



July 23, 2015

The Honorable Trey Gowdy
Chairman
Immigration and Border Subcommittee
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20510

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The Honorable Zoe Lofgren
Ranking Member
Immigration and Border Security Subcommittee
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20510

**RE: Subcommittee on Immigration and Border Security of the House Judiciary
Committee Hearing on “Sanctuary Cities: A Threat to Public Safety”**

Dear Chairman Gowdy and Ranking Member Lofgren:

The American Civil Liberties Union (“ACLU”) submits this statement to the House Immigration and Border Security Subcommittee of the Judiciary Committee for the hearing: “Sanctuary Cities: A Threat to Public Safety.” This hearing raises constitutional questions about the legality of immigration detainees as well as critical policy issues concerning community policing and public safety. The ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual’s rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

The fatal shooting of Kathryn Steinle on July 1, 2015 in San Francisco has focused national attention on the role of local law enforcement in the detention and deportation of immigrants. Details surrounding the shooting are still unfolding, and there are still many unanswered questions about the actions and responsibilities of the federal government and San Francisco laws and policies. One thing is clear: rushing to penalize local law enforcement agencies (“LEAs”) for longstanding policies that limit local officials’ entanglement in federal immigration enforcement would have disastrous effects on community policing efforts across the country.

The ACLU urges members of the Subcommittee to refrain from imposing knee-jerk immigration policy changes potentially affecting over 300 localities. The San Francisco shooting is not representative of the general practices that inform immigration policies adopted by 320 localities across the country—policies designed to protect public safety and promote crime reduction.

I. Immigration detainers present serious Fourth Amendment problems by causing the extended detention of tens of thousands of people annually without probable cause, without judicial approval, and without due process protections.

The most predominant policy among localities dubbed as “sanctuary” policies sets limits on when a LEA will hold people beyond their ordinary release, on immigration detainers. Most localities with limited detainer policies do not self-identify as “sanctuary localities” and have adopted these policies to avoid violations of individual constitutional rights. Immigration detainers present a multitude of constitutional and policy problems.

For years the Department of Homeland Security (“DHS”) has routinely used immigration detainers to request extended detention by state and local LEAs of individuals in custody based on mere suspicion of unlawful immigration status, disregarding the Fourth Amendment’s requirement of probable cause. In recent years, multiple federal courts, through litigation brought by the ACLU and others, have found that immigration detainers raise serious constitutional problems and that state or local LEAs and/or officials may be held liable for their role in causing extended detentions in violation of the Fourth Amendment.¹ In 2014, in response to a series of court decisions holding DHS and local LEAs liable for detaining people beyond their release times, hundreds of LEAs across the country limited the circumstances under which they will detain an individual beyond their ordinary release, for immigration enforcement purposes.² Many of these localities adopted policies permitting compliance with an immigration detainer request only if it is accompanied by a judicial warrant

In November 2014, DHS Secretary Jeh Johnson acknowledged “the increasing number of federal court decisions that hold that [detention based on DHS requests to] state and local law enforcement agencies violates the Fourth Amendment,”³ and promised to end the failed Secure Communities (“S-Comm”) program which had drawn sustained criticism from local law enforcement leaders, caused countless unlawful detentions (including of U.S. citizens),⁴ invited racial profiling,⁵ separated hundreds of thousands of families,⁶ and deterred immigrants from calling the police even if

¹ See, e.g., *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014), *affirmed*, *Morales v. Chadbourne*, -- F.3d ---, 2015 WL 4385945 (1st Cir. July 17, 2015); *Galarza v. Szalczyk*, No. 10-6815, 2012 WL 1080020 (E.D. Pa. Mar. 30, 2012), *rev'd on other grounds*, *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Mendoza v. Osterberg*, No. 13-65, 2014 WL 3784141 (D. Neb. July 31, 2014); *Villars v. Kubiatowski*, 45 F.Supp.3d 791 (N.D. Ill. 2014); *Miranda-Olivares v. Clackamas Cnty.*, -- F.Supp.2d ---, No. 12-02317, 2014 WL 1414305 (D. Or. Apr. 11, 2014); *Uroza v. Salt Lake County*, No. 11-713, 2013 WL 653968 (D. Ut. Feb. 21, 2013); *Vohra v. United States*, No. 04-0972, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. Feb. 4, 2010), *adopted*, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010).

² Jurisdictions that have adopted policies to limit their entanglement with immigration detainers include jurisdictions in California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Minnesota, New York, Nevada, Ohio, Oregon, Rhode Island, and Wisconsin.

³ Jeh Charles Johnson, Secretary of Department of Homeland Security, “Secure Communities” (Nov. 20, 2014), *available at* http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

⁴ Julia Preston, “Immigration Crackdown Also Snares Americans,” *New York Times* (Dec. 13, 2011), http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html?_r=1.

⁵ Aarti Kohli, Peter L. Markowitz, and Lisa Chavez, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, “Secure Communities by the Numbers: An Analysis of Demographics and Due Process” (Oct. 2011), *available at* https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

⁶ Ginger Thompson and Sarah Cohen, “More Deportations Follow Minor Crimes, Records Show,” *New York Times* (Apr. 6, 2014), http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?gwh=334656DC850EE9BC311DADF1D154084E&gwt=pay&assetType=nyt_now.

they had witnessed or been victimized by crime.⁷ While the Administration now offers the new Priority Enforcement Program (“PEP”) as a replacement for S-Comm, PEP does not resolve the Fourth Amendment’s problems with immigration detainers that resulted in liability for DHS and local LEAs. Going forward, if LEAs respond to immigration detainers, they will continue to incur liability for illegal arrests, extended detentions, and transfers of custody that do not meet the Fourth Amendment’s requirements.⁸ In recognition of the constitutional problems associated with immigration detainers, localities that limit their compliance with detainers should not be penalized for their actions.

II. Congress should exercise extreme care not to impose sweeping new requirements that would disrupt long-established, effective community policing policies.

Rep. Duncan Hunter (R-CA) and other sponsors of the “Enforce the Law for Sanctuary Cities Act” (H.R. 3009) fail to understand the purpose and value of community policing policies adopted by local LEAs. Far from being “sanctuary” zones, these localities recognize that immigrant victims and witnesses will not report crimes if they fear that local police are acting as immigration agents—and thus, in order to solve crimes, local officials need to win the trust of the community. Recognizing this reality, these localities have enacted carefully crafted policies aimed at promoting public safety and have prioritized their police resources to focus on community needs. These policies differ from jurisdiction to jurisdiction, reflecting the careful balancing of interests by local law enforcement leaders who understand the public safety needs in their communities.⁹ Importantly, none of these policies shields anyone who is arrested and booked from DHS’s knowledge; through the automatic receipt of fingerprints, DHS is already notified of all individuals booked into jail across the country.

Local police understand that their core mission is to protect public safety, and understandably oppose any federally imposed requirements that would divert them from this goal and force them to comply with immigration detainers—particularly given the constitutional concerns that federal courts have raised with that practice. Law enforcement leaders from the Major Cities Chiefs Association¹⁰ to the President’s Task Force on 21st Century Policing¹¹ have acknowledged that promoting trust between local law enforcement officials and the communities they serve builds cooperation and is central to their core mission of protecting public safety. According to a recent op-ed from Dayton (OH) Police Chief Richard Biehl, adopting a policy that maintains a clear separation between local police and federal immigration enforcement has “produced concrete results, coinciding with significant reductions in crime in Dayton.”¹² When immigrant victims and witnesses can feel confident that their interactions with the police will not lead to their deportation, they are much more likely to report crime.¹³

⁷ Nik Theodore, Department of Urban Planning and Policy at the University of Illinois at Chicago, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (May 2013), http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

⁸ Probable cause has always been the required legal standard for extended detention, but DHS’s new 2015 detainer form does not address all the Fourth Amendment problems associated with immigration detainer practices. First, several courts have held that the Fourth Amendment requires probable cause to believe a *crime* has been committed; probable cause of removability (a civil matter) is insufficient. Second, the Fourth Amendment requires a *judicial* determination of probable cause for the arrest, either before or promptly afterward (no later than 48 hours).

⁹ These include local policies that limit arrests by local police for federal immigration violations, limit local police inquiries into immigration status, treat as confidential and limit the type of information that may be shared with other agencies, including federal immigration authorities, or decline to hold individuals beyond their ordinary release on the mere basis of an immigration detainer.

¹⁰ Major Cities Chiefs Association, “Immigration Policy” (2013), *available at* https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf (recognizing that “trust and cooperation with immigrant communities . . . are essential elements of community oriented policing.”).

¹¹ President’s Task Force on 21st Century Policing Final Report at 18 (May 2015), *available at* http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf (recognizing that “build[ing] relationships based on trust with immigrant communities . . . is central to overall public safety.”).

¹² Richard S. Biehl, “Here’s How Not to Jump-Start Immigration Reform in the House,” *Roll Call* (Jan. 24, 2014), http://www.rollcall.com/news/heres_how_not_to_jump_start_immigration_reform_in_house_commentary-230343-1.html?zkPrintable=true.

¹³ *Supra* note 7 at 17.

III. Conclusion

The ACLU urges the members of the Subcommittee to refrain from punishing hundreds of localities based on the alleged actions of a single individual. Doing so would divert state and local law enforcement officers from their core mission of promoting public safety and crime reduction. In particular, the Subcommittee should not attempt to coerce localities into complying with immigration detainers. The solution to the constitutional problems with DHS's use of detainers is to fix those problems or end their use. For more information, please contact Legislative Counsel Joanne Lin (202/675-2317; jlin@aclu.org).

Sincerely,



Michael W. Macleod-Ball
Acting Director



Joanne Lin
Legislative Counsel

To: Members of Congress

Dear Members of the U.S. Senate and U.S. House of Representatives:

As leaders of religious congregations and faith-based organizations across the United States, we are united in grief over the tragic death of Kathryn Steinle. We are also troubled by the tenor of debate, as some are seeking to use this tragedy to paint both immigrants and community-policing practices as national threats. We implore all Members of Congress to not allow the politicization of this tragedy to punish entire communities for the actions of one individual. The faith community has a responsibility to defend individuals who are marginalized by society as we work for the common good of all. It is a moral outrage to see sensationalism shaping new forms of stereotypes and discrimination against immigrants.

The concept of *sanctuary* is rooted in an ancient and biblically-based tradition wherein communities of faith have provided safety and respite to individuals who have been cast out by society. The *Sanctuary Movement* that formed in the United States during the 1980s saved thousands of lives and helped convince the U.S. government to recognize the refugee status of Central Americans fleeing death squads. Around the same time, select cities declared themselves “sanctuary cities,” seeking to foster communities in which everyone feels safe, regardless of immigration status. Such policies do not, however, protect individuals from the criminal justice system, nor do they promote the release of individuals who have been convicted of serious offenses.

In the early 2000s, Immigration and Customs Enforcement (ICE) began implementing policies to force local police to serve as immigration enforcement officers through 287(g) agreements and the *Secure Communities* (SCOM) program. As implementation of these policies led to witnesses and victims of crime being deported -- including domestic violence survivors -- police departments saw a reduction in the reporting of crime. Recognizing that when local police are seen as immigration officers, immigrants are afraid to report crime, more than 320 jurisdictions across the United States have limited their collaboration with ICE. Due to this community pushback across the country, as well as federal rulings that ICE’s requests to detain individuals are unconstitutional without probable cause, SCOM was recently replaced by the Priority Enforcement Program.

Our congregations minister to people of all backgrounds, including individuals in the immigrant community who have witnessed and been victims of crime. It is vital for these individuals to know that they can go to the police for help, and for police to develop relationships with these communities. When all individuals can report dangerous situations without the fear of being deported and separated from their families, safety is increased for all community members. Policies that promote equal policing also help protect against racial profiling. We support the longstanding efforts that many cities and towns have made to foster trust between local law enforcement officers and all community members, regardless of their immigration status.

We are concerned that, in an attempt to respond to the tragic death of Kathryn Steinle, Congress will lose sight of the important role that community-based policing plays in establishing trust and cooperation between police and communities. We urge all Members of Congress to oppose legislation that would further criminalize undocumented immigrants or infringe on the rights of states, cities, localities and police departments to regulate how they interact with ICE.

We are committed to enacting policy reforms that improve our immigration system, and are against proposals that take us backward. Together, we stand ready to work with members of both chambers on immigration reform that provides opportunities for full citizenship, rather than punitive policies that harm communities.

Sincerely,

Sister Rosemarie Abate
Sisters, Home Visitors of Mary

Sister Louise Alff
Franciscan Sister

Sister Sharon Altendorf
Union of the Sisters of the BVM - US Province

Sister Maria Manuela Amaral
Missionary Sisters of St. Charles

Reverend Clela Anderson
Union Avenue Christian Church

Sister Guadalupe Arciniega
Sisters of Loretto

Reverend Carroll Arkema
Service for Counseling

Sister Joan Arnold

Sister Mary Ann Azar
Daughters of Charity

Mary Baird
Poor hand maids of Jesus Christ

Sister Therese Bangert
Sisters of Charity of Leavenworth

Reverend Kay Barckley
University Temple

Reverend Josefina Beecher
Episcopal Diocese of Olympia

Mary Bertolini
Associate of the Congregation of Divine Providence

Sister Elaine Betoncourt
Sisters of St Joseph/West Hartford

Pastor W. Michael Biklen
Musserville/San Pablo

Minister Gilford Bisjak
United Church of the Valley

Minister Steven Blinder
Church of the Holy Spirit Song

Carol Blythe
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Sister Joan Boberg
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Mona Bomgaars
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Sister Margaret Botch
Sisters of Providence

Sister Theresa bowman
CDP

Sister Mary Brady
Sisters of Mercy

Sister Judith Brady, OP

ReverendLora Brandis

Sister Helen Brennan
Sisters of Providence

Sister Rosemary Brennan, CSJ
Sisters of St. Joseph of Boston

Sister Pauline Bridegroom
Poor Hamdmaid of Jesus Christ

Nuala Briody
Daughters of Mary and Joseph

Reverend Judy Brock

Robert Brown
Havurah Shalom

Amber Bruce
Lighthouse Church

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Sister Janet Bucher
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Grace Bunker
Casas Adobes, Congregational UCC

Sister Ann Catherine Burger
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Sister Catherine Burke
Union Presentation Sisters

Sister Norine Burns
Adrian Dominican

Sister Mary Michael Burns
Sisters of Charity...Seton Hill

Reverend Grace Burson
Church of the Holy Spirit

Sister Donna Butler
Sisters of Providence

Sister Esther Calderon
Dominican sisters of peace

Deacon Judith Campbell
Bainbridge Community UCC

Sister Cathy Campbell
Sisters of Providence

Sister Carmella Campione
Congregation of Sisters of St. Joseph

Sister Cecilia Canales

Dominican Sisters of Mission San Jose

Reverend Paul Carlson
Our Savior's Lutheran Church

Sister Sharon Carpenter
Sharon Carpenter

Sister Mary Carr
Adrian Dominicans

Sister Janet Carr
Congregation of Divine Providence

Priest Jay Carrigan
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Sister Patricia Decker
Red lodge community church

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School Sisters of Notre Dame

Sister Elsa Garcia
Sisters of Divine Providence

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Sisters of St. Francis

Sister Alice Gerdeman, CDP
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Fred Hammond

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Carmen Hernandez

Brother Steve Herro
St. Norbert Abbey

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Barbara Hood

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Sister Susan Jenny

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Reverend Janette Jorgensen
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Sister Bernadine Karge
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Rosanna Kazanjian

Minister Robert Keller
Parsippany

Sister Kathleen Kelley
Poor Handmaids of Jesus Christ

Sister Ann Kendrick
Sisters of Notre Dame de Namur

Reverend Kenneth Kennon
Southside Presbyterian

Sister Peggy Kenny
Holy spirit

Reverend Edward Kern

SisterMary Kernan
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Sister Bernadette Kramer
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Sister Barbara Kuper
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Father Eugene Kutsch

Gladys Lane
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Sister Martha Larsen
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Sister Mary Lawrence
Sisters of Charity

Reverend wayne laws
mountain view united church

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Sister Dorothy LeBlanc
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Marcia Lee

SisterClare Lentz
Sisters of Providence

Sister Pat Leonard

Donald Levan
Bishop Alemany

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Chinese Community UMC

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Sisters of St. Francis

Judith Liteky
St. John of God

Sister Dominica Lo Bianco
Sisters of St. Francis of Philadelphia

Sister Mary Norbert Long
Sisters of Charity

Pastor Judy Longo
Seashore Mission

Reverend Mary Love
Crescent Hill Presbyterian Church

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Medical Mission Sisters

Sister Marie Lucey
Sisters of St. Francis of Philadelphia

Sister Sheila Lynch
Daughters of Mary and Joseph

Minister Sandra Lyon

Diana Madoshi
Diana Madoshi

Alberto Magana
catedral de la esperanza

Minister Leslie Malachi
African American Ministers In Action

Pastor Lilton Marks

Yvonne Marlier
Unitarian Society of Germantown

Janet Matthews
United Church of Rockville Centre

S.C. Maurin
Sophia in Trinity

Pastor Rev. Donald Maxhausen
Christ Lutheran

Jennifer McCabe
St. John's Episcopal Church

Sister Nancy McCarthy

Brenda McCarthy
St. Michael's

Father Eli McCarthy
Conference of Major Superiors of Men

Sister Mary McCauley
Crossing Borders - Dubuque

Thomas McCoy

Reverend Jean McCusker

Sister Mary Ellen McDonald OP
Grand Rapids Dominicans

Sister Emerita McGann
Divide Providence

Sister Donna McGartland
Sisters of St Francis

Brother Brian McLauchlin
Divine Word Missionaries

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Church of the Larger Fellowship

Sister Kathleen McNulty
School Sisters of St. Francis

Sister Stephanie McReynolds
Sisters of St. Francis

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Capitol Heights Presbyterian Church

Sr. Lucy Megaro
Poor Handmaids of Jesus Christ

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Noe Mendoza

Sister Jean Menke
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Rose Menke
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Sister Stephanie Miller
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Sister Mary Louise Mitchell
Sisters of St. Joseph of Rochester

Sister Mary Joyce Moeller
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Madeline Murphy
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Sister Jo Murray
Sisters of the Holy Spirit and Mary Immaculate

Sister Frances Murray

Sister Anne-Louise Nadeau
Pax Christi USA

Sister Anne-Louise Nadeau
Sisters of Notre Dame de Namur

Father Alfonso Narvaez
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Reverend Elizabeth Nash
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Marty Nelson
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Sister Rose Therese, Louise Nolta

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Sister Geraldine Nowak, osf
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ReverendJose Olagues
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Minister Mark Peters
Priests of the Sacred Heart

Sister Joy Peterson
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Charles Pfeifer
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Adrienne Plasse
Adrienne Plasse

Father Mart Pool
St Francis in Exile

Sister Patricia Pora
Sisters of Mercy

Pastor Paige Porter-Buhl
Covenant Presbyterian Church

Priest Michael Potvin-Frost
St. Francis of Assisi Ministry

Michael Poulin

Sister Sr. Mary Price
Srs. of Charity

Sister Jocelyn Quijano

Reverend Nancy Radclyffe

Mark Reedy

Sister Claire Regan
Sisters of Charity

Sister Jean Reimer
Sunday Assembly

Sister Ruth Reischman
Sisters of Charity of Leavenworth

Father Bill Rimmel

Sister Helen Renzelmann
Congregation of Sisters of St. Agnes (CSA)

Sister Judith Riese
Congregation of Divine Providence

Minister Jerry Rivers
The vineyard church

Sister Rose Rizzo
Congregation of Divine Provid.

Merilie Robertson

Belinda Robinson
Temple UMC San Francisco, CA

Sister Veronica Roche
St. Joseph Pro Cathedral, Camden, NJ

Pastor T. Michael Rock
Robbinsdale UCC

Sister Ceil Roeger
Dominican Sisters of Houston

Reverend Cally Rogers-Witte

Dr. Marian Ronan
New York Theological Seminary

Reverend Nancy Rosas
Washington Park

Sister Tarcisia Roths
Adorers of the Blood of Christ

Mother Marguerite Rouleau
Sacred Heart Catholic Church

Mother Patricia Rumer
Ainsworth United Church of Christ

Sister Marlene Rust
Cong. Divine Providence

Reverend Lon Rycraft

Marte Samuelstuen

Minister Teresa Santillana
Berkeley UMC

Rabbi Jeffrey Saxe
Reform Movement Congregation

Sister Judith Schaeffer

SisterJean Schafer SDS

Grace Schmeersal
Divine Providence

Sister Sharon Schmitz
Sisters of Mercy

Sister Ann Scholz
Leadership Conference of Women Religious

Sister Katherine Schroeder

Colleen Seed

Deacon Stephen Serembe
St Anthony

Sister Annette Seubert
Sister of Providence

Sr. Carita Shields
Sisters of Charity of Seton Hill

Reverend Joseph Shore-Goss
MCC/United Church of Christ in the Valley

ReverendMerle Showers
Uiversity United Methodist church

Sister Kathleen Siimpson

Brother John Skrodinsky, ST
Missionary Servants of the Most Holy Trinity

Sister Barbara Ann Smelko
Sisters of Charity of Seton Hill

Sister Colleen Smith
CDP

Sister Katherine Smith
Sisters of Providence

Sister Diane Smith
St. Joseph of Carondelet

Larry Smith

Live Oak UU Church

Barbara Smullen

Joan Spatti

Chris Spencer

Sister Alice St. Hilaire
Sisters of Providence

Donald Steele
First presbyterian Church

Priest Robert Stiefel

Reverend Jerald Stinson

Sister Pat Sullivan

Sister Suzanne Susany
Sisters of St. Francis of the Neumann Communities

Reverend Laurie Sweigard
Central Baptist Church

Clark Taylor

Patricia Tenbrink
Associate of the Congregation of Divine Providence

Reverend Linda Theophilus
Emmanuel Lutheran Church

Sister Kathy Thill
Sisters of Mercy

Pierre Thompson
Shrine of the Sacred Heart

Jan Thompson
Unitarian Universalist Church of Las Cruces

Sister Sheilamarie Tobbe
Ursuline

Reverend Rebecca Tollefson
Broad St. Presbyterian Church

Reverend George Tolleson
UUCA

Jose Tovar
Saint Agustin

Sister Consuelo Tovar
Daughters of Charity of St. Vincent de Paul

Minister John Trant
Mercy associate

MinisterDonald Treadwell
Center for Spiritual Growth

Sister Rose Marie Tresp
Sisters of Mercy

Sister Mary Trippel
Poor Handmaids of Jesus Christ

Pastor Frederick Trost

Sister Carmela Trujillo
Sisters of Saint Francis

Joellen Tumas
Poor Handmaids of Jesus Christ

Reverend Marcia Tyriver
Episcopal Church of N. CA

Sister Donna Vaillancourt
Sisters of Mercy

Sister Janice Vanderneck
Sisters of Saint Joseph

Father Scott VanDerveer
St. Mary's Catholic Church

SisterCharlotte VanDyke
Sisters of Providence

Sister Margaret Verhoff

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Emmanuel Community

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Sister Teresa White
Sisters of Providence

Pam White
Sisters of Providence

Sister Diana White
Sisters of St. Francis

Reverend Sara Wohlleb

Reverend Charles Wolfe

Reverend Lois Ann Wolff
Albany Presbytery

Sister Virginia Wolfzorn
Congregation of Divine Providence

Reverend D John Woodcock
Church of the Loving Shepherd

ReverendRebecca Woods

Sister Coletta Wrasman
Poor Handmaids of Jesus Christ

Reverend Angela Wright
Beloved Community United Church of Christ

Scott Wright
Columban Center for Advocacy and Outreach

Reverend Ieva Zadina
Park Slope UMC

Minister Ruth Zemek
La Casa de Paz y Bien

Sister Mary Zrust
Sisters of the Living Word

The General Board of Church and Society of The United Methodist Church
House Immigration Subcommittee Hearing
Thursday, July 23, 2015

The General Board of Church and Society (GBCS) grieves with the family of Kathryn Steinle who was killed as a result of senseless gun violence. We continue to pray for an end to gun violence, which has sadly become an epidemic in the United States. GBCS urges all Members of the U.S. Senate and House of Representatives to refrain from conflating the actions of one person with an entire community of our immigrant brothers and sisters. Congress should instead search for real solutions to the problems of gun violence.

