

ICE's Role in Combating Trafficking and Smuggling

ICE works with its law enforcement partners to dismantle the global criminal infrastructure engaged in human trafficking. ICE accomplishes this mission by making full use of its authorities and expertise, stripping away assets and profit incentive, collaborating with U.S. and foreign partners to attack networks worldwide and working in partnership with nongovernmental organizations (NGOs) to identify, rescue and provide assistance to trafficking victims.

Victim-Centered Approach

ICE recognizes that in order to successfully investigate and prosecute traffickers, victims must be stable and free from fear and intimidation to be effective witnesses. Equal value is placed on the identification and rescue of victims and the prosecution of traffickers. ICE has more than 300 collateral duty victim/witness coordinators who work with NGOs to assist in the provision of victim services. Short-term immigration relief is provided to certified victims of trafficking in the form of Continued Presence (CP) status.

Recent Anti-Human Trafficking Successes

Sex Trafficking/San Antonio—On June 1, 2007, a San Antonio woman and her two daughters were ordered detained without bond for engaging in sex trafficking of children. The woman, age 59, and her daughters, ages 32 and 29, were arrested and charged with sex trafficking of children by force, fraud or coercion. Based on the ongoing investigation and the victims' statements, it is alleged that the defendants traveled to Nuevo Laredo, Mexico, to recruit young girls to work as prostitutes in the San Antonio area. The victims in this case were 15, 17 and 22 years old. After arriving in the United States, the victims were told they would have to work as prostitutes for five years to repay the money the defendants had spent. Allegedly the money was spent on smuggling and other expenses they incurred to prepare the young women to be prostitutes. The victims told ICE agents that they were scared to leave because a male associate of the Ochoa's had threatened them with a gun; he also stated that he could find them and their families back in Mexico, and he would have them killed. The female violators in this case received sentences of time served to 18 months in prison for their convictions for harboring and transporting aliens for financial gain. One of the male defendants was sentenced to 120 months in prison for conspiracy to transport aliens for financial gain and for aiding and abetting sex trafficking of a child. One remaining defendant is scheduled for jury trial in February 2009.

Involuntary Servitude/Michigan—On May 31, 2007, a couple from Cameroon was sentenced for involuntary servitude and related charges. Joseph Djoumessi, 49, was found guilty of conspiracy, involuntary servitude and harboring for financial gain. He was sentenced to 17 years in prison, to run concurrent with a 9-to-15-year sentence he is currently serving for a Michigan state conviction related to the same crime. A jury also convicted Djoumessi's wife, Evelyn Djoumessi, 42, of conspiracy and involuntary servitude. She was sentenced to five years in prison. The couple was also ordered to pay \$100,000 in restitution to the victim. ICE agents in Detroit began an investigation in 2000 after receiving information regarding a young girl who was possibly being held against her will. A 17-year-old girl from Cameroon was discovered in the Djoumessi home, living under a false identity and in questionable circumstances. The girl had been brought into the United States illegally when she was 14 years old. During the time the girl lived at the couple's home, she was forced "by beating and threats," according to court documents, to care for their children and perform household chores without pay. They also limited her contact with the outside world and did not permit her to attend school.

Labor Trafficking/Long Island, N.Y.—On May 13, 2007, Nassau County Police Department (NCPD) officers encountered a female subject disoriented and wandering around a residential neighborhood. The NCPD identified her as a possible trafficking victim and contacted ICE agents assigned to the Human Trafficking Task Force who interviewed the victim at the Nassau University Medical Center (NUMC). The victim indicated that she had escaped from a residence in Muttontown, N.Y., where she was forced to stay and work under horrific conditions. Doctors diagnosed the victim with extensive bruising, burns and lacerations, allegedly inflicted by her employer, Varsha Sabhnani. On the evening of May 13, 2007, ICE agents executed a federal search warrant at the residence in Muttontown and found another female domestic worker hiding in the basement. The second victim denied physical abuse, but witnessed the physical abuse inflicted upon the other victim. Both victims claimed that Sabhnani and her husband verbally abused them and restricted their movements at all times. On May 14, 2007, ICE agents arrested Mahender and Varsha Sabhnani who were subsequently indicted. On December 18, 2007, they were found guilty by jury of forced labor, peonage, document servitude, harboring aliens and conspiracy. In June 2008, Varsha Sabhnani was sentenced to 11 years imprisonment and her husband was sentenced to three years. The jury ordered that their residence, valued at \$1.5 million, be criminally forfeited. Proceeds from the sale of the residence will be used to pay restitution to the victims.