Every day 89 people die from gun violence in the United States. In 2015 alone, there have been over 180 mass shootings, defined as killing or wounding two or more people in one incident. This includes the tragic gun shooting in Chattanooga, TN on July 16 where four marines were killed.

We are pleased Congress finally wants to respond to the acts of senseless gun violence and so we strongly encourage members of Congress to pass universal background checks on all gun purchases as a way to begin to take seriously their responsibility to keep the public safe from gun violence.

Demonizing the immigrant community, however, for the actions of one person is misguided. Penalizing cities that are working to establish trust between immigrant communities and the local police is an overreach by the federal government and will only damage local communities. Many cities recognize how requests by Immigration and Customs Enforcement (ICE) to hold individuals beyond their court-appointed sentences violate due process and have been found unconstitutional by federal courts. Choosing not to honor ICE detainer requests without probable cause or a signed warrant from a judge is constitutional.

It also actually improves public safety by increasing community trust in its police force. When all individuals can report dangerous situations without the fear of being deported and separated from their families, safety is increased for all community members. When local police collaborate with ICE, more crimes go unreported because victims and witnesses are afraid of being deported if they contact the police.

The General Board of Church and Society opposes proposals that would infringe on the rights of states, cities, localities and police departments as to how they interact with ICE. We oppose the following pieces of legislation:

- H.R.3002, The Mobilizing Against Sanctuary Cities Act;
- H.R.2964, The Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act;
- H.Amdt 352 offered by Rep. Steven King (IA-4) to H.R. 2578,
- The FY16 Commerce, Justice, Science Appropriations Act; S.80 introduced by Senator Vitter (R-LA);
- The Sanctuary Cities Amendment offered by Sen. Cotton (R-AR) to S.1177, The Elementary and Secondary Education Act.

These proposals would do more harm than good. They do not address the epidemic of gun violence affecting the United States.

There are 320 jurisdictions across the United States with policies that limit collaboration with ICE. These jurisdictions should not be punished for exercising their own judgment.

We urge Congress to take responsible action to reduce gun violence and to refrain from demonizing immigrant communities or penalizing local communities from determining how best to provide public safety for their communities.



THE ARCHDIOCESE OF SAN FRANCISCO
OFFICE OF THE ARCHBISHOP

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**Statement of Archbishop Salvatore J. Cordileone
Archbishop of San Francisco
House Judiciary Committee
July 23, 2015**

The recent senseless killing of Kathryn Steinle was a tragedy beyond description not only for her loved ones, but for all San Franciscans and, indeed, all Americans. I offer my deepest condolences to Kathryn's family and friends, and invite everyone in our community to join me in offering prayers for them at this difficult time, and to pray as well for Francisco Sanchez, who has been charged with her death.

This horrible tragedy has ignited a national conversation about our nation's immigration enforcement policies. While it is important that we learn from this incident and work to prevent it from happening again, it is also important that we recognize that the vast majority of immigrants—both those with and without papers—are not a violent threat to society and so should not be subject to guilt by association. In fact, statistics show that immigrant communities are by and large safe and that a cooperative relationship between law enforcement and those communities enhances public safety and reduces crime.

In this regard, I ask our local, state, and federal elected officials to work together in a bipartisan manner to ensure that all persons—U.S citizens and newcomers alike—are protected from individuals who pose a threat to national security or public safety. However, they should avoid the implementation of policies that punish all immigrants for the transgressions of a small minority. I also ask that our elected officials and others refrain from using this tragedy for political expediency or political gain. This is a disservice to Kathryn's memory and to any effort to find a just solution that prevents a reoccurrence of this type of event.

I applaud the commitment to public safety of the City of San Francisco and other local jurisdictions and support their right to exercise reasonable and appropriate discretion in the handling of immigrant detainees, consistent with their need to maintain public safety. At the same time, greater cooperation is needed between local and federal authorities in identifying those who represent a violent threat to our communities. A just and humanitarian policy should not be abandoned because of flaws in the system. Rather, proper authorities should make prudent adjustments in the application of the law in order to protect the public safety of *all* those living in our country.

Over the long-term, and in conjunction with my fellow bishops, I call upon Congress and the Administration to work together to comprehensively repair our nation's flawed immigration system, a system that divides families and undermines human dignity. Such reform, long overdue, should preserve family unity, ensure the due process of law, protect those fleeing persecution, and ensure the integrity of our nation's borders.



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

Statement of the American Immigration Lawyers Association

**Submitted to the United States House of Representatives Committee on the Judiciary
Subcommittee on Immigration and Border Security
Hearing on “Sanctuary Cities: A Threat to Public Safety”**

July 21, 2015

Contact:

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The American Immigration Lawyers Association (AILA) is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members. AILA has 14,000 attorney and law professor members.

In the aftermath of the recent tragic shooting of Kathryn Steinle in San Francisco, many are asking what additional steps federal and local law enforcement authorities should take to protect our communities. The unauthorized immigration status of the alleged perpetrator, Juan Francisco Lopez-Sanchez, has also inflamed discussions about immigration enforcement. AILA agrees that law enforcement authorities must take reasonable and lawful steps to protect the public from anyone—regardless of immigration status—who poses a threat to our safety. However, the facts and circumstances of this particular situation remain unclear. AILA cautions both local and national elected leaders from making immediate changes to law or policy based on this incident before an investigation is completed. A reactionary response in the absence of full information may undermine community safety.

AILA also hopes that this incident will not be used to scapegoat immigrants. As law enforcement officials have clearly stated the mission of law enforcement is to protect the safety of all our communities. But already, some have gone too far by labeling immigrants as criminals. This claim could not be further from the truth. The American Immigration Council and the Cato Institute recently released separate reports presenting overwhelming data that immigrants are no more likely than anyone else to commit crimes. In fact, the data demonstrate the opposite—that the rate of criminality is lower in the immigrant population, including undocumented immigrants, than in those born in the U.S.

No less faulty are the claims that the federal government is not enforcing immigration law. By nearly every objective measure, recent immigration enforcement levels have been at all-time highs. The federal government has committed unprecedented resources to enforcement efforts at

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the border and in the interior. Annually, federal immigration enforcement spending is \$18.5 billion and exceeds that of all other federal criminal law enforcement combined. As a result of the federal government's increased enforcement efforts, apprehensions at the border have decreased and are at a nearly 40-year low. At the same time removals have reached an all-time high with this Administration—it has been removing about 400,000 individuals every year, more than any other president. While the Department of Homeland Security (DHS) still targets people who have convictions for non-violent offenses and should not be priorities for enforcement, DHS has increased its focus on those with more serious offenses who pose threats to public safety.

Ensuring Public Safety and Maintaining Trust of the Community

While the federal government is charged with enforcing immigration laws, the primary function of state and local law enforcement is to ensure the safety of their communities. AILA recommends that greater examination and oversight be done of federal programs that engage local authorities in immigration enforcement to make sure the mission of protecting the public is not compromised. Many of these programs have been fraught with policy and legal problems.

Notably, the controversial Secure Communities program severely undermined community trust by making immigrants fearful of contact with local law enforcement agencies. Effective policing efforts require the building of trust between law enforcement and the communities they serve. The University of Illinois-Chicago conducted a comprehensive survey in 2013 finding that 44 percent of Latinos surveyed reported they are less likely to contact police if they have been a crime victim because they fear that police officers will inquire into their immigration status. For this reason, domestic violence organizations, such as the National Task Force to End Sexual Assault and Domestic Violence and the California Partnership to End Domestic Violence, oppose programs that intertwine local law enforcement authorities with the activity of immigration enforcement.

Many local law enforcement authorities have voiced concerns that federal immigration detainers undermine local policing efforts, strain their resources, and leave them open to liability for constitutional violations. In fact, several federal courts issued decisions last year holding that local law enforcement agencies are liable for holding people beyond their release times solely on the basis of the detainers. In November 2014, Secretary Johnson announced that these courts had found “detainer-based detention by state and local law enforcement agencies violates the 4th Amendment.” As a result of these concerns, nationwide over 320 law enforcement jurisdictions have adopted policies limiting or ending the practice of honoring immigration detainers issued by Immigration and Customs Enforcement (ICE).

Priority Enforcement Program (PEP)

In an effort to address the flaws in Secure Communities, the Secretary announced the establishment of the new Priority Enforcement Program (PEP), which is currently being introduced across the country. As of yet, DHS has not disclosed many details about how PEP

will function, making it difficult for law enforcement and other government officials to evaluate whether they should participate.

Before government officials endorse PEP, they should examine whether PEP makes meaningful changes to the Secure Communities program and detainers. Importantly, the Secretary's November 2014 memorandum states that PEP will still be used to lodge detainers. Detainers will be used to detain in more limited circumstances, but DHS has yet to define those circumstances. In the past, such detainers have not been obtained based on probable cause that is promptly reviewed by a judge or with the backing of a judge-issued warrant. As of yet DHS has given no indication that PEP will correct this problem, meaning local authorities may still be liable for unconstitutional detention practices. In recent comments about PEP, Chief Thomas Manger of Montgomery County, who is also president of the Major Cities Chiefs Association, explained: "We can't hold them. Basically, you're falsely imprisoning an individual without legal foundation to hold them."

Another problem with PEP—which was a major criticism of Secure Communities—is that it will still result in enforcement against individuals with misdemeanors and non-violent offenses or offenses that are very old from which the individual has long since been rehabilitated. By its name, PEP should prioritize enforcement against those who actually pose a threat to our communities. But PEP will likely also capture first-time border crossers and non-violent misdemeanor offenders. AILA's immigration lawyer members have identified several individuals who committed an offense five or ten years ago and since then have been living without incident in the community with a family and a job. None of these individuals should be a priority for immigration enforcement let alone local law enforcement involvement.

Local officials should have flexibility to determine how to engage DHS in a way that both protects public safety and adequately responds to their community's concerns. Still, that flexibility must have a baseline. There is a vast difference between the approach of Sheriff Joe Arpaio, who appears determined to arrest every unauthorized person no matter the consequences, and the efforts of other law enforcement officials who acknowledge that they cannot protect the public without the community's trust. A baseline for PEP practices must be established to restrain the practices of law enforcement officials who are not only willing but may be motivated to alienate the immigrant community and violate the Constitution. Before Congress or local officials endorse PEP, they should insist that DHS be more transparent about how it will implement the program to guard against these pitfalls.

Recent Congressional Proposals

AILA urges lawmakers to reject legislation that would withhold federal funding from or otherwise punish so-called "sanctuary cities," such as the proposals by Senators Vitter and Cotton. The term "sanctuary city" is used to describe localities that have passed laws and policies that limit the role that law enforcement officers should play when enforcing federal immigration law. These policies are designed to promote community safety and are premised on the community policing model. They are not designed to harbor dangerous or violent criminals.

Many local law enforcement agencies have refrained from asking about the immigration status of a victim or witness precisely to ensure public cooperation and trust. As Dayton Police Chief Richard Biehl recently wrote: inquiring about immigration status “detracts from the investigation” and “is detrimental to relations with members of our community. We must balance investigative approaches that will encourage (and not discourage) public cooperation with investigations.”

AILA also recommends that Congress refrain from mandating local participation or cooperation with federal immigration programs, not only for the policy reasons articulated by Chief Biehl and other law enforcement leaders but also to avoid 10th Amendment “commandeering” concerns that will demand local resources and commitment. In fact many localities have resisted participation in DHS programs in order to ensure their limited resources are dedicated to their primary mission of protecting the public rather than taking on the federal responsibility of immigration enforcement. State and local police know their communities best, and they should not be compelled to enforce federal immigration laws at the expense of the safety and security of their communities.

America Needs Immigration Reform

What America needs is for Congress to pass reforms to the legal immigration system and legalization, which taken together will significantly reduce illegal immigration. Effective, commonsense immigration reform would make our nation safer and bring people who are already members of our communities more completely into our society. Enactment of enforcement-only legislation is not a solution. The SAFE Act and similar proposals are premised on the criminalization of immigrants and immigrant communities and do little to improve public safety. As our nation’s leaders seek to respond to the incident in San Francisco, AILA hopes the focus will be on solutions that protect all members of our communities.



STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

**SUBMITTED TO THE U.S. HOUSE OF REPRESENTATIVES JUDICIARY
COMMITTEE, SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY**

HEARING ON “SANCTUARY CITIES: A THREAT TO PUBLIC SAFETY”

July 23, 2015

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The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our research and analysis regarding immigration enforcement.

The Immigration Council is saddened by the tragic murder of Kathryn Steinle, which has prompted this hearing. We share the public's and policymakers' desire to understand what happened and whether there are lessons to be learned. At the same time, we caution that anecdotes are no substitute for hard data and that our laws and policies must be grounded in analysis of the facts, thoughtful discussion, and practical solutions.

For too long, U.S. immigration laws and policies have been shaped by fear and stereotype rather than by empirical evidence. Empirical data shows that immigration is associated with *lower* crime rates and immigrants are *less likely* than the native-born to be serious criminals. Yet, we have spent billions of dollars deporting millions of people who have committed only immigration violations, and we have focused on quantity, not quality of deportations, while separating families.

There is no doubt that our nation is safer when everyone is accounted for and fully documented. A major benefit of comprehensive immigration reform is that every person in this country would get documents and be “on the grid” of U.S. life, with driver's licenses, social security numbers, and other forms of identification. Such a system would help us make smart national security decisions and differentiate those who are law-abiding from those who are not. Comprehensive immigration reform is practical policy, and more productive than finger-pointing at local officials or demonizing an entire group for the mistakes of a few.

Instead of debating the patchwork of local immigration enforcement laws that have developed over the past several years, Congress should get to the important job of passing immigration reform. Calibrating our system to get everyone on the books would go further towards securing

our communities than any other piece-meal measures currently on the table. It also would allow us all to benefit from the economic potential of immigrants.

We submit to you below (1) our recent research regarding the relationship between immigration and crime, which confirms that immigrants are less likely to commit serious crimes or be behind bars than the native-born and that high rates of immigration are associated with lower rates of violent crime and property crime; (2) our paper outlining the legal implications of detainers, and (3) our analysis regarding the failures of the “enforcement first” approach to immigration reform.

I. Immigrants Are Less Likely to Commit Crimes

For more than a century, innumerable studies have confirmed two simple yet powerful truths about the relationship between immigration and crime: immigrants are less likely to commit serious crimes or be behind bars than the native-born, and high rates of immigration are associated with lower rates of violent crime and property crime. This holds true for both legal immigrants and the unauthorized, regardless of their country of origin or level of education. The Immigration Council’s report, *The Criminalization of Immigration in the United States*, by Walter A. Ewing, Ph.D., Daniel E. Martínez, Ph.D., and Rubén G. Rumbaut, Ph.D, available at www.americanimmigrationcouncil.org (Attachment A), explains the data and highlights the following:

Higher Immigration is Associated with Lower Crime Rates

- Between 1990 and 2013, the foreign-born share of the U.S. population grew from 7.9 percent to 13.1 percent and the number of unauthorized immigrants more than tripled from 3.5 million to 11.2 million.
- During the same period, FBI data indicate that the violent crime rate declined 48 percent—which included falling rates of aggravated assault, robbery, rape, and murder. Likewise, the property crime rate fell 41 percent, including declining rates of motor vehicle theft, larceny/robbery, and burglary.

Immigrants are Less Likely than the Native-Born to Be Behind Bars

- An analysis of data from the 2010 American Community Survey (ACS) indicates that roughly 1.6 percent of immigrant males age 18-39 are incarcerated, compared to 3.3 percent of the native-born. This disparity in incarceration rates has existed for decades, as evidenced by data from the 1980, 1990, and 2000 decennial censuses.
- The 2010 Census data reveals that incarceration rates among the young, less-educated Mexican, Salvadoran, and Guatemalan men who make up the bulk of the unauthorized population are significantly lower than the incarceration rate among native-born young men without a high-school diploma.
 - In 2010, less-educated native-born men age 18-39 had an incarceration rate of 10.7 percent—more than triple the 2.8 percent rate among foreign-born Mexican men, and five times greater than the 1.7 percent rate among foreign-born Salvadoran and Guatemalan men.

Immigrants are Less Likely Than the Native-Born to Engage in Criminal Behavior

- Several studies have found that immigrants are less likely than the native-born to engage

in either violent or nonviolent “antisocial” behaviors; that immigrants are less likely than the native-born to be repeat offenders among “high risk” adolescents; and that immigrant youth who were students in U.S. middle and high schools in the mid-1990s and are now young adults have among the lowest delinquency rates of all young people.

- Immigrants are a self-selected group of people who tend to be highly motivated. They have left their homes and moved to a new country to improve their lives and the lives of their children. There is a great incentive to stay out of trouble.

II. Detainers Raise a Host of Legal Questions

In considering state and local responses to Immigration and Custom’s (ICE) practice of issuing “detainer” requests—a request to local law enforcement to hold a noncitizen—it is important to remember that immigration detainers, as ICE practiced them until November 2014, have been ruled illegal and unconstitutional by several courts. Those rulings are a major reason why, among others, the Secretary of Homeland Security Jeh Johnson stated that the previous system wasn’t working. Returning to that system, or legislatively mandating it, is not a viable legal option.

The Immigration Council’s report, *The Faulty Legal Arguments Behind Immigration Detainers*, by law professor Christopher Lasch, available at <http://immigrationpolicy.org/perspectives/faulty-legal-arguments-behind-immigration-detainers> (Attachment B), explains how immigration detainers work and why they were unconstitutional. Put simply, a detainer must be based on probable cause of a violation—which ICE detainers were not. Localities were subjecting themselves to risk for liability for holding someone under an ICE detainer.

Under ICE’s new Priority Enforcement Program (PEP), the federal government now will request notification of release rather than a detainer for many individuals meeting its priorities. ICE has said that will provide probable cause to justify detainers in “special circumstances.” Nonetheless, many concerns persist regarding whether this program satisfies the Fourth Amendment requirements. One thing that is clear is that returning to the pre-PEP use of detainers is not an option.

III. “Enforcement First” Has Proven to be Unsuccessful

As explained in the Immigration Council’s report, *The Fallacy of “Enforcement First”* at <http://www.immigrationpolicy.org/just-facts/fallacy-enforcement-first> (Attachment C), the United States has been pursuing an “enforcement first” approach to immigration control for more than two-and-a-half decades—and it has yet to work. The U.S. currently spends more on immigration enforcement—\$18 billion per year—than all other federal law enforcement combined.¹ Since the last major legalization program for unauthorized immigrants in 1986, the

¹ Consolidated Appropriations Act, 2014, P.L. 113-76, 128 Stat. 5, 248-52 (Jan. 17, 2014), at <http://www.gpo.gov/fdsys/pkg/PLAW-113publ76/pdf/PLAW-113publ76.pdf>; Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, MIGRATION POLICY INSTITUTE (2013), www.migrationpolicy.org/pubs/enforcementpillars.pdf.

federal government has spent over \$200 billion on immigration enforcement.² Yet during that time, the unauthorized population has tripled in size to 11 million. This is a testament that enforcement measures alone pale in the face of a strong economy where the demand for foreign workers outstrips the available visas. Meanwhile, punitive laws separate families unnecessarily despite the natural desire of immigrants to be reunited with their families.

The American Immigration Council hopes that our research and analysis helps foster a practical, fact-based conversation about what we can do to ensure that our immigration system works for everyone. “Enforcement-only” proposals rely on stereotypes, not evidence, and ignore that this approach has proven unsuccessful. Congress has the power to make our communities safer by passing comprehensive immigration reform.

² Marc R. Rosenblum, Migration Policy Institute, Testimony to House Judiciary Committee, *Examining the Adequacy and Enforcement of Our Nation’s Immigration Laws* (Feb. 3, 2015), p. 18, at http://judiciary.house.gov/?a=Files.Serve&File_id=31971212-6FDB-4FE6-ABBB-406B7C673B21.

ATTACHMENT A

THE CRIMINALIZATION OF IMMIGRATION IN THE UNITED STATES

By Walter A. Ewing, Ph.D., Daniel E. Martínez, Ph.D., and Rubén G. Rumbaut, Ph.D.

THE CRIMINALIZATION OF IMMIGRATION IN THE UNITED STATES

ABOUT THE AUTHORS

Walter A. Ewing, Ph.D. is Senior Researcher at the American Immigration Council. He writes on a wide range of topics pertaining to U.S. immigration policy, including the impact of immigration on the U.S. economy, the unintended consequences of U.S. border-enforcement policies, and the relationship between immigration and crime. He has published articles in the *Journal on Migration and Human Security, Society*, the *Georgetown Journal of Law and Public Policy*, and the *Stanford Law and Policy Review*. He also authored a chapter in *Debates on U.S. Immigration*, published by SAGE in 2012. He received his Ph.D. in Anthropology from the City University of New York (CUNY) Graduate School.

Daniel E. Martínez, Ph.D. is an Assistant Professor in the Department of Sociology and inaugural director of the Cisneros Hispanic Leadership Institute at The George Washington University. He is a co-principal investigator of the Migrant Border Crossing Study, a Ford Foundation-funded research project that involves interviewing recently deported unauthorized migrants about their experiences crossing the U.S.-Mexico border and residing in the United States. Martínez also does extensive research on undocumented border-crosser deaths along the U.S.-Mexico border. He received his Ph.D. from the School of Sociology at the University of Arizona.

Rubén G. Rumbaut, Ph.D. is Distinguished Professor of Sociology at the University of California, Irvine. Together with Alejandro Portes, he has directed the landmark *Children of Immigrants Longitudinal Study* and coauthored *Immigrant America: A Portrait* (4th ed., 2014) and *Legacies: The Story of the Immigrant Second Generation* (2001), which won the American Sociological Association's top award for Distinguished Scholarship. He is the founding chair of the International Migration Section of the American Sociological Association, and an elected member of the National Academy of Education and the American Academy of Arts and Sciences. He received his Ph.D. in Sociology from Brandeis University.

ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. Our reports and materials are widely disseminated and relied upon by press and policymakers. Our staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

Visit our website at www.AmericanImmigrationCouncil.org and our blog at www.immigrationimpact.com.

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EXECUTIVE SUMMARY

For more than a century, innumerable studies have confirmed two simple yet powerful truths about the relationship between immigration and crime: immigrants are less likely to commit serious crimes or be behind bars than the native-born, and high rates of immigration are associated with lower rates of violent crime and property crime. This holds true for both legal immigrants and the unauthorized, regardless of their country of origin or level of education. In other words, the overwhelming majority of immigrants are not “criminals” by any commonly accepted definition of the term. For this reason, harsh immigration policies are not effective in fighting crime.

Unfortunately, immigration policy is frequently shaped more by fear and stereotype than by empirical evidence. As a result, immigrants have the stigma of “criminality” ascribed to them by an ever-evolving assortment of laws and immigration-enforcement mechanisms. Put differently, immigrants are being defined more and more as threats. Whole new classes of “felonies” have been created which apply only to immigrants, deportation has become a punishment for even minor offenses, and policies aimed at trying to end unauthorized immigration have been made more punitive rather than more rational and practical. In short, immigrants themselves are being criminalized.

Immigrants are Less Likely to be Criminals Than the Native-Born

Higher Immigration is Associated with Lower Crime Rates

- Between 1990 and 2013, the foreign-born share of the U.S. population grew from 7.9 percent to 13.1 percent and the number of unauthorized immigrants more than tripled from 3.5 million to 11.2 million.
- During the same period, FBI data indicate that the violent crime rate declined 48 percent—which included falling rates of aggravated assault, robbery, rape, and murder. Likewise, the property crime rate fell 41 percent, including declining rates of motor vehicle theft, larceny/robbery, and burglary.

Immigrants are Less Likely than the Native-Born to Be Behind Bars

- According to an original analysis of data from the 2010 American Community Survey (ACS) conducted by the authors of this report, roughly 1.6 percent of immigrant males age 18-39 are incarcerated, compared to 3.3 percent of the native-born. This disparity in incarceration rates has existed for decades, as evidenced by data from the 1980, 1990, and 2000 decennial censuses. In each of those years, the incarceration rates of the native-born were anywhere from two to five times higher than that of immigrants.
- The 2010 Census data reveals that incarceration rates among the young, less-educated Mexican, Salvadoran, and Guatemalan men who make up the bulk of the unauthorized population are significantly lower than the incarceration rate among native-born young men without a high-school diploma. In 2010,

less-educated native-born men age 18-39 had an incarceration rate of 10.7 percent—more than triple the 2.8 percent rate among foreign-born Mexican men, and five times greater than the 1.7 percent rate among foreign-born Salvadoran and Guatemalan men.

Immigrants are Less Likely Than the Native-Born to Engage in Criminal Behavior

- A variety of different studies using different methodologies have found that immigrants are less likely than the native-born to engage in either violent or nonviolent “antisocial” behaviors; that immigrants are less likely than the native-born to be repeat offenders among “high risk” adolescents; and that immigrant youth who were students in U.S. middle and high schools in the mid-1990s and are now young adults have among the lowest delinquency rates of all young people.

Criminalizing Immigration and Expanding the Apparatus of Enforcement

Despite the abundance of evidence that immigration is not linked to higher crime rates, and that immigrants are less likely to be criminals than the native-born, many U.S. policymakers succumb to their fears and prejudices about what they imagine immigrants to be. As a result, far too many immigration policies are drafted on the basis of stereotypes rather than substance. These laws are criminalizing an ever broadening swath of the immigrant population by applying a double standard when it comes to the consequences for criminal behavior. Immigrants who experience even the slightest brush with the criminal justice system, such as being convicted of a misdemeanor, can find themselves subject to detention for an undetermined period, after which they are expelled from the country and barred from returning. In other words, for years the government has been redefining what it means to be a “criminal alien,” using increasingly stringent definitions and standards of “criminality” that do not apply to U.S. citizens.

Of course, these increasingly punitive laws are only as effective as the immigration-enforcement apparatus designed to support them. And this apparatus has expanded dramatically over the past three decades. More and more immigrants have been ensnared by enforcement mechanisms new and old, from worksite raids to Secure Communities. Detained immigrants are then housed in a growing nationwide network of private, for-profit prisons before they are deported from the United States. In short, as U.S. immigration laws create more and more “criminal aliens,” the machinery of detention and deportation grows larger as well, casting a widening dragnet over the nation’s foreign-born population in search of anyone who might be deportable. With the technologically sophisticated enforcement systems in place today, being stopped by a police officer for driving a car with a broken tail light can culminate in a one-way trip out of the country if the driver long ago pled guilty to a misdemeanor that has since been defined as a deportable offense.

The scale of the federal government’s drive to criminalize immigration and expand the reach of the enforcement dragnet becomes very apparent when the proliferation of immigration laws, policies, and enforcement mechanisms is tracked over the past three decades. Two bills passed by Congress in 1996 stand as the most flagrant modern examples of laws which create a system of justice for non-U.S. citizens that is distinct from

the system which applies to citizens. And, from old-fashioned worksite raids to the modern databases which are the heart of initiatives such as Secure Communities and the Criminal Alien Program (CAP), the government's immigration-enforcement mechanisms continue to expand and reach deeper and deeper into the immigrant community. In the process, basic principles of fairness and equal treatment under the law are frequently left by the wayside.

The “Great Expulsion”

The United States is in the midst of a “great expulsion” of immigrants, both lawfully present and unauthorized, who tend to be non-violent and non-threatening and who often have deep roots in this country. This relentless campaign of deportation is frequently justified as a war against “illegality”—which is to say, against unauthorized immigrants. But that justification does not come close to explaining the banishment from the United States of lawful permanent residents who committed traffic offenses and who have U.S.-based families. Nor does it explain the lack of due-process rights accorded to so many of the immigrants ensnared in deportation proceedings. Likewise, the wave of deportations we are currently witnessing is often portrayed as a crime-fighting tool. But, as the findings of this report make clear, the majority of deportations carried out in the United States each year do not actually target “criminals” in any meaningful sense of the word.

INTRODUCTION

In November 2013, NPR reported that U.S. Immigration and Customs Enforcement (ICE) had been instructed by Congress since 2009 to fill 34,000 beds in detention facilities across the country with immigrant detainees every day. It was immediately apparent that this sort of inmate quota would never fly if applied to native-born prisoners. As the NPR story puts it: “Imagine your city council telling the police department how many people it had to keep in jail each night.”¹ Clearly, such a concept has nothing to do with fighting crime or protecting the public. But when it comes to the detention (and deportation) of immigrants, very different standards of justice and reason are at work.

For more than a century, innumerable studies have confirmed two simple yet powerful truths about the relationship between immigration and crime: immigrants are *less* likely to commit serious crimes or be behind bars than the native-born, and high rates of immigration are associated with *lower* rates of violent crime and property crime.² This holds true for both legal immigrants and the unauthorized, regardless of their country of origin or level of education. In other words, the overwhelming majority of immigrants are not “criminals” by any commonly accepted definition of the term. For this reason, harsh immigration policies are not effective in fighting crime.

Unfortunately, immigration policy is frequently shaped more by fear and stereotype than by empirical evidence, which is partly why immigrants are often treated like dangerous criminals by the U.S. immigration system. More precisely, immigrants have the stigma of “criminality” ascribed to them by an ever-evolving assortment of laws and immigration-enforcement mechanisms. From the Immigration Reform and Control Act of 1986 (IRCA) to

Operation Streamline (launched in 2005), immigrants are being defined more and more as threats.³ Whole new classes of “felonies” have been created which apply only to immigrants, deportation has become a punishment for even minor offenses, and policies aimed at trying to end unauthorized immigration have been made more punitive rather than more rational and practical. Moreover, as a growing body of “crimmigration” law has reimagined noncitizens as criminals and security risks, immigration law enforcement has increasingly adopted the securitized approach of criminal law enforcement.⁴ In short, immigrants themselves are being criminalized.⁵ As prominent immigration scholar Douglas Massey has written with regard to the plight of unauthorized immigrants in particular, “not since the days of slavery have so many residents of the United States lacked the most basic social, economic, and human rights.”⁶

This report tackles the criminalization of immigration from two angles. First, it documents the fact that immigration is not associated with “crime” as it is commonly understood. For more than two decades, rates of violent crime and property crime have fallen in the United States as the immigrant population (including the unauthorized population) has grown. Moreover, immigrants are less likely than the native-born to be behind bars or to engage in typically “criminal behaviors.” Second, the report describes the ways in which U.S. immigration laws and policies are re-defining the notion of “criminal” as it applies to immigrants, while also ramping up the enforcement programs designed to find anyone who might be deportable. More and more, a zero-tolerance policy has been applied by the federal government to immigrants who commit even the slightest offense or infraction. “Crimes” which might result in a fine or a suspended sentence for natives end up getting immigrants detained and deported. This represents a double standard of justice for immigrants in which the scale of the punishment (detention and deportation) far outweighs the severity of the crime (traffic offenses, for example). Unfortunately, this double standard has been the guiding principle behind a litany of immigration-enforcement laws and programs, such as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the 287(g) program, Secure Communities, and the “Consequence Delivery System” implemented by U.S. Customs and Border Protection (CBP) in 2011.

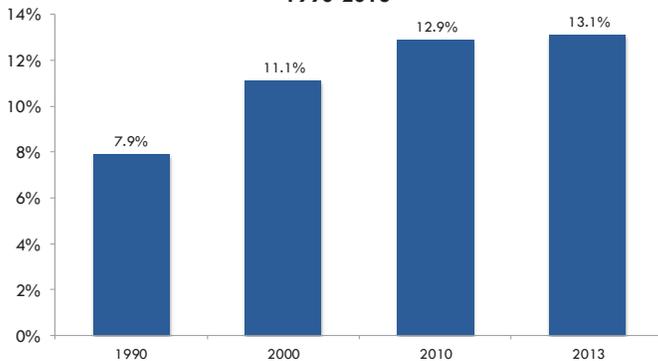
IMMIGRANTS ARE LESS LIKELY TO BE CRIMINALS THAN THE NATIVE-BORN

The evidence that immigrants tend *not* to be criminals is overwhelming. To begin with, there is an inverse relationship between crime and immigration. Crime rates in the United States have trended downward for many years at the same time that the number of immigrants has grown. Second, immigrants are *less* likely to be incarcerated than the native-born. And, third, immigrants are *less* likely than the native-born to engage in the criminal behaviors that tend to land one in prison. No matter how you look at the issue, the inescapable conclusion is that immigrants are, on average, less prone to criminality than the U.S. native-born population.

Higher Immigration is Associated with Lower Crime Rates

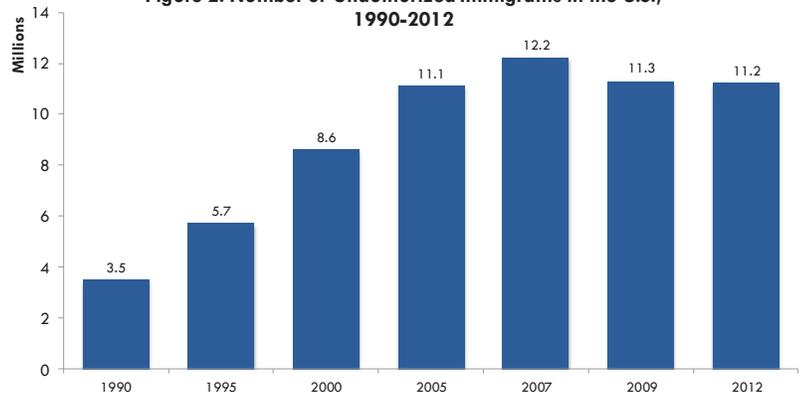
As the number of immigrants in the United States has risen in recent years, crime rates have fallen. Between 1990 and 2013, the foreign-born share of the U.S. population grew from 7.9 percent to 13.1 percent {Figure 1}⁷ and the number of unauthorized immigrants more than tripled from 3.5 million to 11.2 million {Figure 2}.⁸ During the same period, FBI data indicate that the violent crime rate declined 48 percent—which included falling rates of aggravated assault, robbery, rape, and murder {Figure 3}.⁹ Likewise, the property crime rate fell 41 percent, including declining rates of motor vehicle theft, larceny/robbery, and burglary {Figure 4}.¹⁰ This decline in crime rates in the face of high levels of new immigration has been a steady national trend, and has occurred in cities across the country.¹¹

Figure 1: Foreign-Born Share of the U.S. Population, 1990-2013



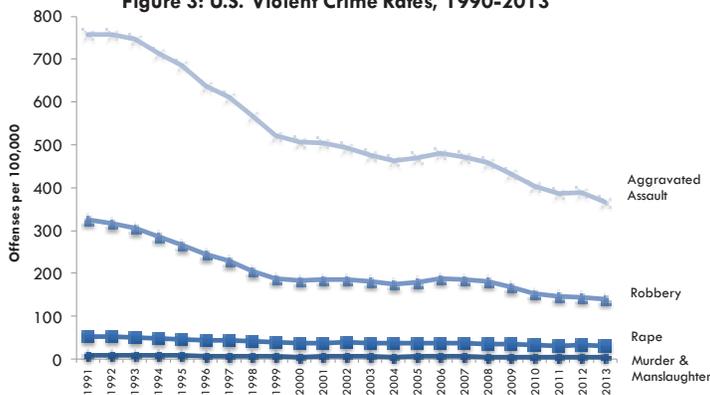
Source: Elizabeth M. Grieco, et al., *The Size, Place of Birth, and Geographic Distribution of the Foreign-Born Population in the United States: 1960 to 2010* (Washington, DC: U.S. Census Bureau, October 2012), p. 19; 2013 ACS 1-Year Estimates.

Figure 2: Number of Unauthorized Immigrants in the U.S., 1990-2012



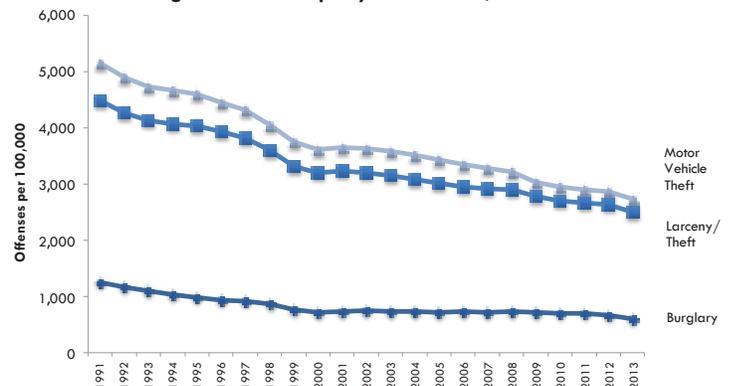
Source: Jeffrey S. Passel and D'Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14* (Washington, DC: Pew Hispanic Center, November 18, 2014), Table A1.

Figure 3: U.S. Violent Crime Rates, 1990-2013



Source: FBI, Uniform Crime Reports.

Figure 4: U.S. Property Crime Rates, 1990-2013



Source: FBI, Uniform Crime Reports.

The most thoroughly studied aspect of this phenomenon has been the drop in rates of violent crime since the early 1990s in cities that have long been “gateways” for immigrants entering the United States, such as Miami, Chicago, El Paso, San Antonio, and San Diego.¹² However, the inverse relationship between immigration and crime is also apparent in “new” immigrant gateways, such as Austin, where rates of both violent crime and serious property crime have declined despite high levels of new immigration.¹³ Declining rates of property crime have also been documented in metropolitan areas across the country.¹⁴ Some scholars suggest that new immigrants may revitalize dilapidated urban areas, ultimately reducing violent crime rates.¹⁵

In short, to quote sociologist Robert J. Sampson, “cities of concentrated immigration are some of the safest places around.”¹⁶ The reason for this is straightforward. Immigrants as a group tend to be highly motivated, goal-driven individuals who have little to gain by running afoul of the law. As law professor and public-policy expert Michael Tonry puts it: “First-generation economic immigrants are self-selected risk takers who leave their homes, families, and languages to move to a new country to improve their and their children’s lives. They have good reasons to work hard, defer gratifications, and stay out of trouble.”¹⁷ Sampson and colleagues also find that immigrant communities are insulated from crime because they tend to display “social cohesion among neighbors combined with their willingness to intervene on behalf of the common good.”¹⁸

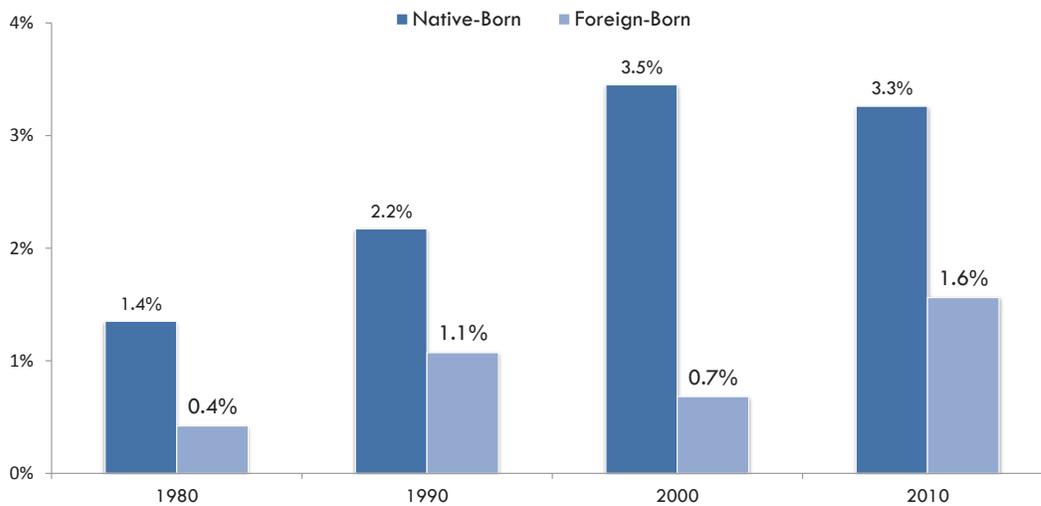
There is a sense of *déjà vu* in these modern-day findings. In the first three decades of the 20th century, during the last era of large-scale immigration, three government commissions studied the relationship between immigrants and crime and came to the same conclusion as contemporary researchers. The Industrial Commission of 1901, the [Dillingham] Immigration Commission of 1911, and the [Wickersham] National Commission on Law Observation and Enforcement of 1931 each set out to measure how immigration increases crime. But each found lower levels of criminality among immigrants than among their native-born counterparts.¹⁹ A century ago, the report of the Dillingham Commission concluded:

No satisfactory evidence has yet been produced to show that immigration has resulted in an increase in crime disproportionate to the increase in adult population. Such comparable statistics of crime and population as it has been possible to obtain indicate that immigrants are less prone to commit crime than are native Americans.²⁰

Immigrants are Less Likely than the Native-Born to Be Behind Bars

Another concrete indication that immigrants are less likely than the native-born to be criminals is the fact that relatively few prisoners in the United States are immigrants. According to an original analysis of data from the 2010 American Community Survey (ACS) conducted by the authors of this report, roughly 1.6 percent of immigrant males age 18-39 are incarcerated, compared to 3.3 percent of the native-born.²¹ This disparity in incarceration rates has existed for decades, as evidenced by data from the 1980, 1990, and 2000 decennial censuses {Figure 5}. In each of those years, the incarceration rates of the native-born were anywhere from two to five times higher than that of immigrants.²²

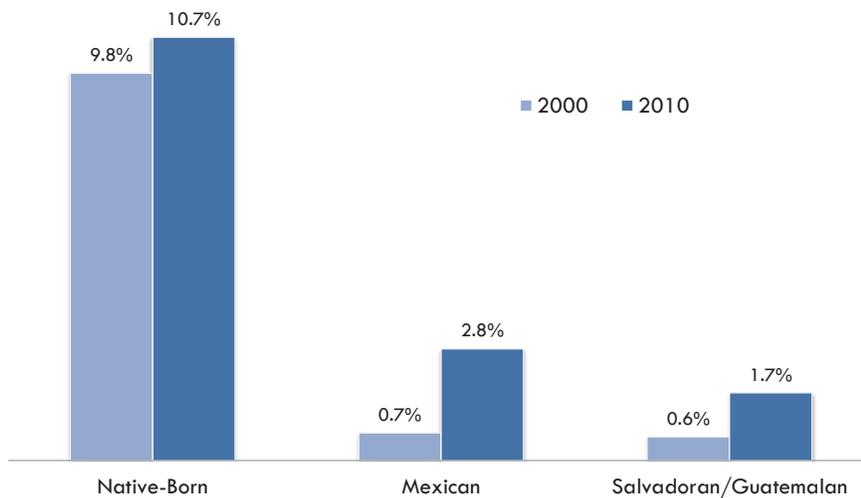
Figure 5: U.S. Incarceration Rates of Men Age 18-39, by Nativity, 1980-2010



Source: Kristin F. Butcher and Anne Morrison Piehl, *Why are Immigrants' Incarceration Rates so Low?* (Cambridge, MA: National Bureau of Economic Research, July 2007), Table 2; 2010 ACS.

The pronounced difference between immigrants and the native-born in terms of incarceration rates also holds true in the case of those immigrants most likely to be unauthorized. The 2010 Census data reveals that incarceration rates among the young, less-educated Mexican, Salvadoran, and Guatemalan men who make up the bulk of the unauthorized population are significantly lower than the incarceration rate among native-born young men without a high-school diploma. In 2010, less-educated native-born men age 18-39 had an incarceration rate of 10.7 percent—more than triple the 2.8 percent rate among foreign-born Mexican men, and five times greater than the 1.7 percent rate among foreign-born Salvadoran and Guatemalan men {Figure 6}.²³

Figure 6: U.S. Incarceration Rates of Native-Born, Mexican, and Salvadoran/Guatemalan Men, Age 18-39, Without a High-School Diploma, 2000 & 2010



Source: 2000 Decennial Census; 2010 ACS.