Sex Trafficking/New York—The Flores-Carreto family sex-trafficking ring operated between Tenancingo, Tlaxcala, Mexico, and Queens, New York, from 1991 to 2004 and involved brothels in the New York metropolitan area. ICE began its investigation in December 2003 after the mother of a trafficking victim reported to the U.S. Embassy in Mexico City that her daughter had been kidnapped and was being held against her will in New York. ICE discovered that male members of the Flores-Carreto family romantically lured young Mexican women to the United States, where they were forced into prostitution through beatings and threats against their children, who were residing with the traffickers' mother in México. Victims who became pregnant were forced to have abortions. In April 2005, Josue Flores-Carreto, Gerardo Flores-Carreto and Daniel Perez Alfonso, a brothel manager, were sentenced to 50, 50, and 25 years imprisonment respectively, for multiple offenses related to forced prostitution. In January 2007, Mexico extradited Consuelo Carretto Valencia, the mother of the Carreto brothers, to the United States, where she was charged with conspiring on sex trafficking and related offenses. On July 22, 2008, she pled guilty to sex trafficking and is pending sentencing for that crime. The prosecution has been one of the largest sex trafficking cases brought under the provisions of the Trafficking Victims Protection Act of 2000. The sentences in this case are the longest to date.

ICE

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APPENDIX L



U.S. Immigration
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FACT SHEET

November 19, 2008

Criminal Alien Program

U.S. Immigration and Customs Enforcement (ICE), the largest investigative agency in the Department of Homeland Security, places a high priority on combating illegal immigration, including targeting illegal aliens with criminal records who pose a threat to public safety. ICE's Criminal Alien Program (CAP) is responsible for identifying, processing and removing criminal aliens incarcerated in federal, state and local prisons and jails throughout the United States, preventing their release into the general public by securing a final order of removal prior to the termination of their sentences, when possible.

CAP Enforcement Activity

ICE Office of Detention and Removal Operations (DRO) officers and agents assigned to CAP in federal, state and local prisons and jails throughout the country screen inmates and place detainees on criminal aliens to process them for removal before they are released to the general public. After the screening process and interviews, when required, DRO issues charging documents to formally begin proceedings to remove the criminal alien from the United States.

Detention Enforcement and Processing Offenders by Remote Technology (DEPORT)

Approximately 27 percent of inmates in U.S. Bureau of Prisons (BOP) custody are non-U.S. citizens, according to BOP estimates. DRO created the DEPORT Center in Chicago to process this population through CAP. DRO personnel assigned to the DEPORT Center conduct interviews of BOP inmates nationwide using video teleconference equipment. Through the combined effort of the DEPORT Center and local DRO resources, criminal aliens from all 114 federal detention facilities are taken into DRO custody upon completion of their sentences.

CAP Results

DRO tracks CAP charging documents issued to criminal aliens. Although DRO begins removal proceedings against criminal aliens through CAP, they may remain in prison or jail to complete criminal hearings or sentences.

- CAP charging documents issued to criminal aliens during FY07: 164,296
- CAP charging documents issued to criminal aliens during FY08: 221,085
- DEPORT charging documents issued to BOP inmates during FY07: 11,292
- DEPORT charging documents issued to BOP inmates during FY08: 5,933