Research also indicates that such statistics are not simply the product of an effective immigration-enforcement system that removes immigrants from the country rather than holding them in U.S. prisons. According to a study by economists Kristin Butcher and Anne Morrison Piehl, the “evidence suggests that deportation and deterrence of immigrants’ crime commission from the threat of deportation are not driving the results. Rather, immigrants appear to be self-selected to have low criminal propensities and this has increased over time.”²⁴ The study begins by using data from the 1980, 1990, and 2000 Censuses to demonstrate that immigrants have had lower incarceration rates than the native-born for quite some time, and that this effect has been growing more pronounced with each passing decade.²⁵ But the study then goes on to answer the question of whether these decreasing incarceration rates are the result of harsh immigration policies enacted in the 1990s, either because more immigrants were deported or because more were deterred from criminal behavior because of the threat of deportation. The answer to this question proved to be “no.”

Nevertheless, it is clear from the ACS statistics that the incarceration rates for immigrant men rose between 2000 and 2010 (although they remained much lower than for native-born men). However, this is likely the product of changes in how immigration laws are enforced, not an indication of some immigrant predisposition towards “criminality” in the commonly understood sense of the word. The most probable explanation for the increase is that many more immigrant men were incarcerated for immigration-related offenses during the first decade of the 21st century as Congress redefined more and more immigration offenses as criminal (such as unauthorized entry or re-entry into the country),²⁶ thus triggering criminal incarceration before deportation.

These same factors also explain why immigrants are over represented in the federal prison system: while some may be there for committing a serious criminal offense, a great many more may be there because of an immigration violation. Moreover, it is important to keep in mind that the characteristics of the federal prison population do not necessarily speak to the U.S. prison population as a whole because the overwhelming majority of prisoners are not in federal prisons. According to data from the U.S. Bureau of Justice Statistics, federal inmates accounted for only 9 percent of all prisoners in 2010. Well over half (58 percent) were incarcerated in state prisons and a third (33 percent) in local jails.²⁷ So, when anti-immigrant activists and politicians trumpet the out-of-context statistic that one-quarter of the inmates in federal prisons are foreign-born,²⁸ that figure should not be taken at face value.

Although there is no reliable source of data on immigrants incarcerated in state prisons and local jails, the U.S. Government Accountability Office (GAO) sought to overcome this limitation in a 2011 study. Not only did the study examine immigrants in federal prison during the Fiscal Year (FY) 2005-2010 period, but also non-federal immigrant prisoners for whom state and local governments had sought federal reimbursement of some incarceration costs through the U.S. Department of Justice’s State Criminal Alien Assistance Program (SCAAP) during the FY 2003-2009 period.²⁹ The GAO found that, among the immigrant prisoners in its sample, 65 percent had been arrested at least once for (although not necessarily convicted of) an immigration violation, 48 percent for a drug offense, and 39 percent for traffic violations—all of which are generally non-violent acts. In compari-

son, 8 percent had been arrested at least once for homicide and 9 percent for robbery.³⁰ The GAO also analyzed data from the U.S. Sentencing Commission and found that, in FY 2009, the “federal primary conviction” for 68 percent of offenders who were immigrants was an immigration-related violation—not a violent offense or any sort of crime which could be construed as a threat to public safety.³¹

Immigrants are Less Likely Than the Native-Born to Engage in Criminal Behavior

The available evidence indicates that immigrants are not only less likely to end up behind bars than the native-born, but that immigrants are also less likely to commit criminal acts to begin with. For instance, a 2014 study found that “immigrants to the US are less likely to engage in violent or nonviolent antisocial behaviors than native-born Americans. Notably, native-born Americans were approximately four times more likely to report violent behavior than Asian and African immigrants and three times more likely than immigrants from Latin America.”³² The study analyzed data from the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC) to determine how often natives and immigrants engage in a wide range of violent and nonviolent “antisocial behaviors,” from hurting another person on purpose and using a weapon during a fight to shoplifting and lying.³³

In a related vein, another 2014 study tracked 1,354 “high risk” adolescents over the course of seven years and found that the immigrants in the sample were less likely than the native-born to be repeat offenders. In the words of the authors, immigrants “appear to be on a path toward desistance much more quickly than their peers.”³⁴ All of the adolescents in question had been convicted of a serious offense (usually a felony) in either a juvenile or adult court in Maricopa County, Arizona, or Philadelphia County, Pennsylvania. The study sought to determine who became a “persistent offender” and who did not.³⁵

A 2010 study yielded similar findings based on data from the National Longitudinal Study of Adolescent Health (Add Health).³⁶ Add Health offers a “national, longitudinal account of delinquency by gender, race/ethnicity, and immigrant group from the onset of adolescence (ages 11-12) to the transition into adulthood (ages 25-26).”³⁷ The study found that “immigrant youth who enrolled in U.S. middle and high schools in the mid-1990s and who are young adults today had among the lowest delinquency rates of all youth.”³⁸ The authors conclude that the national-level data gathered by Add Health “debunk(s) the myth of immigrant criminality. Fears that immigration will lead to an escalation of crime and delinquency are unfounded.”

CRIMINALIZING IMMIGRATION AND EXPANDING THE APPARATUS OF ENFORCEMENT

Despite the abundance of evidence that immigration is not linked to higher crime rates, and that immigrants are less likely to be criminals than the native-born, many U.S. policymakers succumb to their fears and prejudices about what they imagine immigrants to be. As a result, far too many immigration policies are drafted on the basis of stereotypes rather than substance. These laws are criminalizing an ever broadening swath of the immigrant population by applying a double standard when it comes to the consequences for criminal behavior. Immigrants who experience even the slightest brush with the criminal justice system, such as being convicted of a misdemeanor, can find themselves subject to detention for an undetermined period, after which they are expelled from the country and barred from returning. This reality is at the core of what law professor Juliet Stumpf calls “crimmigration”—the “criminalization of immigration law.”³⁹ Stumpf argues that “as criminal sanctions for immigration-related conduct and criminal grounds for removal from the United States continue to expand, aliens become synonymous with criminals.”⁴⁰ In other words, for years the government has been redefining what it means to be a “criminal alien,” using increasingly stringent definitions and standards of “criminality” that do not apply to U.S. citizens.

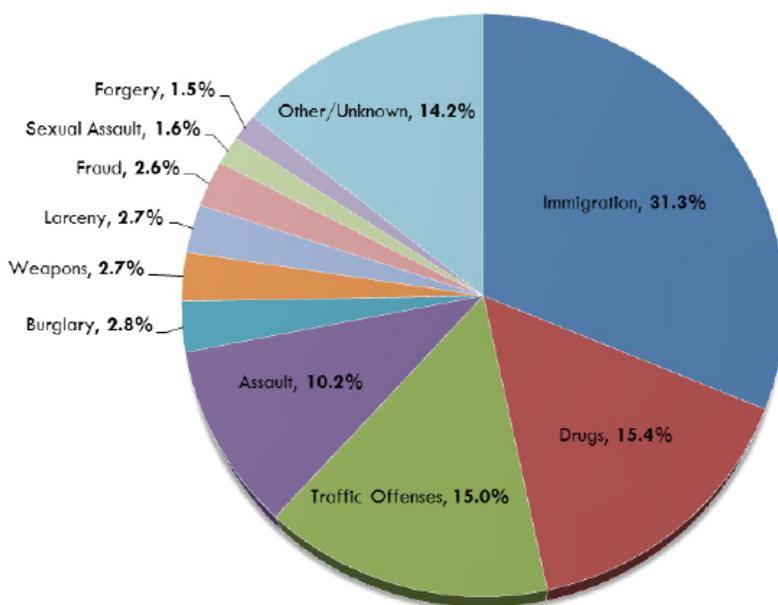
Of course, these increasingly punitive laws are only as effective as the immigration-enforcement apparatus designed to support them. And this apparatus has expanded dramatically over the past three decades.⁴¹ More and more immigrants have been ensnared by enforcement mechanisms new and old, from worksite raids to Secure Communities. Detained immigrants are then housed in a growing nationwide network of private, for-profit prisons before they are deported from the United States.⁴² In short, as U.S. immigration laws create more and more “criminal aliens,” the machinery of detention and deportation grows larger as well, casting a widening dragnet over the nation’s foreign-born population in search of anyone who might be deportable. With the technologically sophisticated enforcement systems in place today, being stopped by a police officer for driving a car with a broken tail light can culminate in a one-way trip out of the country if the driver long ago pled guilty to a misdemeanor that has since been defined as a deportable offense.

Misleading Language in the “Official” Deportation Statistics

The definition of “criminal alien” used by the federal government is clearly inconsistent with the general public’s understanding of serious crime. The term represents a terminological sleight-of-hand used to justify a punitive approach to immigration enforcement that is based on incarceration and deportation. An important part of the government’s attempt to redefine what it means to be a “criminal alien,” with all the social and legal implications this label carries, becomes clear upon closer consideration of the data on enforcement actions that is released by the U.S. Department of Homeland Security (DHS). According to DHS, 438,421 foreign nationals were removed from the United States in FY 2013. Among those removed, roughly 45 percent (198,394) were classified as “known criminal aliens.”⁴³ (Along these lines, the director of ICE testified before Congress that “eighty-five percent of individuals removed or returned from the interior were previously convicted of a criminal offense”).⁴⁴

However, a more detailed examination of the data clearly illustrates that the majority of “criminal aliens” are in fact *not* being removed for what most Americans perceive to be serious crime, such as the FBI’s eight Index Crimes, which consist of “Part I” offenses (homicide, assault, forcible rape, and robbery) and “Part II” offenses (larceny, burglary, motor vehicle theft and arson).⁴⁵ In fact, DHS’s FY 2013 enforcement actions indicate that serious crimes such as “Assault,” “Robbery,” “Burglary,” and “Sexual Assault” collectively make up only one-fifth of the crime categories for which “criminal aliens” were removed. Nearly one-third (31.3 percent) of “criminal aliens” were removed for “Immigration” offenses (i.e., illegal entry or reentry into the United States), followed by 15.4 percent for “Dangerous Drugs” (which includes possession of marijuana), and 15 percent for “Criminal Traffic Offenses” (including both Driving Under the Influence (DUI) and “hit and run”). Also noteworthy are an additional 14.2 percent of “criminal aliens” who were removed for “All other categories, including unknown” {Figure 7}.⁴⁶

Figure 7: Removals by Crime Category, FY 2013



Source: John F. Simanski, *Immigration Enforcement Actions: 2013* (Washington, DC: U.S. Department of Homeland Security, September 2014), p. 7.

Immigrant Incarceration and the Rise of the Private Prison Industry

The criminalization of immigration involves much more than the manipulation of official deportation statistics. It is also driven by a massive expansion in the infrastructure for the detention of immigrants who fit one or more of the growing list of offenses that qualify as “criminal” for immigration purposes. The immigrant-detention industry began to expand in earnest during the early 1980s following the creation of the Krome Avenue Detention Center in Miami to detain Mariel refugees from Cuba. Moreover, at the same time the immigration detention system has grown, the nation’s prison system has become increasingly privatized.⁴⁷ The end result is the federal government’s reliance upon private prison corporations, such as Corrections Corporation of America (CCA) and The GEO Group, to handle the burgeoning inflows of “criminal aliens.”⁴⁸

As the immigrant-detention industry grew, so did the redefinition of “immigrants” as an inherently dangerous group of people. This can be attributed in part to the fact that private prison companies work actively to shape the federal and state laws governing corrections and law enforcement. The companies make sizeable campaign contributions to politicians, and lobby Congress and state legislatures on bills that affect their interests. These companies also belong to organizations such as the American Legislative Exchange Council (ALEC), which champions free markets, limited government, and public-private partnerships that bring together federal and state legislators with members of the private sector. These partnerships can wield considerable power. For instance, there are indications that ALEC and CCA may have played a major role in drafting the legislation that would become Arizona’s infamous anti-immigrant law, SB 1070.⁴⁹ This scenario represents a conflict of interest in which a company that has a vested financial interest in the incarceration of as many people as possible is influencing legislation that will increase the flow of prisoners into that company’s prisons. One can only wonder if this business ethic is behind the fact that ICE is now required by law “to maintain an average daily population of 34,000 detainees.”⁵⁰

A Chronology of Criminalization and the Expansion of Immigration Enforcement

The scale of the federal government’s drive to criminalize immigration and expand the reach of the enforcement dragnet becomes very apparent when the proliferation of immigration laws, policies, and enforcement mechanisms is tracked over the past three decades.⁵¹ The 1996 laws stand as the most flagrant modern examples of laws which create a system of justice for non-U.S. citizens that is distinct from the system which applies to citizens.⁵² And, from old-fashioned worksite raids to the modern databases which are the heart of initiatives such as Secure Communities and the Criminal Alien Program (CAP), the government’s immigration-enforcement mechanisms continue to expand and reach deeper and deeper into the immigrant community. In the process, basic principles of fairness and equal treatment under the law are frequently left by the wayside.

Worksite Immigration Raids

For decades, worksite raids of businesses employing unauthorized immigrants were a mainstay of immigration enforcement in the United States. In recent times, their economic and social destructiveness are perhaps best exemplified by the case of Postville, Iowa. On May 12, 2008, 389 workers were arrested during an immigration raid at Postville’s Agriprocessors, Inc. meat-packing plant. The consequences for the community and the local economy have been dire.⁵³ According to the authors of *Postville U.S.A.*, one year after the raid, Postville “lost 40% of its pre-raid population, the economy was in shambles, the city government teetered on the brink of financial collapse, and the future of the town’s major employer grew increasingly doubtful with time.”⁵⁴ Long after the Agriprocessors raid, Postville was still what its leaders described as “a human and economic disaster area.”⁵⁵ The population loss meant steep losses for Postville in taxes and utility revenue. Local businesses closed, rental units remained empty, and the town couldn’t pay its bills. According to the book’s authors: “Attempts to come up with simple black-and-white solutions, such as arresting undocumented workers or closing down the companies that employ them, often causes a host of far more complex situations that do little to address any of the real concerns expressed by either side in the immigration debate.”⁵⁶

The use of worksite raids as an enforcement mechanism has waned in recent years, although unauthorized workers are occasionally still swept up in such raids. According to ICE, in FY 2012, the agency made “520 criminal arrests tied to worksite enforcement investigations. Of the individuals criminally arrested, 240 were owners, managers, supervisors or human resources employees.” The remaining were workers who faced charges “such as aggravated identity theft and Social Security fraud.”⁵⁷

Criminal Alien Program

The Immigration Reform and Control Act of 1986 (IRCA) is perhaps best known for providing an avenue to legal status for most unauthorized immigrants in the country at that time. However, IRCA also spurred the creation of new immigration-enforcement programs targeting noncitizens with criminal convictions.⁵⁸ Among those programs were two that eventually became ICE’s Criminal Alien Program (CAP)⁵⁹—a moniker which actually encompasses a number of different systems designed to identify, detain, and begin removal proceedings against deportable immigrants within federal, state, and local prisons and jails. CAP is currently active in all state and federal prisons, as well as more than 300 local jails throughout the country. It is one of several so-called “jail status check” programs intended to screen individuals in federal, state, or local prisons and jails for removability. CAP is by far the oldest and largest such interface between the criminal justice system and federal immigration authorities. CAP also encompasses other activities, including the investigation and arrest of some noncitizens who are not detained.⁶⁰

Regardless of its official intent, in practice CAP encourages local police to engage in ethnic profiling. In particular, police are motivated to arrest as many Latinos as possible in order to snare as many deportable immigrants as possible. For instance, one study found:

compelling evidence that the Criminal Alien Program tacitly encourages local police to arrest Hispanics for petty offenses. These arrests represent one part of an implicit, but relatively clear logic: the higher the number of Hispanic arrests, the larger the pool of Hispanic detainees; the larger the pool of detainees, the more illegal immigrants that can be purged from the city via the CAP screening system.⁶¹

The War on Drugs

Starting in the mid-1980s, the expansion of the infrastructure for detention in the United States was based not only on an escalating crackdown on immigrants, but was also a central component of the “war on drugs.” While IRCA and the Immigration Act of 1990 specifically expanded immigration detention, prisons were also filled with offenders—immigrant and native-born alike—on the basis of the Anti-Drug Abuse Act of 1988 (which created the concept of the “aggravated felony”), the Crime Control Act of 1990, and the Violent Crime Control and Law Enforcement Act of 1994, among other laws. In fact, the battles against illegal drugs and “illegal aliens” were frequently linked to each other in the political rhetoric of the time.⁶² The result was a growing number of prisons and a growing number of offenders to fill them.

1996 Laws

The year 1996 was pivotal in terms of the criminalization of immigration. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA) transformed immigration law in two profound ways. First, the laws mandated the detention and deportation of noncitizens (lawful permanent residents and unauthorized immigrants alike) who had been convicted of an “aggravated felony,” including individuals who may have pled guilty to minor charges to avoid jail time by opting for probation. Second, the laws expanded the list of offenses that qualify as “aggravated felonies” for immigration purposes, and applied this new standard retroactively to offenses committed years before the laws were enacted.⁶³

A classic example of just how unfair these laws can be is the case of Mary Anne Gehris, who was born in Germany in 1965 but adopted by U.S.-citizen parents when she was two years old and taken to live in the United States. In 1988, she got into a fight with another woman over a boyfriend, pulled that woman’s hair, and ended up pleading guilty to misdemeanor assault. In 1999, she applied for U.S. citizenship and found herself in deportation proceedings instead because the 1996 immigration reforms defined her 1988 misdemeanor assault conviction as a “crime of violence.” Fortunately, the Georgia Board of Pardons intervened on Ms. Gehris’s behalf and pardoned her, thereby sparing her from deportation and allowing her to become a U.S. citizen.⁶⁴ But many other non-citizens have not been so lucky and have found themselves deported to countries they have not seen since they were children.

287(g) Program

Created by IIRIRA in 1996, 287(g)—which refers to the relevant section of the Immigration and Nationality Act (INA)—allows DHS to deputize select state and local law-enforcement officers to perform the functions of federal immigration agents. Like employees of ICE, so-called “287(g) officers” have access to federal immigration databases, may interrogate and arrest noncitizens believed to have violated federal immigration laws, and may lodge “detainers” against alleged noncitizens held in state or local custody. The program has attracted a wide range of critics since the first 287(g) agreement was signed more than 10 years ago. Among other concerns, opponents say the program lacks proper federal oversight, diverts resources from the investigation of local crimes, and results in profiling of Latino residents—as was documented following the entry into a 287(g) agreement with Sheriff Joe Arpaio of Maricopa County, Arizona. Following the nationwide expansion of the Secure Communities program, which has its own drawbacks but is operated exclusively by federal authorities, critics have asked whether the 287(g) program continues to offer any law-enforcement benefit.⁶⁵ In its budget justification for FY 2013, DHS sought \$17 million *less* in funding for the 287(g) program, and said that in light of the expansion of Secure Communities, “it will no longer be necessary to maintain the more costly and less effective 287(g) program.”⁶⁶

While 287(g) may be on the way out, it is important to keep in mind that state governments have repeatedly sought to enlist their police forces in immigration enforcement without the cooperation or permission of federal authorities. Arizona’s SB 1070 and

Alabama's HB 56 are the most notorious examples of sweeping anti-immigrant laws that sought to turn police officers into immigration-enforcement agents. Although major provisions of these laws were struck down in the courts as a preemption of federal immigration-enforcement powers, other onerous provisions have survived. In Arizona, for instance, the U.S. Supreme Court upheld the provision of SB 1070 that permits police to conduct immigration status checks during law-enforcement stops.⁶⁷ Even if 287(g) programs eventually cease to exist, anti-immigrant laws introduced in state houses will remain a very real equivalent.

September 11

The U.S. government responded to the attacks of September 11, 2001, in the same way it has in so many other times of national crisis: by using “national security” as a justification for incarcerating and deporting greater numbers of immigrants. “Foreigners” were broadly defined as potential threats and were detained on immigration-related charges that do not require the same standard of proof that is necessary in a criminal investigation.⁶⁸ Although federal authorities first targeted Arabs, Muslims, and South Asians in the aftermath of 9/11, the “war on terror” has had an impact on all immigrants regardless of ethnicity or legal status—including Latin American immigrants, particularly Mexicans, who comprise the majority of immigration detainees.⁶⁹ Post-9/11 policies not only increased funding for various immigration-enforcement functions as part of the broader effort to enhance national security, but fostered an “us or them” mentality in which “they” are the foreign-born.⁷⁰

More precisely, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, the Homeland Security Act of 2002, and the Enhanced Border Security and Visa Entry Reform Act of 2002 collectively “illustrate the accelerating criminalization of the immigration system.”⁷¹ This intersection of criminal and immigration law has led to a notable increase in deportations.⁷² As Stumpf notes, in the period “between 1908 and 1980, there were approximately 56,000 immigrants deported based on criminal convictions. In 2004 alone, there were more than 88,000 such deportations.”⁷³ While immigration law had been used by U.S. authorities to remove non-citizens who came into contact with the criminal justice system in the pre-9/11 era, the relationship between these two systems of law intensified after 9/11.⁷⁴ As law professor Teresa A. Miller notes, “After the attacks, zero-tolerance enforcement of immigration laws was extended to immigrants who had not passed through the criminal justice system, such as asylum seekers and undocumented immigrants.”⁷⁵ The PATRIOT Act in particular allowed federal officers to apprehend and detain “non-citizens on immigration grounds without legal review and without public disclosure of the specific charge for a period of seven days, or for a maximum of six months if the case is deemed a national security risk.”⁷⁶

The “war on terror” thus had immediate implications for foreign-born individuals residing in the United States. As Miller states: “In January of 2002, Deputy Attorney General Larry Thompson announced a new initiative to ‘locate, apprehend, interview, and deport’ approximately 314,000 noncitizens who had been ordered deported, but had failed to comply with their deportation orders.”⁷⁷ This initiative led to the arrest of more than 1,100 Muslim and Arab men without formally charging them with a crime.⁷⁸ However, the

consequences of the PATRIOT Act extended beyond these individuals and into immigrant communities, ultimately being manifested through “racial profiling and scapegoating, mass detentions and mistreatment, and the government’s refusal to disclose information about those detained.”⁷⁹

A prime example of the enforcement-only mindset of DHS and its component agencies in the post-9/11 era is “Operation Endgame”—the name given to the “Office of Detention and Removal Strategic Plan, 2003–2012,”⁸⁰ which was released on June 27, 2003, by Anthony S. Tangeman, Director of ICE’s Office of Detention and Removal Operations (DRO). Tangeman succinctly explains the rationale underlying his department’s new strategic plan:

As the title implies, DRO provides the endgame to immigration enforcement and that is the removal of all removable aliens. This is also the essence of our mission statement and the ‘golden measure’ of our success. We must endeavor to maintain the integrity of the immigration process and protect our homeland by ensuring that every alien who is ordered removed, and can be, departs the United States as quickly as possible and as effectively as practicable. We must strive for 100% removal rate.⁸¹

However, Tangeman’s assertions about how best to “protect our homeland” ring hollow given that the vast majority of immigrants aren’t criminals (let alone terrorists), and that even minor infractions can render an immigrant “deportable” under current law. Yet the Tangeman memo, and the strategic plan it introduces, treat all immigrants as potential security risks—a paranoid worldview that has become widespread not only throughout the federal government, but in many state and local governments as well.

Operation Streamline

The federal government’s detention-and-deportation machine is also being fed by Operation Streamline, a program begun in 2005 in the southwest of the country under which unauthorized border-crossers are prosecuted in group trials and convicted of illegal entry into the country—a misdemeanor. If they cross again, they may be convicted of an aggravated felony and face up to two years in prison.⁸² Although these offenses have been on the books since 1929, they are being applied under Operation Streamline more widely than they ever were before.⁸³ Yet the structure of Operation Streamline—in which up to 80 immigrants are tried at a time, and each defendant has only a few minutes to speak to an attorney—practically guarantees the violation of basic legal and human rights.⁸⁴

In addition, Streamline—which currently operates in all but three southwestern Border Patrol Sectors—has fueled a surge in immigration prosecutions over the past decade, severely straining the capacities of courtrooms along the border and clogging the courts with petty immigration offenses. According to Justice Department data analyzed by the Transactional Records Access Clearinghouse (TRAC), immigration prosecutions “reached an all-time high” in FY 2013 with 97,384 (53,789 for “illegal entry” and 37,346 for “illegal re-entry”). This marks an increase of 367 percent over the number of prosecutions 10 years earlier.⁸⁵ Between FY 2005-2012, a “total of 208,939 people were processed

through Operation Streamline,” which represents 45 percent of the 463,051 immigration-related prosecutions in Southwest border districts during this time period.⁸⁶ U.S. Sentencing Commission data analyzed by the Pew Research Center finds that the “Dramatic growth over the past two decades in the number of offenders sentenced in federal courts has been driven primarily by enforcement of a particular immigration offense—unlawful reentry into the United States.”⁸⁷ Predictably, Operation Streamline has diverted resources away from drug and human smuggling prosecutions.⁸⁸ All this means that massive amounts of time, money, and manpower are being wasted on the prosecution of non-violent immigrants who do not represent a threat to public safety or national security.

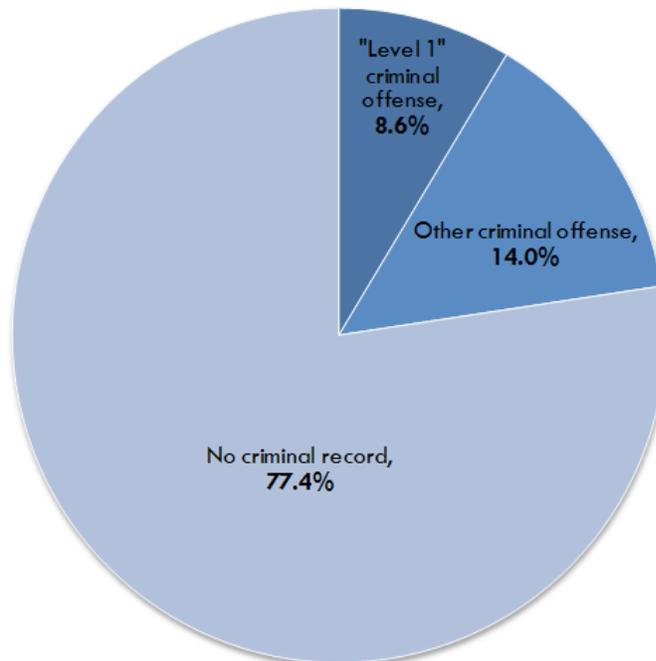
Secure Communities

Although the double standards inherent in immigration law have been applied to immigrants for more than a decade and a half, they took on new meaning starting in 2008 with the launch and dramatic expansion of Secure Communities. This was (or still is, depending on one’s perspective) a DHS program, eventually activated in all 3,181 jurisdictions across the United States,⁸⁹ which used biometric data to screen for deportable immigrants as people were being booked into jails.⁹⁰ Under Secure Communities, an arrestee’s fingerprints were run not only against criminal databases, but immigration databases as well. If there was an immigration “hit,” ICE could issue a “detainer” requesting that the jail hold the person in question until ICE could pick them up.

Not surprisingly, given the new classes of “criminals” created by IIRIRA, most of the immigrants scooped up by Secure Communities were non-violent and not a threat to anyone. In fact, one report found that in Los Angeles County, “the vast majority of those deported through Secure Communities have merely had contact with local law enforcement and have not committed serious crimes.”⁹¹ Moreover, as the program metastasized throughout every part of the country, more and more people were thrown into immigration detention prior to deportation, which led to mounting financial costs.⁹² In FY 2013, 306,622 immigrants convicted of crimes were removed from the United States after identification through Secure Communities.⁹³

More broadly, regardless of whether they were identified through Secure Communities or not, the overwhelming majority of people receiving ICE detainers while in the custody of local, state, and federal law-enforcement officials had no criminal record.⁹⁴ For instance, among the nearly one million detainers issued by ICE during a 50-month period during FY 2008-2012, over 77 percent consisted of individuals who “had no criminal record—either at the time the detainer was issued or subsequently.”⁹⁵ Records from this same time period illustrate that for “the remaining 22.6 percent that had a criminal record, only 8.6 percent of the charges were classified as a Level 1 offense” {Figure 8}.⁹⁶

Figure 8: Targets of ICE Detainers, by Criminal Record, FY 2008-2012



Source: Transactional Records Access Clearinghouse, "Who Are the Targets of Ice Detainers?" (Syracuse, NY: Syracuse University, February 20, 2013).

Secure Communities was not a practical or responsible approach to public safety. It undermined community policing by creating distrust of local law enforcement within immigrant communities, which in turn made community members less likely to report crimes or cooperate with local authorities in on-going investigations due to fear of deportation. This had negative consequences for public safety.⁹⁷ Secure Communities, along with other programs of its kind, also led to the separation of U.S.-citizen children from their parents.⁹⁸ These were issues that could not be fixed by simply altering the program. Further, one study found that "ICE's failure to adhere to its own stated priorities is a feature rather than a reparable flaw of the program" and "has led to increased use of racial profiling in policing."⁹⁹

The current status of Secure Communities is somewhat murky. In February 2013, ICE stated that it would transfer "full responsibility" for the day-to-day management of Secure Communities to CAP, and began to redirect Secure Communities funding towards CAP.¹⁰⁰ But Homeland Security Secretary Jeh Johnson announced in a November 20, 2014, memo that, due to widespread opposition to the program by law-enforcement officers and elected officials, "the Secure Communities program, as we know it, will be discontinued."¹⁰¹ It is to be replaced by the "Priority Enforcement Program" (PEP), under which ICE can "issue a request for detention" to state or local law-enforcement agencies if it can "specify that the person is subject to a final order of removal or there is other sufficient probable cause to find that the person is a removable alien."¹⁰² It remains to be seen how substantively different PEP will be from Secure Communities.

CBP's Consequence Delivery System

The systematic criminalization of unauthorized immigrants in particular has intensified along the U.S.-Mexico border. In 2011, CBP, in collaboration with ICE, rolled out a program described as the Consequence Delivery System (CDS). Rooted in the notion of specific deterrence, CDS is designed “to break the smuggling cycle and deter a subject from attempting further illegal entries or participating in a smuggling enterprise.”¹⁰³ The program “guides management and agents through a process designed to uniquely evaluate each subject and identify the ideal consequences to deliver to impede and deter further illegal activity.”¹⁰⁴ Possible “consequences” under this initiative include, but are not limited to, being processed through the Alien Transfer and Exit Program (commonly referred to a “lateral repatriation,” often resulting in people being sent to unfamiliar and dangerous Mexican border towns plagued with drug war violence), being repatriated to Mexico in the middle of the night, or being charged with “unauthorized entry” (a misdemeanor) or “unauthorized re-entry” (an aggravated felony), which commonly occurs through Operation Streamline. Not only has CDS contributed to the further criminalization of immigration, but it has also needlessly contributed to the increased vulnerability of the already vulnerable unauthorized population.

Executive Action

With Congress perennially deadlocked over comprehensive immigration reform legislation, the Obama administration eventually took matters into its own hands. On November 20 and 21, 2014, President Obama announced a series of “executive actions” that would grant a temporary reprieve from deportation, and work authorization, to as many as 5.3 million unauthorized immigrants (5.8 million remain ineligible).¹⁰⁵ This would be accomplished through expansion of the already functioning 2012 Deferred Action for Childhood Arrivals (DACA) program, as well as the creation of a new deferred action program called Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). DACA offers temporary relief from deportation (and temporary work authorization) to qualified young adults who were brought to the United States as children. DAPA would grant temporary relief from deportation, as well as temporary work authorization, to some unauthorized parents of U.S. citizens or lawful permanent residents.¹⁰⁶ However, neither DAPA nor the expansion of DACA can get off the ground until the legal challenges to them are resolved in court. So it remains to be seen how the President’s “executive action” will impact the drive to deportation that still permeates the U.S. immigration system.¹⁰⁷ Moreover, the rhetoric used by the Obama administration in justifying executive action—such as saying that immigration authorities will now target only “felons, not families”¹⁰⁸—fails to account for the fact that there are a great many “felons” who have committed only immigration offenses and pose a threat to no one.

CONCLUSION

There are many signs that the U.S. immigration-enforcement system has run amok. Deportations during the Obama Administration have exceeded the two-million mark.¹⁰⁹ Families and communities have been and are being needlessly torn apart in the process.¹¹⁰ And each year, billions upon billions of dollars are spent on border and interior enforcement, while hundreds of migrants die in the deserts and mountains of the southwest trying to cross into the country from Mexico—sometimes while trying to reach their families in the United States.¹¹¹ These are tragedies that could be prevented—if only Congress would choose to inject proportionality, discretion, and a little humanity back into the immigration system.

While lawmakers repeatedly justify their crackdown on immigrants as a means of fighting crime, the reality is that crime in the United States is not caused or even aggravated by immigrants, regardless of their legal status. This is hardly surprising since immigrants come to the United States to pursue economic and educational opportunities not available in their home countries and to build better lives for themselves and their families. As a result, they have little to gain and much to lose by breaking the law. Unauthorized immigrants in particular have even more reason to not run afoul of the law given the risk of deportation that their lack of legal status entails. But the terminological sleight-of-hand inherent in the government’s definition of “criminal alien” perpetuates and exacerbates the fallacy of a link between immigration and crime.

Public policies must be based on facts, not anecdotes or emotions. And the fact is that the vast majority of immigrants are *not* “criminals” in any meaningful sense of the word. The bulk of the immigration-enforcement apparatus in this country is not devoted to capturing the “worst of the worst” foreign-born criminals. Rather, as Secure Communities exemplifies all too well, the detention-and-deportation machine is designed primarily to track down and expel non-violent individuals, including legal residents of the United States who have worked and raised families here for many years. This brand of immigration policy is cruel, pointless, shortsighted, and counterproductive. And it is not an effective substitute for immigration reform which makes our immigration system responsive to the economic and social forces which drive migration in the first place.

The United States is in the midst of a “great expulsion” of immigrants, both lawfully present and unauthorized, who tend to be non-violent and non-threatening and who often have deep roots in this country.¹¹² This relentless campaign of deportation is frequently justified as a war against “illegality”—which is to say, against unauthorized immigrants.¹¹³ But that justification does not come close to explaining the banishment from the United States of lawful permanent residents who committed traffic offenses and who have U.S.-based families. Nor does it explain the lack of due-process rights accorded to so many of the immigrants ensnared in deportation proceedings. Likewise, the wave of deportations we are currently witnessing is often portrayed as a crime-fighting tool. But, as the findings of this report make clear, the majority of deportations carried out in the United States each year do not actually target “criminals” in any meaningful sense of the word.

Policymakers who look at the entire foreign-born population of the United States through a law-enforcement lens are seeing things that aren't really there. As renowned psychologist Abraham H. Maslow wrote many years ago, "it is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail."¹¹⁴ The blunt weapon that is the U.S. immigration-enforcement apparatus is being wielded against a widening swath of the immigrant community, regardless of their ties to this country, regardless of whether or not they are actually criminals. It is long past time for U.S. immigration policies to accurately reflect the diversity and complexity of immigration to this country, based not on a reflexive politics of fear and myth, but on sound analysis and empirical evidence.

ENDNOTES

¹ Ted Robbins, "[Little-Known Immigration Mandate Keeps Detention Beds Full](#)," NPR, November 19, 2013.

² Jessica T. Simes and Mary C. Waters, "The Politics of Immigration and Crime," in Sandra M. Bucerius and Michael Tonry, eds., *The Oxford Handbook of Ethnicity, Crime, and Immigration* (New York, NY: Oxford University Press, 2014), pp. 457-483; M. Kathleen Dingeman and Rubén G. Rumbaut, "[The Immigration-Crime Nexus and Post Deportation Experiences](#)," *University of La Verne Law Review* 31, no. 2 (2010): 363-383.

³ Samantha Hauptman, *The Criminalization of Immigration: The Post 9/11 Moral Panic* (El Paso: LFB Scholarly Publishing, 2013).

⁴ César Cuauhtémoc García Hernández, "[Creating Crimmigration](#)," 2013 *Brigham Young University Law Review* 1457; University Denver Legal Studies Research Paper No. 14-12 (2014).

⁵ This concept is often referred to as "crimmigration," which means different things to different scholars. Juliet Stumpf, for instance, uses it to refer to the incorporation of criminal enforcement techniques (such as detention) into immigration enforcement (Juliet Stumpf, "[The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power](#)," *American University Law Review* 56, no. 2 (December 2006): 367-419). But Jennifer Chacón uses the term to mean the increase of federal criminal sanctions for immigration violations (Jennifer M. Chacón, "[Overcriminalizing Immigration](#)," *Journal of Criminal Law and Criminology* 102, no. 3 (Summer 2012): 613-652).

⁶ Douglas S. Massey, "[America's Immigration Policy Fiasco: Learning from Past Mistakes](#)," *Dædalus* 142, no. 3 (Summer 2013): 13.

⁷ Elizabeth M. Grieco, et al., *The Size, Place of Birth, and Geographic Distribution of the Foreign-Born Population in the United States: 1960 to 2010* (Washington, DC: U.S. Census Bureau, October 2012), p. 19; 2013 American Community Survey. Jeffrey S. Passel and D'Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*

⁸ (Washington, DC: Pew Research Center, November 18, 2014), Table A1.

⁹ FBI, Uniform Crime Reports, Data Online, Table-Building Tool, [State and National Estimates](#), 1990-2012 (date of download: March 1, 2014); FBI, Uniform Crime Reports, Crime in the United States: 2013, [Violent Crime](#), Table 1.

¹⁰ Ibid.

¹¹ Tim Wadsworth, "[Is Immigration Responsible for the Crime Drop? An Assessment of the Influence of Immigration on Changes in Violent Crime between 1990 and 2000](#)," *Social Science Quarterly* 91, no. 2 (June 2010): 531-53; Leslie W. Reid, Harald E. Weiss, Robert M. Adelman, and Charles Jaret, "[The Immigration-Crime Relationship: Evidence Across US Metropolitan Areas](#)," *Social Science Research* 34, no. 4 (December 2005): 757-870.

¹² Ramiro Martínez, Jr., Matthew T. Lee and A. L. Nielsen, "[Segmented Assimilation, Local Context and Determinants of Drug Violence in Miami and San Diego: Does Ethnicity and Immigration Matter?](#)" *International Migration Review* 38, no. 1 (March 2004): 131-157; Matthew T. Lee, Ramiro Martínez, Jr. and Richard B. Rosenfeld, "[Does Immigration Increase Homicide? Negative Evidence from Three Border Cities](#)," *Socio-*

logical Quarterly 42, no. 4 (September 2001): 559-580; Ramiro Martínez, Jr., Jacob I. Stowell, and Jeffrey M. Cancino, "[A Tale of Two Border Cities: Community Context, Ethnicity, and Homicide](#)," *Social Science Quarterly* 89, no. 1 (March 2008): 1-16; Robert J. Sampson, Jeffrey D. Morenoff and Stephen Raudenbush, "[Social Anatomy of Racial and Ethnic Disparities in Violence](#)," *American Journal of Public Health* 95(2), February 2005: 224-232; Ramiro Martínez, Jr., and Kimberly Mehlman-Orozco, "Latino/Hispanic Immigration and Crime," in Sandra M. Bucerius and Michael Tonry, eds., *The Oxford Handbook of Ethnicity, Crime, and Immigration* (New York, NY: Oxford University Press, 2014), pp. 584-599.

¹³ Scott Akins, Rubén G. Rumbaut, and Richard Stansfield, "[Immigration, Economic Disadvantage and Homicide: An Analysis of Communities in Austin, Texas](#)," *Homicide Studies* 13, no. 3 (2009): 307-14; Richard Stansfield, Scott Akins, Rubén G. Rumbaut, and Roger B. Hammer, "Assessing the Effects of Recent Immigration on Serious Property Crime in Austin, Texas," *Sociological Perspectives* 56, no. 4 (Winter 2014): 647-672.

¹⁴ Leslie W. Reid, Harald E. Weiss, Robert M. Adelman, and Charles Jaret, "[The Immigration-Crime Relationship: Evidence Across US Metropolitan Areas](#)," *Social Science Research* 34, no. 4 (December 2005): 757-870; Kristin F. Butcher and Ann M. Piehl, "[Crime, Corrections and California: What Does Immigration Have to Do with It?](#)" *California Counts* 9, no. 3 (Public Policy Institute of California, February 2008): 1-23.

¹⁵ Vincent Ferraro, "Immigration and Crime in the New Destinations, 2000-2007: A Test of the Disorganizing Effect of Migration," *Journal of Quantitative Criminology*, online first article (February 2015); Matthew T. Lee and Ramiro Martínez, Jr., "Social disorganization revisited: Mapping the recent immigration and Black homicide relationship in Northern Miami," *Sociological Focus* 35, no. 4 (November 2002): 365-380.

¹⁶ Robert J. Sampson, "[Rethinking Crime and Immigration](#)," *Contexts* 7, no. 1 (Winter 2008): 30.

¹⁷ Michael Tonry, "Race, Ethnicity, Crime, and Immigration," in Sandra M. Bucerius and Michael Tonry, eds., *The Oxford Handbook of Ethnicity, Crime, and Immigration* (New York, NY: Oxford University Press, 2014), p. 2.

¹⁸ Robert J. Sampson, Stephen W. Raudenbush, and Felton Earls, "Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy," *Science* 277, no. 5328 (August 1997): 918-924.

¹⁹ For a summary of these reports, see Jessica T. Simes and Mary C. Waters, "The Politics of Immigration and Crime," in Sandra M. Bucerius and Michael Tonry, eds., *The Oxford Handbook of Ethnicity, Crime, and Immigration* (New York, NY: Oxford University Press, 2014), pp. 459-460; Rubén G. Rumbaut and Walter A. Ewing, *The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates among Native and Foreign-Born Men* (Washington, DC: Immigration Policy Center, American Immigration Law Foundation, Spring 2007), p. 14.

²⁰ *Reports of the Immigration Commission*, 61st Congress, 3rd Session (Washington, DC: Government Printing Office, 1911), p. 159-221.

²¹ Means are weighted to reflect sampling.

²² Kristin F. Butcher and Anne Morrison Piehl, [Why are Immigrants' Incarceration Rates](#)

so Low? *Evidence on Selective Immigration, Deterrence, and Deportation* (Cambridge, MA: National Bureau of Economic Research, July 2007), Table 2.

²³ 2010 American Community Survey.

²⁴ Kristin F. Butcher and Anne Morrison Piehl, *Why Are Immigrants' Incarceration Rates So Low? Evidence on Selective Immigration, Deterrence, and Deportation*, Working Paper 2005-19 (Chicago, IL: Federal Reserve Bank of Chicago, November 2005), p. i.

²⁵ Kristin F. Butcher and Anne Morrison Piehl, *Why Are Immigrants' Incarceration Rates So Low? Evidence on Selective Immigration, Deterrence, and Deportation*, Working Paper 2005-19 (Chicago, IL: Federal Reserve Bank of Chicago, November 2005), p. 2.

²⁶ Lisa Seghetti, *Border Security: Immigration Enforcement Between Ports of Entry* (Washington, DC: Congressional Research Service, December 31, 2014), pp. 7-10.

²⁷ Lauren E. Glaze and Erika Parks, *Correctional Populations in the United States, 2011*, NCJ 23997 (Washington, DC: U.S. Bureau of Justice Statistics, November 2012), p. 8.

²⁸ U.S. Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs*, GAO-11-187, March 2011, pp. 7-8.

²⁹ *Ibid.*, pp. 1-2.

³⁰ *Ibid.*, p. 20.

³¹ *Ibid.*, p. 23.

³² Michael G. Vaughn, et al., "The immigrant paradox: immigrants are less antisocial than native-born Americans," *Social Psychiatry and Psychiatric Epidemiology* 49, no. 7 (July 2014): 1135.

³³ *Ibid.*, pp. 1129-1137.

³⁴ Bianca E. Bersani, Thomas A. Loughran, and Alex R. Piquero, "Comparing Patterns and Predictors of Immigrant Offending Among a Sample of Adjudicated Youth," *Journal of Youth and Adolescence* 43, no. 11 (November 2014): 1914.

³⁵ *Ibid.*, pp. 1914-1933.

³⁶ Darci Powell, Krista M. Perreira, and Kathleen Mullan Harris, "Trajectories of Delinquency From Adolescence to Adulthood," *Youth & Society* 41, no. 4 (June 2010): 475-502.

³⁷ *Ibid.*, p. 477.

³⁸ *Ibid.*, p. 497.

³⁹ Juliet Stumpf, "The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power," *American University Law Review* 56, no. 2 (December 2006): 367-419; Mathew Coleman, "Immigration Geopolitics Beyond the Mexico-US Border," *Antipode* 39, no. 1 (February 2007): 54-76.

⁴⁰ Juliet Stumpf, "The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power," *American University Law Review* 56, no. 2 (December 2006): 419.

⁴¹ Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: Migration Policy Institute, January 2013).

⁴² Erik Camayd-Freixas, *US Immigration Reform and Its Global Impact: Lessons from the Postville Raid* (New York: Palgrave MacMillan, 2013).

⁴³ John F. Simanski, *Immigration Enforcement Actions: 2013* (Washington, DC: U.S. Department of Homeland Security, September 2014), p. 7.

⁴⁴ Testimony of Sarah R. Saldaña, Director, U.S. Immigration and Customs Enforcement, before the House Judiciary Committee, on "Oversight of U.S. Immigration and Customs Enforcement," April 14, 2015.

⁴⁵ U.S. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reporting Handbook* (2004).

⁴⁶ John F. Simanski, *Immigration Enforcement Actions: 2013* (Washington, DC: U.S. Department of Homeland Security, September 2014), p. 7.

⁴⁷ Kristina K. Shull, "Nobody Wants These People": Reagan's Immigration Crisis and America's First Private Prisons (Doctoral dissertation in History, University of California, Irvine, 2014); Kristina K. Shull, "A Recession-Proof Industry': Reagan's Immigration Crisis and the Birth of the Neoliberal Security State," *Border Criminologies: Foreigners in a Carceral Age*, April 30, 2015.

⁴⁸ Alissa R. Ackerman and Rich Furman, "The criminalization of immigration and the privatization of the immigration detention: implications for justice," *Contemporary Justice Review* 16, no. 2 (2013): 251-252. See also César Cuauhtémoc García Hernández, "Immigration Detention as Punishment," *UCLA Law Review* 61, no. 5 (2014): 1346-1414.

⁴⁹ Alissa R. Ackerman and Rich Furman, "The criminalization of immigration and the privatization of the immigration detention: implications for justice," *Contemporary Justice Review* 16, no. 2 (2013): 254-257; Justice Policy Institute, *Gaming the system: How the political strategies of private prison companies promote ineffective policies* (Washington, DC: Justice Policy Institute, 2011).

⁵⁰ U.S. Department of Homeland Security, Office of Inspector General, *ICE's Release of Immigration Detainees*, OIG-14-116 (Revised), August 2014, p. 1.

⁵¹ Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery* (Washington, DC: Migration Policy Institute, January 2013).

⁵² American Immigration Council, *Two Systems of Justice: How the Immigration System Falls Short of American Ideals of Justice* (Washington, DC: March 2013).

⁵³ Erik Camayd-Freixas, *US Immigration Reform and Its Global Impact: Lessons from the Postville Raid* (New York: Palgrave MacMillan, 2013).

⁵⁴ Mark A. Grey, Michele Devlin and Aaron Goldsmith, *Postville, U.S.A.: Surviving Diversity in Small-Town America* (Boston, MA: GemmaMedia, 2009), p. 119.

⁵⁵ *Ibid.*, p. 83.

⁵⁶ *Ibid.*, p. 88.

⁵⁷ U.S. Immigration and Customs Enforcement, *Fact Sheet: Worksite Enforcement*, April 1, 2013.

⁵⁸ See Immigration Reform and Control Act, P.L. 99-603, 100 Stat. 3359, §701 (1986); 8 U.S.C. § 1252(i).

⁵⁹ Andrea Guttin, *The Criminal Alien Program: Immigration Enforcement in Travis County, Texas* (Immigration Policy Center, American Immigration Council, February 2010), p. 4.

⁶⁰ Marc R. Rosenblum and William A. Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens* (Washington, DC: Congressional Research Service, December 20, 2012), pp. 12-13.

⁶¹ Trevor Gardner II and Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program* (The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, Berkeley Law Center for Research and Administration, September 2009), p. 4.

⁶² César Cuauhtémoc García Hernández, “Immigration Detention as Punishment,” *UCLA Law Review* 61, no. 5 (2014): 1361-1362.

⁶³ Juliet Stumpf, “The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power,” *American University Law Review* 56, no. 2 (December 2006): 367-419.

⁶⁴ Kathryn Harrigan Christian, “National Security and the Victims of Immigration Law: Crimes of Violence After *Leocal v. Ashcroft*,” *Stetson Law Review* 35, no. 3 (Spring 2006): 1001-1003; Anthony Lewis, “Abroad at Home: Rays of Hope,” *New York Times*, February 10, 2001.

⁶⁵ Scott Akins, “287(g): State and Local Enforcement of Immigration Law,” *Criminology & Public Policy* 12, no. 2 (May 2013): 227-236; Immigration Policy Center, *The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement* (Washington, DC: American Immigration Council, November 2012).

⁶⁶ U.S. Department of Homeland Security, *Annual Performance Report: Fiscal Years 2011-2013*, “Fiscal Year 2013 Congressional Justification,” p. 77.

⁶⁷ Jessica T. Simes and Mary C. Waters, “The Politics of Immigration and Crime,” in Sandra M. Bucerius and Michael Tonry, eds., *The Oxford Handbook of Ethnicity, Crime, and Immigration* (New York, NY: Oxford University Press, 2014), pp. 476-478.

⁶⁸ Jennifer M. Chacón, “The Security Myth: Punishing Immigrants in the Name of National Security,” in Julie A. Dowling and Jonathan Xavier Inda, *Governing Immigration Through Crime: A Reader* (Stanford, CA: Stanford University Press, 2013), p. 77.

⁶⁹ David Manuel Hernández, “Pursuant to Deportation: Latinos and Immigrant Detention,” in Julie A. Dowling and Jonathan Xavier Inda, *Governing Immigration Through Crime: A Reader* (Stanford, CA: Stanford University Press, 2013), pp. 199, 206.

⁷⁰ *Ibid.*, p. 85.

⁷¹ Teresa A. Miller, “Blurring the Boundaries Between Immigration and Crime Control after September 11th,” *Boston College Third World Law Journal* 25, no. 1 (January 1, 2005): 87.

⁷² Juliet Stumpf, “The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power,” *American University Law Review* 56, no. 2 (December 2006): 367-419.

⁷³ *Ibid.*, p. 386.

⁷⁴ Teresa A. Miller, “Blurring the Boundaries Between Immigration and Crime Control after September 11th,” *Boston College Third World Law Journal* 25, no. 1 (January 1, 2005): 81-122.

⁷⁵ *Ibid.*, p. 87.

⁷⁶ Mathew Coleman, “Immigration Geopolitics Beyond the Mexico-US Border,” *Antipode* 39, no. 1 (February 2007): 60.

⁷⁷ Teresa A. Miller, “Blurring the Boundaries Between Immigration and Crime Control after September 11th,” *Boston College Third World Law Journal*, no. 1 (January 1, 2005): 87.

⁷⁸ *Ibid.*, p. 88.

⁷⁹ Michael Welch, “Ironies of Social Control and the Criminalization of Immigrants,” *Crime, Law and Social Change* 39, no. 3 (June 2003): 332.

⁸⁰ U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, *ENDGAME: Office of Detention and Removal Strategic Plan, 2003-2012*, June 27, 2003.

⁸¹ Anthony S. Tangeman, “Memorandum for Deputy Assistant Director, Field Operations Division, Field Office Directors,” U.S. Immigration and Customs Enforcement, June 27, 2003.

⁸² Joanna Jacobbi Lydgate, “Assembly-Line Justice: A Review of Operation Streamline,” *California Law Review* 98, no. 2 (April 30, 2010): 481-544.

⁸³ Doug Keller, “Re-thinking Illegal Entry and Re-entry,” *Loyola University Chicago Law Journal* 44, no. 1 (Fall 2012): 65-139.

⁸⁴ Joanna Jacobbi Lydgate, “Assembly-Line Justice: A Review of Operation Streamline,” *California Law Review* 98, no. 2 (April 30, 2010): 481-544.

⁸⁵ Transactional Records Access Clearinghouse, “At Nearly 100,000, Immigration Prosecutions Reach All-time High in FY 2013” (Syracuse, NY: Syracuse University, November 25, 2013).

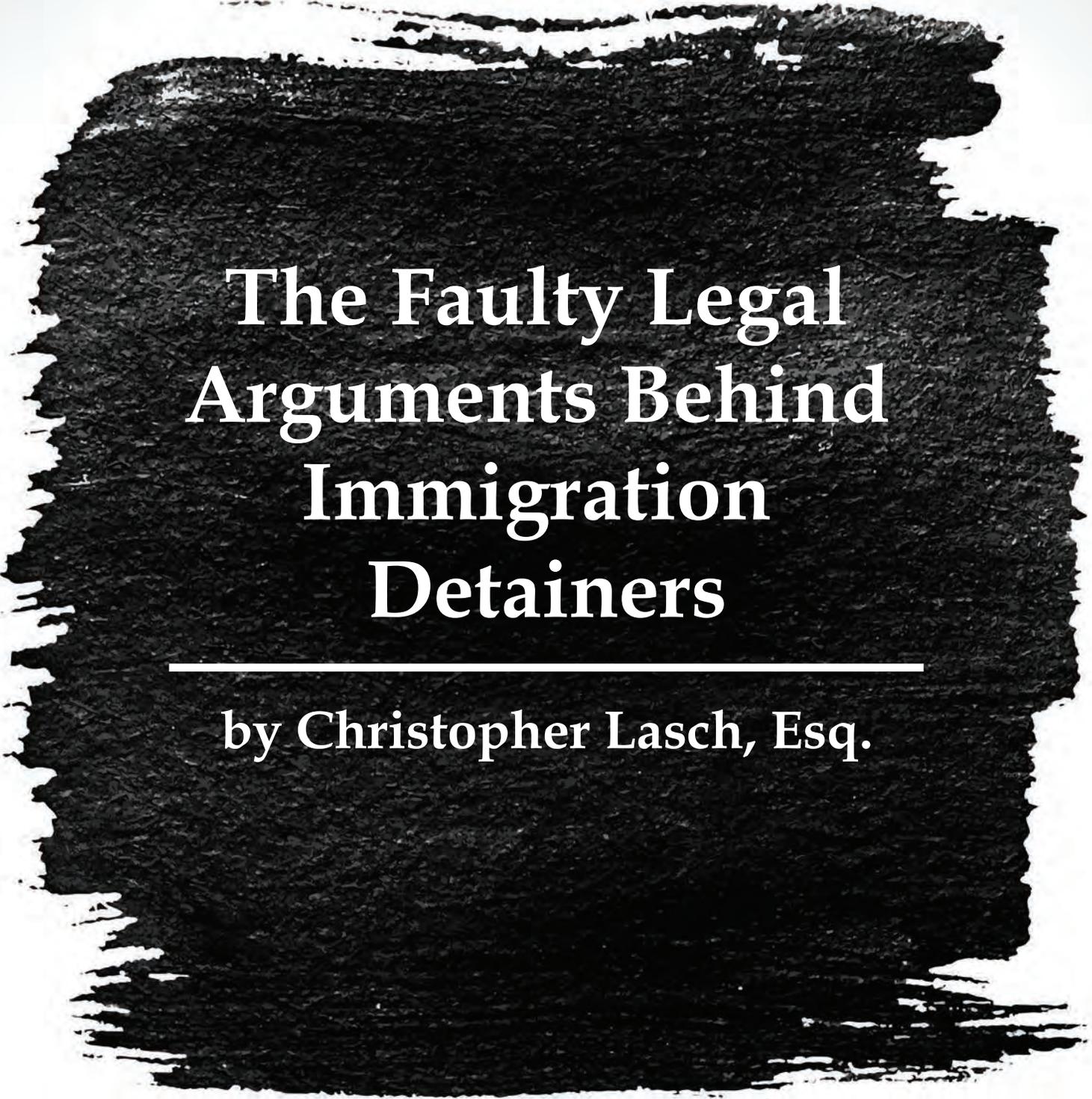
⁸⁶ Marc R. Rosenblum, *Border Security: Immigration Enforcement Between Ports of Entry* (Congressional Research Service, May 3, 2013).

⁸⁷ Michael T. Light, Mark Hugo López, and Ana González-Barrera, *The Rise of Federal Immigration Crimes* (Washington, DC: Pew Research Center’s Hispanic Trends Project, March 2014), p. 4.

⁸⁸ Joanna Lydgate, *Assembly-Line Justice: A Review of Operation Streamline* (The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, University of California, Berkeley Law School, January 2010).

- ⁸⁹ U.S. Immigration and Customs Enforcement, *Secure Communities, Activated Jurisdictions*, January 22, 2013.
- ⁹⁰ Marc R. Rosenblum and William A. Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens* (Washington, DC: Congressional Research Service, December 20, 2012), pp. 15-16.
- ⁹¹ Edgar Aguila-socho, David Rodwin, and Sameer Ashar, *Misplaced Priorities: The failure of Secure Communities in Los Angeles County* (Immigration Rights Clinic, University of California, Irvine School of Law, January 2012): 2.
- ⁹² Michele Waslin, *The Secure Communities Program: Unanswered Questions and Continuing Concerns* (Immigration Policy Center, American Immigration Council, updated November 2011); Edgar Aguila-socho, David Rodwin, and Sameer Ashar, *Misplaced Priorities: The failure of Secure Communities in Los Angeles County* (Immigration Rights Clinic, University of California, Irvine School of Law, January 2012).
- ⁹³ U.S. Immigration and Customs Enforcement, “Secure Communities: Monthly Statistics through September 30, 2013,” accessed January 31, 2014; According to U.S. Immigration and Customs Enforcement, “Level 1 offenders are those aliens convicted of ‘aggravated felonies,’ as defined in § 101(a)(43) of the Immigration and Nationality Act, or two (2) or more crimes each punishable by more than 1 year, commonly referred to as ‘felonies.’ Level 2 offenders are aliens convicted of any other felony or three (3) or more crimes each punishable by less than 1 year, commonly referred to as ‘misdemeanors.’ Level 3 offenders are aliens convicted of ‘misdemeanor’ crime(s) punishable by less than 1 year.” See U.S. Immigration and Customs Enforcement, “Secure Communities: Get the Facts,” accessed January 5, 2014.
- ⁹⁴ Transactional Records Access Clearinghouse, “Who Are the Targets of Ice Detainers” (Syracuse, NY: Syracuse University, February 20, 2013).
- ⁹⁵ Ibid.
- ⁹⁶ Ibid.
- ⁹⁷ Edgar Aguila-socho, David Rodwin, and Sameer Ashar, *Misplaced Priorities: The failure of Secure Communities in Los Angeles County* (Immigration Rights Clinic, University of California, Irvine School of Law, January 2012). Aarti Kohli, Peter L. Markowitz, and Lisa Chávez, *Secure Communities By the Numbers: An Analysis of Demographics and Due Process* (The Chief Justice Earl Warren Institute on Law and Social Policy, University of California, Berkeley Law School, October 2011).
- ⁹⁸ Edgar Aguila-socho, David Rodwin, and Sameer Ashar, *Misplaced Priorities: The failure of Secure Communities in Los Angeles County* (Immigration Rights Clinic, University of California, Irvine School of Law, January 2012); Jeremy Slack, Daniel E. Martínez, Scott Whiteford, and Emily Peiffer, *In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security: Preliminary Data from the Migrant Border Crossing Study* (The Center for Latin Americans Studies, University of Arizona, March 2013).
- ⁹⁹ Edgar Aguila-socho, David Rodwin, and Sameer Ashar, *Misplaced Priorities: The failure of Secure Communities in Los Angeles County* (Immigration Rights Clinic, University of California, Irvine School of Law, January 2012), p. 2.
- ¹⁰⁰ U.S. Immigration and Customs Enforcement, *Salaries and Expenses, Fiscal Year 2014 Congressional Justification*, p. 57.
- ¹⁰¹ Memorandum from Homeland Security Secretary Jeh Charles Johnson Regarding Secure Communities, November 20, 2014.
- ¹⁰² Ibid.
- ¹⁰³ U.S. Department of Homeland Security, “Testimony of Michael J. Fisher, Chief, U.S. Border Patrol, U.S. Customs and Border Protection, before the House Committee on Homeland Security, Subcommittee on Border and Maritime Security: ‘Does Administrative Amnesty Harm our Efforts to Gain and Maintain Operational Control of the Border?’” (October 4, 2011), accessed January 31, 2014.
- ¹⁰⁴ Ibid.
- ¹⁰⁵ Jens Manuel Krogstad and Jeffrey S. Passel, *Those from Mexico will benefit most from Obama’s executive action* (Washington, DC: Pew Research Center, November 20, 2014).
- ¹⁰⁶ American Immigration Council, *A Guide to the Immigration Accountability Executive Action* (Washington, DC: American Immigration Council, November 2014), p. 1.
- ¹⁰⁷ Walter A. Ewing, *The Growth of the U.S. Deportation Machine: More Immigrants are being “Removed” from the United States than Ever Before* (Washington, DC: Immigration Policy Center, American Immigration Council, updated March 2014).
- ¹⁰⁸ Jim Acosta and Stephen Collinson, “Obama: ‘You can come out of the shadows,’” CNN, November 21, 2014.
- ¹⁰⁹ U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2013*, Table 39.
- ¹¹⁰ Immigration Policy Center of the American Immigration Council and First Focus, *Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught Up in the Child Welfare System* (Washington, DC: December 2012); Ajay Chaudry, et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement* (Washington, DC: Urban Institute, February 2010).
- ¹¹¹ Walter A. Ewing, *The Cost of Doing Nothing: Dollars, Lives, and Opportunities Lost in the Wait for Immigration Reform* (Washington, DC: Immigration Policy Center, American Immigration Council, updated September 2013).
- ¹¹² *The Economist*, “The Great Expulsion: America’s Deportation Machine,” February 8, 2014.
- ¹¹³ Michael Jones-Correa and Els de Graauw, “The Illegality Trap: The Politics of Immigration & the Lens of Illegality,” *Dædalus* 142, no. 3 (Summer 2013): 186.
- ¹¹⁴ Abraham H. Maslow, *The Psychology of Science: A Reconnaissance* (Chapel Hill, NC: Maurice Bassett Publishing, 2002 [1966]), p. 15.

ATTACHMENT B



The Faulty Legal Arguments Behind Immigration Detainers

by Christopher Lasch, Esq.

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THE FAULTY LEGAL ARGUMENTS BEHIND IMMIGRATION DETAINERS

By Christopher Lasch, Esq.

ABOUT PERSPECTIVES ON IMMIGRATION

The Immigration Policy Center's *Perspectives* are thoughtful narratives written by leading academics and researchers who bring a wide range of multi-disciplinary knowledge to the issue of immigration policy.

ABOUT THE AUTHOR

Christopher Lasch is Assistant Professor at the University of Denver Sturm College of Law. Professor Lasch's scholarship focuses generally on the intersection of immigration and criminal law, and particularly on the legal validity of immigration detainer practices. This paper is adapted with permission from [Federal Immigration Detainers After Arizona v. United States](#), 46 Loy. L.A. L. Rev. 629 (forthcoming 2013). Other works by the author on immigration detainers include [Enforcing the Limits of the Executive's Authority to Issue Immigration Detainers](#), 35 William Mitchell L. Rev. 164 (2008) (invited symposium), [Preempting Immigration Detainer Enforcement Under Arizona v. United States](#), 3 Wake Forest J. L. & Pol'y 281 (2013); [Rendition Resistance](#), 92 N.C. L. Rev. 101 (forthcoming 2013); and [Litigating Immigration Detainer Issues](#), chapter in COLORADO BAR ASSOCIATION, IMMIGRATION LAW FOR THE COLORADO PRACTITIONER (2012).

ABOUT THE IMMIGRATION POLICY CENTER

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational conversation on immigration and immigrant integration. Through research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serve as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

Introduction

In late June 2012, the Supreme Court struck down three provisions of Arizona’s SB 1070 and left a fourth vulnerable to future legal challenge. As has been well documented, the Court’s rejection of SB 1070 tipped the balance in favor of federal enforcement and away from state and local enforcement of the immigration laws. But this essay explores a less obvious consequence of the Court’s decision: its implications for the viability of a critical federal enforcement mechanism: the immigration “detainer.”

An immigration detainer is a piece of paper that federal immigration officials send to state and local jails requesting that they continue holding an individual for up to 48 business hours *after* he or she would otherwise be released, so that agents of U.S. Immigration and Customs Enforcement (ICE) can investigate the person’s status and assume custody if necessary. Also known as immigration “holds,” detainers are the key enforcement mechanism behind federal enforcement initiatives like the Criminal Alien Program and Secure Communities.

There has been considerable confusion as to whether a detainer is a mere request that ICE be notified of a suspected immigration violator’s impending release, or a command by ICE that state or local officials hold a prisoner for ICE beyond the time the prisoner would otherwise be released.¹ Independent of that question, however, the Court’s decision in *Arizona v. United States* identifies a more fundamental problem: that detainers may violate the Constitution and federal statutes even when honored on a voluntary basis.

Indeed, detainers are invalid in many instances for the same reason the Supreme Court struck down numerous parts of SB 1070—they permit law enforcement action inconsistent with laws enacted by Congress. Moreover, as Justice Anthony Kennedy’s majority opinion also makes clear, the use of immigration detainers raises serious problems under the Fourth Amendment, which requires state and local law enforcement officials to have “probable cause” that a person has violated the law before placing him or her under arrest or extending the period of custody. Ironically, then, even as the *Arizona* decision trumpeted the supremacy of the federal government over immigration enforcement, it also cast doubt on the validity of ICE’s central mechanism for obtaining custody of individuals targeted for removal proceedings.

Due to these underlying legal problems, many of the “anti-detainer” measures enacted around the country are well founded. For example, numerous municipalities—including Chicago, New York, and San Francisco—now prevent local jails from honoring immigration detainers unless an arrestee has been charged with or convicted of certain criminal offenses. However, to the extent jurisdictions believe they can selectively honor immigration detainers, they may yet be exposed to civil liability. While legally sound in resisting the notion that the federal government can impose any binding obligation on state and local officials,² even selective enforcement of detainers may violate the Constitution and the Immigration and Nationality Act (INA).

Jurisdictions can avoid legal liability by following the lead of Cook County, Illinois, which does not honor immigration detainers under any circumstances. Alternatively, jurisdictions can attempt to enact detainer policies crafted to avoid the aforementioned legal problems, such as requiring probable cause that the subject of a detainer has committed a federal crime. Selective enforcement policies, however, could be preempted as efforts to hijack federal enforcement discretion.³

Background

How Immigration Detainers Work

Immigration detainers are the principle mechanism for ICE to obtain custody of suspected immigration violators who are initially arrested by state or local law enforcement officials. When ICE learns a suspected immigration violator is in a state prison or local jail, the agency sends a detainer—or “Form I-247”—requesting that the individual be held in custody for an additional 48 hours after he or she would otherwise be released, excluding weekends and holidays.⁴ Thus, once suspected immigration violators are entitled to release (e.g. after posting bail or being acquitted of the charges against them), local agencies that choose to honor detainers continue to hold them in custody.

Unlike criminal arrest warrants, which are based upon probable cause and must be issued by a neutral magistrate, detainers can be issued by virtually any ICE officer and without any proof that an inmate is removable from the country. For years, the Form I-247 itself (see excerpt of December 2011 Form I-247 below) allowed federal immigration officials to issue a detainer after merely “[i]nitiat[ing] an investigation” into whether an arrestee is removable.⁵ A complaint alleging detainer illegalities in Los Angeles estimated that 78% of detainers issued to the Los Angeles County Sheriff’s Department had the “[i]nitiating an investigation” box checked.⁶ (As discussed below, ICE issued revised detainer guidance, accompanied by a new detainer form, following the *Arizona* decision.)

DEPARTMENT OF HOMELAND SECURITY IMMIGRATION DETAINER - NOTICE OF ACTION	
Subject ID: Event #:	File No: Date:
TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)	FROM: (Department of Homeland Security Office Address)
MAINTAIN CUSTODY OF ALIEN FOR A PERIOD NOT TO EXCEED 48 HOURS	
Name of Alien: _____	
Date of Birth: _____	Nationality: _____ Sex: _____
THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) HAS TAKEN THE FOLLOWING ACTION RELATED TO THE PERSON IDENTIFIED ABOVE, CURRENTLY IN YOUR CUSTODY:	
<input type="checkbox"/> Initiated an investigation to determine whether this person is subject to removal from the United States.	
<input type="checkbox"/> Initiated removal proceedings and served a Notice to Appear or other charging document. A copy of the charging document is attached and was served on _____ (Date)	
<input type="checkbox"/> Served a warrant of arrest for removal proceedings. A copy of the warrant is attached and was served on _____ (Date)	
<input type="checkbox"/> Obtained an order of deportation or removal from the United States for this person.	

Although detainers have been issued for decades, their use has become increasingly common since 2008 due to the launch and expansion of the Secure Communities program, which routes to ICE all fingerprints taken by local police. When the fingerprints of a local arrestee generate a “match” in federal databases, ICE determines whether to send a detainer to the arresting agency. From less than 15,000 detainers issued in fiscal year 2007, after the implementation of Secure Communities, immigration officials now issue some 250,000 detainers each year.⁷

As the Secure Communities program has expanded across the country, detainers have become the mechanism by which people arrested for minor offenses—such as traffic violations—are held for

transfer to ICE agents. As a result, concerns have been raised that the detainer “tail” will wag the street-level enforcement “dog,” encouraging profiling by police.⁸ In addition, due to flawed databases on which ICE agents rely, U.S. citizens have been mistakenly held on immigration detainers.⁹ And, although the detainer form only purports to authorize continued detention for 48 hours (excluding weekends and holidays), numerous lawsuits have been filed by arrestees who have been detained beyond this period.

The Supreme Court’s Decision in *Arizona v. United States*

The law known as Arizona SB 1070 was enacted and signed by Gov. Jan Brewer in April 2010. Its legality was quickly challenged in federal court, first by a coalition of civil and immigrants’ rights groups, and later by the Obama administration. The administration’s challenge eventually made its way to the Supreme Court, which agreed to consider whether four provisions of SB 1070 were in conflict with—and therefore “preempted” by—federal immigration laws.

Of the four provisions the Supreme Court agreed to review, two have particular relevance to the validity of federal immigration detainers: Section 2(B), which was upheld by the Court, and Section 6, which was struck down. Although the Court reached different conclusions about their legality, the discussion of each provision revolved around a common theme: namely, that law enforcement officers are constrained by Congress’s enactments and the Constitution when detaining and arresting suspected immigration law violators.

Section 2(B) of SB 1070

Section 2(B), also known as the “show me your papers” provision, imposes two distinct obligations on Arizona law enforcement officers. First, it requires officers to attempt to determine the immigration status of any person they have stopped or detained if “reasonable suspicion” exists that the person is unlawfully present in the United States.¹⁰ Second, it requires officers to determine the immigration status of all persons arrested before they are released, regardless of whether they are suspected of being in the country unlawfully.¹¹ In both circumstances, officers are required to contact federal immigration authorities to determine whether a person is unlawfully present, not make their own determination.¹²

In upholding Section 2(B), the Court emphasized that on its face, the provision required nothing more than communication between state and federal officials, which it described as “an important feature of the immigration system.”¹³ In practice, however, Justice Kennedy recognized that Section 2(B) could potentially result in persons being detained “for no reason other than to verify their immigration status.”¹⁴ If officers subjected arrestees to “prolonged detention”¹⁵ to determine their immigration status, the majority made clear that such detentions would violate the Fourth Amendment, which prohibits law enforcement officers from arresting individuals unless they have probable cause to believe they have broken the law. The Court thus left open the door to future legal challenges to Section 2(B) based on how it is applied in practice.¹⁶

Section (6) of SB 1070

Meanwhile, Section 6 would have authorized Arizona officers to arrest immigrants *without* a warrant if probable cause existed that they had committed a public offense making them removable from the United States.¹⁷ In other words, the provision would have authorized Arizona officers to make warrantless arrests based solely on the suspicion of a civil immigration violation.

In striking down Section 6, the Court held that the provision exceeded the careful statutory structure put in place by Congress in the INA, and was therefore preempted. That statutory structure, the Court observed, included explicit allocation of civil immigration arrest authority to state officials—but in carefully limited circumstances. The Court noted that Congress has authorized “287(g)” agreements whereby state and local officers may be authorized to make civil immigration arrests, but only after adequate training in immigration enforcement.

The Court found that not only did Section 6 exceed the specific civil enforcement ability conferred by Congress upon state and local officers, but also the enforcement ability conferred by Congress on *federal* immigration agents to make warrantless arrests. As Justice Kennedy explained in the majority opinion, the INA generally requires immigration officers to obtain an administrative warrant before making an arrest,¹⁸ unless they have reason to believe a suspected immigration violator is “likely to escape before a warrant can be obtained.”¹⁹ Because Section 6 would have given Arizona officers more authority to make immigration arrests than Congress granted even federal agents, the Supreme Court found it to be inconsistent with the system Congress created, and struck Section 6 down as preempted.²⁰

The Effect of *Arizona v. United States* on Federal Immigration Detainers

Although the Supreme Court’s ruling in *Arizona v. United States* did not directly address the legality of detainers, the majority opinion nonetheless makes clear that honoring immigration detainers often violates both the Constitution and the INA. Like Section 6 of SB 1070, detainers are inconsistent with the statutory enactments of Congress. And like Section 2(B), detainers raise substantial Fourth Amendment concerns because of the possibility of prolonged detention based on suspected civil immigration violations. Detainers raise additional constitutional concerns not discussed in the *Arizona* decision because they cause individuals to be held in custody for more than 48 hours without an independent probable cause determination, which is a separate violation of the Fourth Amendment.

How Immigration Detainers Violate Federal Immigration Law

Immigration detainers are inconsistent with the statutory system Congress enacted for immigration enforcement. As noted above, the Court in striking down Section 6 of SB 1070 found that Congress had carefully delineated the civil arrest powers of state and local officers, and of federal immigration officials. Today, federal immigration officials often issue detainers in a manner that exceeds Congress’s grant of arrest authority.

As the *Arizona* Court discussed, federal immigration officials may take persons into custody either (1) pursuant to an immigration arrest warrant or (2) when the person is “likely to escape before a warrant can be obtained.”²¹ Although holding an individual in custody solely because of an immigration detainer amounts to a warrantless arrest,²² federal officials frequently issue detainers without regard to the individual’s likelihood of escape. Indeed, ICE’s practice has included filing immigration detainers that are not accompanied by arrest warrants against individuals who are not scheduled to be released for days, weeks, or even months.

Some might argue that persons in the custody of a law enforcement agency should be presumed flight risks, and therefore likely to escape before a warrant can be obtained. While this argument might have force in a particular case, it sweeps too broadly to justify the issuance of detainers in circumstances where immigration officials clearly *can* obtain a warrant before the prisoner’s release. Indeed, a strong case can be made for the opposite presumption, because individuals who are already in the custody of

law enforcement officials are much less likely to be able to flee than those who have not yet been arrested.

Additionally, the issuance of a detainer results in prolonged detention not by federal officials, but by state and local officials. Congress has not authorized state and local officials to arrest suspected immigration violators, except in the narrow circumstances the Court noted in *Arizona*. Just as Section 6 purported to authorize state and local officials to effectuate civil immigration arrests beyond any power Congress had delegated to them or even to federal immigration officials, the issuance of immigration detainers exceeds Congress's carefully crafted statutory structure.

How Immigration Detainers Raise Substantial Constitutional Questions

Under the Fourth Amendment, state and local law enforcement officials generally cannot take a person into custody without probable cause to believe he or she has committed a crime. As importantly, a person subjected to a warrantless arrest is entitled to a reasonably prompt hearing—generally within 48 hours—before a neutral magistrate.

The Supreme Court's discussion of Section 2(B) makes clear that holding a prisoner under the sole authority of an immigration detainer implicates the Fourth Amendment's probable cause requirement. It must be noted that Section 2(B), like an immigration detainer, applies generally to circumstances in which the prisoner is already lawfully in state custody. The Fourth Amendment concern is triggered in both instances when it is proposed that state officials prolong detention on the basis of a suspected civil immigration violation. As noted above, in the case of Section 2(B) the *Arizona* Court avoided this constitutional concern by construing Section 2(B) as requiring an inquiry into immigration status only "during the course of an authorized, lawful detention or after a detainee has been released." With this construction of Section 2(B), the Court found it need not even consider whether prolonged detention would be justifiable if state officials had reasonable suspicion (or probable cause) to believe an immigration *crime* had occurred.

Like Section 2(B), immigration detainers call for prolonged detention by state and local officials even in the absence of proof that an individual is removable. While DHS's most recent detainer guidance states that immigration officials "should" place a detainer only where there is "reason to believe" an individual is subject to removal,²³ this guidance cannot eliminate the substantial Fourth Amendment concern. First, the guidance is expressed not as a legal position of DHS, but as an enforcement priority. The guidance contains an express disclaimer stating that it does not "limit the legal authority of ICE or its personnel" and does not "create any right ... enforceable at law by any party" The guidance also excludes U.S. Customs and Border Protection (CBP) from its ambit, further emphasizing the document's function as an enforcement priority policy position as opposed to a legal position. The guidance also calls for a six-month review, whereupon "ICE will consider whether modifications, if any, are needed."

There is no guarantee, in other words, that ICE will not continue its practice over the past three decades of issuing detainers based upon nothing more than an *initiated investigation* into whether an individual is subject to removal. Notwithstanding the new detainer guidance, detainers allow state and local officials to do precisely what the Supreme Court said *Arizona* officers could not do when enforcing Section 2(B): subject individuals to "prolonged detention" solely to determine their immigration status.²⁴

A second reason the detainer guidance cannot cure this Fourth Amendment problem is that it requires only "reason to believe" the target of a detainer is removable. Because there is no requirement of reasonable suspicion or probable cause that a *crime* has been committed, the detainer guidance

continues to put state and local officials in the position of enforcing federal *civil* immigration law. Blocking Indiana’s SB 1070 “copycat” legislation, a federal district court held Indiana’s law, authorizing its law enforcement officials to arrest and detain persons subject to immigration detainers, likely violated the Fourth Amendment because it “authorizes the warrantless arrest of persons for matters and conduct that are not crimes.”²⁵ (The *Arizona* decision additionally makes clear that unlawful presence itself is not a crime, and state officials cannot enforce civil immigration law except in the narrow circumstances Congress has authorized.)

Furthermore, even aside from the Fourth Amendment’s probable cause requirement, continued custody under the authority of an immigration detainer may violate the Fourth Amendment for a separate reason. The Fourth Amendment requires the subject of a warrantless arrest to be brought before a neutral magistrate within 48 hours of the arrest—including weekends and holidays—for an independent probable cause determination.²⁶ By contrast, the detainer regulation flatly contradicts this requirement, authorizing prolonged detention for longer than 48 hours (indeed, up to five days over a holiday weekend) without any provision whatsoever for an independent probable cause determination by a neutral magistrate.²⁷

Detainer Resistance and its Limitations

In recent years, some jurisdictions have sought to indirectly “opt out” of Secure Communities by limiting the circumstances in which local jails may honor immigration detainers.²⁸ The foregoing discussion demonstrates the legal validity of this resistance; detainers often exceed Congress’s grant of authority,²⁹ raise substantial constitutional questions, and provide no legal authority for state and local officials to prolong detention of suspected immigration violators. But the majority of anti-detainer ordinances enacted around the country appear to have been motivated not by the legal issues, but by civil rights concerns stemming from the expansion of Secure Communities. Contrary to its stated purpose,³⁰ Secure Communities does not focus on the removal of noncitizens who have committed serious crimes.³¹ Opponents of Secure Communities argue that the program instead encourages racial profiling, diverts local resources from crime control, and makes communities less safe by discouraging immigrants from reporting crimes or cooperating with police.³²

Resistance to detainers was rooted in these criticisms. For example, years before California adopted statewide legislation limiting detainer compliance, the Santa Clara County, California Board of Supervisors passed a resolution urging the disentanglement of local law enforcement from federal immigration enforcement.³³ The resolution indicated a clear concern for the civil rights of immigrants in Santa Clara County. Its opening paragraph described the county as “home to a diverse and vibrant community of people representing many races, ethnicities, and nationalities, including immigrants from all over the world.” The resolution also expressed the belief of the Board of Supervisors that “laws like Arizona’s SB 1070 ... subject individuals to racial profiling” and affirmed the county’s commitment to protect all of its residents from “discrimination, abuse, violence, and exploitation ...”³⁴

Ultimately, the county adopted a measure prohibiting jails from honoring detainers unless the federal government agreed to pay the costs of detention, and then only if the arrestee was convicted of a felony classified as violent or serious under California law.³⁵ Likewise, the District of Columbia adopted an ordinance that, among other things, would only allow jails to honor detainers filed against arrestees convicted of dangerous and violent crimes.³⁶ Similar measures or policies have been enacted in Amherst, Berkeley, Chicago, Los Angeles, New Orleans, New York, and San Francisco, and in several counties as well, such as King County, Washington. On the state level, resistance has occurred in Connecticut and California,³⁷ and has been proposed in Florida, Massachusetts, and Washington.

The civil rights roots of detainer resistance were rendered visible in Cook County, Illinois, which voted in September 2011 to stop complying with detainers altogether.³⁸ The ordinance in question appeared to be legally rooted in the Constitution’s “unfunded mandate” doctrine, allowing the sheriff to honor detainers only if the federal government agreed to reimburse the county for all associated costs.³⁹ Yet, when ICE Director John Morton offered to reimburse the county for any costs associated with honoring immigration detainers,⁴⁰ County Board President Toni Preckwinkle told the press: “Equal justice before the law is more important to me than the budgetary considerations.”⁴¹

Unlike Cook County, which honors no detainers,⁴² other jurisdictions that have resisted wholesale compliance with detainers have claimed discretion to honor some detainers and not others. Santa Clara County and the District of Columbia are examples of jurisdictions that have indicated they may honor detainers when they target serious criminal offenders. In December 2012, California’s Attorney General Kamala D. Harris issued guidance to law enforcement agencies stating: “Immigration detainer requests are not mandatory, and each agency may make its own decision about whether or not to honor an individual request.”⁴³ Subsequently, California’s TRUST Act ratified the idea that California officials have discretion to honor immigration detainers, while limiting the exercise of that discretion.

But jurisdictions that claim a power to honor detainers selectively still confront many of the same legal problems that render immigration detainers invalid under federal law. Local officers honoring detainers are making what amount to civil immigration arrests, in circumstances beyond those specifically authorized by Congress. Even where there is an administrative arrest warrant, state or federal law may be violated by, for example, reliance upon a warrant that is not issued by a judge and not issued upon oath or affirmation.⁴⁴ Further, local officers honoring detainers may violate the Fourth Amendment, by prolonging detention without probable cause of a crime having been committed,⁴⁵ and by failing to provide prompt judicial review.⁴⁶

To avoid incurring legal liability, jurisdictions can follow the lead of Cook County by declining to honor immigration detainers in all circumstances. Alternatively, state and local jurisdictions can attempt to craft policies preventing local jails from honoring detainers unless authorized by Congress and in compliance with the Fourth Amendment and local law. Selective enforcement policies, however, may be subject to preemption if they interfere with federal immigration enforcement policy.⁴⁷

Conclusion

In *Arizona v. United States*, the Supreme Court made clear that states may not enforce civil immigration law unless explicitly authorized by Congress. But while generally providing a ringing endorsement of federal power, *Arizona* also limits the power of the federal executive to pursue immigration enforcement objectives. The executive branch, like the states, has an obligation to implement “the system Congress created” and none other. The *Arizona* opinion leaves little doubt that immigration detainers do not comport with the system Congress created.

Detainers also raise substantial constitutional questions, including the Fourth Amendment issue raised by prolonged detention—the precise concern raised by the justices concerning implementation of Section 2(B) of SB 1070. It is clear that such detention must comply with the Fourth Amendment; it must be supported by probable cause and meet the independent requirement of prompt neutral review.

Federal immigration detainers cannot support prolonged detention. Those jurisdictions that have resisted immigration detainers have done so with sound legal justification. But some of these

jurisdictions simultaneously assert a power to selectively comply with detainers. Given the legal problems attendant to the use of detainers, jurisdictions wanting to honor immigration detainers in some cases must do more than focus on the seriousness of the offense of which arrestees are accused. At a minimum, they must be sure that honoring a detainer in a particular case complies not only with “the system Congress created” for immigration enforcement, but also with state and federal constitutional requirements. By honoring immigration detainers that do not meet these threshold legal requirements, local officials and localities risk civil liability.

ENDNOTES

¹ See generally, Kate M. Manuel, *Immigration Detainers: Legal Issues 11-14* (Congressional Research Service, Aug. 31, 2012) (detailing authorities in support of position that detainer is a request and authorities in support of position that detainer is a command); *Rios-Quiroz v. Williamson County*, Slip Copy, 2012 WL 3945354 at *4 (M.D. Tenn.) (holding that use of “shall” in 8 CFR § 287.7(d) renders the regulation mandatory). The Third Circuit appears poised to become the first federal court of appeal to decide the question of whether immigration detainers can be mandatory on state officials, in *Ernesto Galarza v. County of Lehigh*, No. 12-3991, which was argued on October 10, 2013. The plaintiff in *Galarza*, a United States citizen, sued the County of Lehigh, Pennsylvania for detaining him based on an immigration detainer. *Galarza v. Szalczyk*, No. 10-cv-06815, 2012 WL 1080020, at *1–2 (E.D. Pa. Mar. 30, 2012). The district court held the county could not be held liable because the county’s policy of honoring all immigration detainers was “consistent with” the federal regulation stating that a local law enforcement agency “shall” prolong detention pursuant to a detainer. *Id.* at *18–19 (citing 8 CFR § 287.7(d)).

² For a thorough discussion of the anti-commandeering argument, see generally Brief of Law Professors as Amici Curiae in Support of Appellant & in Support of Reversal, *Galarza v. Cnty. of Lehigh*, No. 12-3991 (filed March 26, 2013), available at <http://portfolio.du.edu/downloadItem/252013>; Lasch, *Rendition Resistance*, 92 N.C. L. REV. 101 (forthcoming 2013).

³ Lasch, *Preempting Immigration Detainer Enforcement Under Arizona v. United States*, 3 WAKE FOREST J. L. & POL’Y 281, 301-11 (2013).

⁴ The form detainer has been in existence since at least 1983. Immigration Forms, 54 Fed. Reg. 39336-02, 39337 (Sept. 26, 1989) (to be codified at 8 C.F.R. pt. 299) (referring to Form I-247 with date of Mar. 1, 1983); Form I-247 (March 1, 1983) (on file with the author). Historically, federal immigration officials would also lodge a copy of the immigration charging documents with jail or prison officials, and these documents would be considered the equivalent of a detainer. *E.g.*, *Fernandez-Collado v. I.N.S.*, 644 F. Supp. 741, 742 (D. Conn. 1986); see Jonathan E. Stempel, *Custody Battle: The Force of U.S. Immigration and Naturalization Service Detainers over Imprisoned Aliens*, 14 FORDHAM INT’L L.J. 741, 742 n.11 (1990–1991).

⁵ Form I-247 (March 1, 1983); Form I-247 (April 1997); Form I-247 (August 2010); Form I-247 (June 2011) (all on file with the author).

⁶ Complaint, *Roy v. County of Los Angeles et al.*, No. CV12-9012, Complaint ¶¶ 25-26.

⁷ ICE placed 14,803 immigration detainers in fiscal year 2007 and 20,339 in fiscal year 2008. United States Department of Homeland Security, *Budget-in-Brief: Fiscal Year 2008* at 36, available at http://www.dhs.gov/xlibrary/assets/budget_bib-fy2008.pdf; United States Department of Homeland Security, *Budget-in-Brief: Fiscal Year 2009* at 35, available at http://www.dhs.gov/xlibrary/assets/budget_bib-fy2009.pdf. In fiscal years 2009 and 2010, ICE issued 234,939 and 239,523 detainers respectively, or approximately 20,000 per month – through its Criminal Alien Program alone. United States Department of Homeland Security, *FY11 Budget in Brief* at 63, available at http://www.dhs.gov/xlibrary/assets/budget_bib_fy2011.pdf; United States Department of Homeland Security, *FY12 Budget in Brief* at 79, available at <http://www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf>. Other ICE programs may make the number of detainers issued even greater. See Complaint, *Jimenez Moreno v. Napolitano*, No. 1:2011cv05452 (N.D. Ill., filed Aug. 11, 2011) at ¶ 28 (alleging 270,988 detainers were issued in fiscal year 2009).

⁸ See Trevor Gardner II & Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program* (Sept. 2009), available at http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf (observing correlation between issuance of detainers and profiling of Latinos in Irving, Texas).

⁹ See Molly F. Franck, *Unlawful Arrests and Over-Detention of America's Immigrants: What the Federal Government Can Do to Eliminate State and Local Abuse of Immigration Detainers*, 9 HASTINGS RACE & POVERTY L. J. 55, 65 (2011) (reporting 5 percent of individuals targeted for immigration enforcement through the "Secure Communities" program between October 2008 and October 2009 were U.S. citizens); Julia Preston, *Immigration Crackdown Also Snares Americans*, N.Y. TIMES, Dec. 13, 2011, at A20; see also Brian Bennett, *Fingerprinting Program Ensnarers U.S. Citizen; He's Suing the FBI and Homeland Security After Being Flagged as an Illegal Immigrant and Held in Prison*, L.A. TIMES, July 6, 2012, at A9 (describing U.S. citizen's claim that he was wrongfully detained for two months due to database error); Complaint, *Vohra v. United States*, No. SA CV 04-00972 DSF (RZx) (C.D. Cal. Feb. 4, 2010) (alleging plaintiff to be a U.S. citizen held pursuant to immigration detainer); *Henry v. Chertoff*, 317 F. App'x 178, 179 (3d Cir. 2009) (discussing habeas petition alleging prisoner subject to immigration detainer was a U.S. citizen).

¹⁰ ARIZ. REV. STAT. ANN. § 11-1051(B) (2011) (West).

¹¹ *Id.*

¹² ARIZ. REV. STAT. ANN. § 11-1051(E) (2011) (West).

¹³ *Arizona v. United States*, 132 S. Ct. 2492, 2508 (2012). (citing INA § 287(g)(10), 8 U.S.C. § 1357(g)(10))

¹⁴ *Id.* Although Justice Kennedy referred only to "constitutional concerns," the cases cited in support of the argument dealt with the Fourth Amendment. In particular, Justice Kennedy quoted the Court's previous decision in *Illinois v. Caballes*, 543 U. S. 405, 407 (2005), which stated that a traffic stop "that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." In their dissenting opinions, Justice Scalia and Justice Alito also recognized that prolonged detention of individuals while their immigration status was under investigation would raise Fourth Amendment concerns.

¹⁵ *Arizona v. United States*, 132 S. Ct. 2492, 2509 (2012).

¹⁶ *Id.* 2492, 2510 (2012) ("This opinion does not foreclose other preemption and constitutional challenges to the law as interpreted and applied after it goes into effect.").

¹⁷ ARIZ. REV. STAT. ANN. § 13-3883(A)(5) (2011) (West).

¹⁸ *Arizona v. United States*, 132 S. Ct. 2492, 2505-06 (2012) (citing INA § 236, 8 U.S.C. § 1226(a)). The administrative arrest warrants authorized by INA § 236 are not the equivalent of criminal arrest warrants. The statute sets forth no standard for the issuance of such warrants. Nor is there any requirement that such warrants be based upon sworn testimony, or issued by a neutral magistrate.

¹⁹ *Id.* 2492, 2506 (2012) (citing INA § 287(a)(2), 8 U.S.C. § 1357(a)(2)).

²⁰ *Id.*

²¹ *Id.* (quoting INA § 287(a)(2), 8 U.S.C. § 1357(a)(2)). The Court did not explicitly note the other important requirement of § 287(a)(2)—that an immigration official making a warrantless arrest have "reason to believe" the arrestee has violated federal immigration law. See *id.* Courts have construed the "reason to believe" requirement as importing a probable cause requirement in order to satisfy the Fourth Amendment's prohibition against unreasonable seizures. See Jennifer M. Chacón, *A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights*, 59 DUKE L.J. 1563, 1608 & n.229 (2010).

²² See *Cervantez v. Whitfield*, 776 F.2d 556, 560 (5th Cir. 1985) (former Immigration and Naturalization Service stipulating to proposition that "[a]n immigration hold is an arrest without warrant made pursuant to 8 U.S.C. § 1357(a)(2). As such, an immigration hold may only be authorized by an officer of the INS and only when the officer has determined that there is probable cause to believe that the person to be held (a) is an alien, (b) is in the United States in violation of the immigration laws, and (c) is likely to escape before a warrant can be obtained for his arrest.").

²³ Simultaneous with its December 2012 guidance, DHS released a new version of the Form I-247 detainer, which eliminates the "initiated an investigation" checkbox and replaces it with a checkbox indicating DHS has "reason to believe" the target of the detainer is "an alien subject to removal." Form I-247 (Dec. 2012) (on file with author).

²⁴ *Arizona v. United States*, 132 S. Ct. 2492, 2509 (2012).

²⁵ *Buquer v. City of Indianapolis*, 797 F.Supp.2d 905, 919 (S.D. Ind. 2011).

²⁶ *County of Riverside v. McLaughlin*, 500 U.S. 44, 56-57 (1991).

²⁷ 8 C.F.R. § 287.7(d).

²⁸ See generally Lasch, *Rendition Resistance*, 92 N.C. L. REV. 101 (forthcoming 2013).

²⁹ The federal detainer regulation exceeds Congress's limitations on immigration arrests and is therefore *ultra vires*. See generally Lasch, *Federal Immigration Detainers After Arizona v. United States*, 46 LOY. L.A. L. REV. 629 (forthcoming 2013). Compliance with detainers by state and local officials exceeds Congress's limitations as well and is therefore preempted. Lasch, *Preempting Immigration Detainer Enforcement Under Arizona v. United States*, 3 WAKE FOREST J. L. & POL'Y 281 (2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2253001.

³⁰ Press Release, Dep't of Homeland Sec., *ICE unveils sweeping new plan to target criminal aliens in jails nationwide: Initiative aims to identify and remove criminal aliens from all U.S. jails and prisons*, ICE (Mar. 28, 2008), available at <http://www.ice.gov/news/releases/0803/080328washington.htm>.

³¹ National Day Laborer Organizing Network, et al., *Briefing Guide to "Secure Communities" – ICE's Controversial Immigration Enforcement Program – New Statistics and Information Reveal Disturbing Trends and Leave Crucial Questions Unanswered at 2*, available at http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/NDLON_FOIA_Briefing%20guide_final.pdf (reporting 79% of people apprehended through Secure Communities were "non-criminals or were picked up for low-level offenses"); see also Transactional Records Access Clearinghouse, *Few ICE Detainers Target Serious Criminals* (Sept. 17, 2013), available at <http://trac.syr.edu/immigration/reports/330> (noting that during the 16-month period under study, "no more than 14 percent of the 'detainers' issued ... met the agency's stated goal of targeting individuals who pose a serious threat to public safety or national security" and nearly half targeted people with no criminal conviction whatsoever, not even a minor traffic conviction).

³² E.g., Violeta R. Chapin, *¡Silencio! Undocumented Immigrant Witnesses and the Right to Silence*, 17 MICH. J. RACE & L. 119, 152–54 (2011); *Secure Communities*, NAT'L IMMIGRATION FORUM (2009), http://www.immigrationforum.org/images/uploads/Secure_Communities.pdf; *More Questions than Answers about Secure Communities*, NAT'L IMMIGR. L. CTR. (Mar. 2009), <http://v2011.nilc.org/immlawpolicy/LocalLaw/securecommunities-2009-03-23.pdf>.

³³ Resolution No. 2010-316 (enacted June 22, 2010), available at <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=10621>.

³⁴ *Id.*

³⁵ Santa Clara County Board of Supervisors Policy Manual, available at <http://www.sccgov.org/sites/bos/legislation/bos-policy-manual/documents/bospolicychap3.pdf>.

³⁶ Hearing Notice on Immigration Detainer Compliance Amendment, available at <http://www.dccouncil.us/hearing-notices/immigration-detainer-compliance-amendment>.

³⁷ Perhaps responding to litigation, see Petition for Writ of Habeas Corpus, *Brizuela v. Feliciano*, No. 3:12-cv-00226-JBA (D. Conn. Feb. 13, 2012), the Connecticut Department of Correction limited its compliance with detainers to instances in which the Department determines the prisoner's release would pose an "unacceptable risk to public safety." CONN. DEP'T OF CORR., ADMIN. DIRECTIVE 9.3: INMATE ADMISSIONS, TRANSFERS AND DISCHARGES ¶¶ 9–10 (2012), available at <http://www.ct.gov/doc/LIB/doc/PDF/AD/ad0903.pdf>. In June 2013, the Connecticut General Assembly passed and the governor signed into law a bill that will expand the limitations on detainer compliance beyond the Department of Correction to other state and local law enforcement agencies. Act of June 25, 2013, 2013 Conn. Acts 13-155, available at <http://www.cga.ct.gov/2013/act/pa/pdf/2013PA-00155-R00HB-06659-PA.pdf> (concerning civil immigration detainers). The California "TRUST (Transparency and Responsibility Using State Tools) Act," aimed at limiting the state's compliance with federal immigration detainers, was signed into law by the California governor on October 5, 2013. See Assemb. B. 4, 2013–2014 Reg. Sess. (Cal. 2013), available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB4 (bill history) and http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0001-0050/ab_4_bill_20130624_amended_sen_v97.pdf (text of bill).

³⁸ Cook County Ordinance 11-O-73, available at http://cookcountygov.com/ll_lib_pub_cook/cook_ordinance.aspx?WindowArgs=1501.

³⁹ See Lasch, *Federal Immigration Detainers After Arizona v. United States*, 46 LOY. L.A. L. REV. 629, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2178524.

⁴⁰ Letter from John Morton, Director, U.S. Immigration and Customs Enforcement, to Toni Preckwinkle, President, Cook County Board of Supervisors, February 13, 2012, available at <http://www.immigrationpolicy.org/sites/default/files/docs/Morton-Letter-to-Preckwinkle-02-13-12.pdf>.

⁴¹ Hal Dardick, *Preckwinkle Ices ICE proposal: Rejects Call For Working Group to Resolve Issues*, CHI. TRIB., (April 10, 2012), available at http://articles.chicagotribune.com/2012-04-10/news/ct-met-tonipreckwinkle-0411-20120411_1_preckwinkle-detainersimmigration-status.

⁴² Champaign County, Illinois also refuses to honor any immigration detainers. See Letter from Champaign County Sheriff Dan Walsh to U.S. Immigration and Customs Enforcement, March 8, 2012, available at http://d3n8a8pro7vhmx.cloudfront.net/progressivemajorityaction/pages/92/attachments/original/1369418919/C_hampaign_IL_Policy_Letter.pdf?1369418919 (“This office will not hold inmates based on a routine detainer.”).

⁴³ Information Bulletin 2012-DLE-01, “Responsibilities of Local Law Enforcement Agencies under Secure Communities” at 3 (Dec. 4, 2012), available at https://www.aclunc.org/docs/immigration/ag_info_bulletin.pdf.

⁴⁴ See *State v. Rodriguez*, 317 Or. 27, 854 P.2d 399 (1993) (suggesting that administrative warrant issued by federal immigration officials did not satisfy state constitutional analogue to the Fourth Amendment).

⁴⁵ See *Buquer*, *supra*.

⁴⁶ See *County of Riverside*, *supra*.

⁴⁷ A DHS memorandum relied on by the *Arizona* Court insists that “DHS must have exclusive authority to set enforcement priorities,” and insists that state and local officials must “conform to and effectuate” those priorities. Dept. of Homeland Security, Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters 8 (2011), online at <http://www.dhs.gov/xlibrary/assets/guidance-state-local-assistance-immigration-enforcement.pdf>, cited in *Arizona* at 2507. On DHS’s view, a locality’s “mandatory set of directives to implement the [jurisdiction]’s own enforcement policies ... would serve as an obstacle to the ability of individual state and local officers to cooperate with federal officers administering federal policies ...” *Id.*

ATTACHMENT C

May 2013

**THE FALLACY OF “ENFORCEMENT FIRST”:
Immigration Enforcement Without Immigration Reform Has Been Failing for Decades**

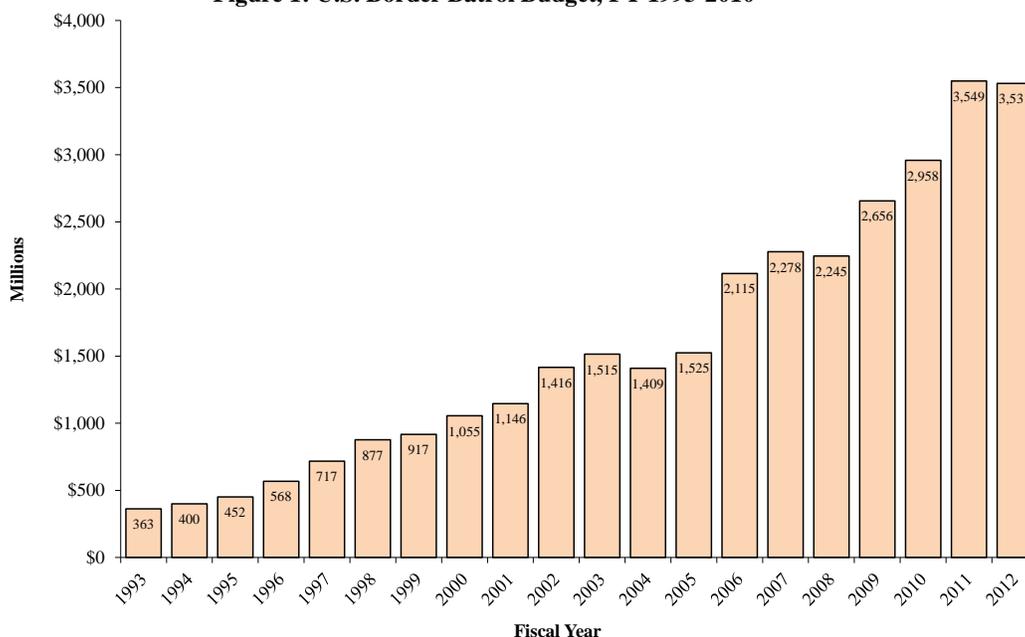
Opponents of a new legalization program for unauthorized immigrants living and working in the United States frequently claim that we must try “enforcement first.” That is to say, we must adequately enforce the laws on the books before we can contemplate the formulation of more reasonable laws. This stance is nonsensical for two reasons. First of all, it ignores the fact that the unworkable nature of our immigration laws is itself facilitating unauthorized immigration; so it is illogical to hope that stronger enforcement of those unworkable laws will somehow lessen unauthorized immigration. Secondly, the “enforcement first” perspective conveniently overlooks the fact that the United States has been pursuing an “enforcement first” approach to immigration control for more than two-and-a-half decades—and it has yet to work.

Since the last major legalization program for unauthorized immigrants in 1986, the federal government has spent an estimated \$186.8 billion on immigration enforcement.¹ Yet during that time, the unauthorized population has tripled in size to 11 million.² This did not occur because \$186.6 billion was not enough to get the job done. It occurred because this money was spent trying to enforce immigration laws that have consistently failed to match either the U.S. economy’s demand for workers or the natural desire of immigrants to be reunited with their families. As a result, we keep throwing good money after bad, ignoring the old adage that “insanity” is doing the same thing over and over again and expecting different results. More concretely, the federal government has met nearly every “metric” for border security that appeared in the 2006, 2007, and 2010 immigration-reform bills in the Senate, yet new metrics are continually created to replace the old ones, and the finish line keeps moving further away.³ The “enforcement first” approach to unauthorized immigration would more accurately be called “enforcement forever,” because there is no end in sight.

The U.S. Border Patrol budget has increased nearly 10-fold since 1993.

- Since 1993, when the current strategy of concentrated border enforcement was first rolled out along the U.S.-Mexico border, the annual budget of the U.S. Border Patrol has increased from \$363 million to more than \$3.5 billion {Figure 1}.⁴
- Since 2001, the Border Patrol budget has more than tripled in size {Figure 1}.⁵

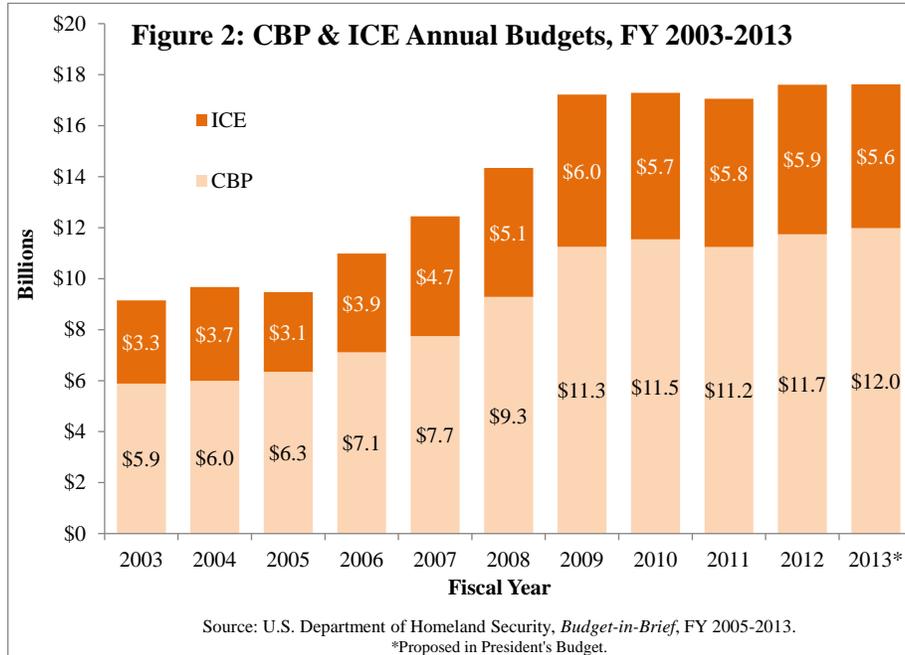
Figure 1: U.S. Border Batrol Budget, FY 1993-2010



Source: U.S. Border Patrol, "Enacted Border Patrol Program Budget by Fiscal Year," February 2013.

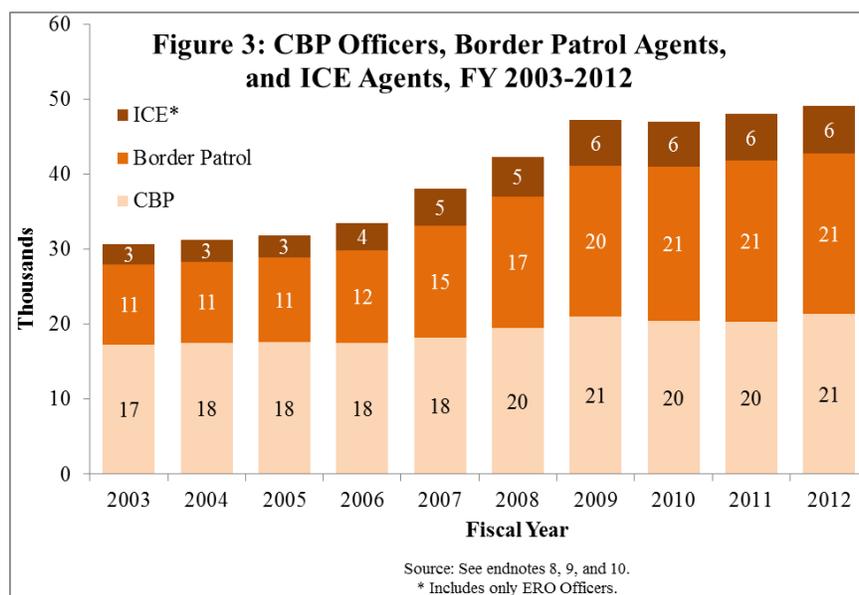
Since 2003, the budget of U.S. Customs and Border Protection (CBP) has doubled, while the budget of Immigration and Customs Enforcement (ICE) has increased by 73 percent.

- Since the creation of the Department of Homeland Security (DHS) in 2003, the budget of U.S. Customs and Border Protection (CBP)—the parent agency of the Border Patrol within DHS—has increased from \$5.9 billion to \$12 billion per year {Figure 2}.⁶
- On top of that, spending on U.S. Immigration and Customs Enforcement (ICE), the interior-enforcement counterpart to CBP within DHS, has grown from \$3.3 billion since its inception to \$5.6 billion today {Figure 2}.⁷



The number of border and interior enforcement personnel now stands at more than 49,000.

- The number of Border Patrol agents doubled from 10,717 in FY 2003 to 21,394 in FY 2012 {Figure 3}.⁸
- The number of CBP officers staffing ports of entry (POEs) grew from 17,279 in FY 2003 to 21,423 in FY 2012 {Figure 3}.⁹
- The number of ICE agents devoted to Enforcement and Removal Operations increased from 2,710 in FY 2003 to 6,338 in FY 2012 {Figure 3}.¹⁰



The federal government has already met the border-security benchmarks laid down in the immigration-reform bills introduced in the Senate since 2006.

- As the American Immigration Lawyers Association points out in a January 2013 analysis, the “benchmarks” for border security specified in the 2006, 2007, and 2010 immigration-reform bills in the Senate have been largely met.¹¹
- The requirements in the bills for more border-enforcement personnel, border fencing, surveillance technology, unmanned aerial vehicles, and detention beds have been fulfilled.¹²

“Enforcement first” has been the law of the land for decades.

- As the Migration Policy Institute concluded in a comprehensive report in January 2013:

“...a philosophy known as ‘enforcement first’ has become *de facto* the nation’s singular response to illegal immigration, and changes to the immigration system have focused almost entirely on building enforcement programs and improving their performance. Enforcement-first proponents argue that effective immigration enforcement should be a precondition for addressing broader reform and policy needs. In fact, the nation’s strong, pro-enforcement consensus has resulted in the creation of a well-resourced, operationally robust, modernized enforcement system...”¹³

Conclusion

“Enforcement first” is just more of the same; more of the same enforcement-without-reform approach to unauthorized immigration that has consistently failed to work for 27 years and counting. Trying to enforce a dysfunctional immigration system as a prerequisite for reforming that system is a fool’s errand. Immigration reform that includes a pathway to legal status for unauthorized immigrants already living in the country, coupled with the creation of flexible avenues for future immigration, would enhance border security and help bring unauthorized immigration under control. Enforcement *with* reform is the only effective way to repair a broken immigration system.

Endnotes

¹ Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, [*Immigration Enforcement in the United States: The Rise of a Formidable Machinery*](#) (Washington, DC: Migration Policy Institute, January 2013), p. 3.

² Jeffrey S. Passel and D’Vera Cohn, [*Unauthorized Immigrant Population: National and State Trends, 2010*](#) (Washington, DC: Pew Hispanic Center, February 1, 2011), p. 23.

³ Greg Chen and Su Kim, [*Border Security: Moving Beyond Past Benchmarks*](#) (Washington, DC: American Immigration Lawyers Association, January 2013).

⁴ U.S. Border Patrol, [“Enacted Border Patrol Program Budget by Fiscal Year,”](#) February 2013.

⁵ Ibid.

⁶ U.S. Department of Homeland Security, [*Budget-in-Brief*](#), FY 2005-2013.

⁷ Ibid.

⁸ U.S. Border Patrol, [“Border Patrol Agent Staffing by Fiscal Year,”](#) February 2013.

⁹ U.S. Customs and Border Protection, Communications Management Office, November 2012.

¹⁰ U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, May 28, 2013.

¹¹ Greg Chen and Su Kim, [*Border Security: Moving Beyond Past Benchmarks*](#) (Washington, DC: American Immigration Lawyers Association, January 2013).

¹² Ibid.

¹³ Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, [*Immigration Enforcement in the United States: The Rise of a Formidable Machinery*](#) (Washington, DC: Migration Policy Institute, January 2013), p.

1.

Statement of
Mary Meg McCarthy, Executive Director
Heartland Alliance's National Immigrant Justice Center

House Judiciary Committee
Hearing on "Sanctuary Cities: A Threat to Public Safety"

*Public Safety is a Shared Goal, but Requires Community Trust;
NIJC urges Congress to respect local law enforcement's prioritization of limited resources*

July 22, 2015

In the wake of the tragic death of Kate Steinle in San Francisco just weeks ago, Heartland Alliance's National Immigrant Justice Center (NIJC) strongly urges Congress to resist enacting misguided and harmful laws like H.R. 3009, "Enforce the Law for Sanctuary Cities Act," sponsored by Rep. Duncan Hunter (R-CA), which would undermine local law enforcement's ability to foster trust in the communities they serve.

As a legal service provider to thousands of low-income immigrants and their families in the Midwest, NIJC encounters many victims of violence, including survivors of human trafficking, who have struggled to report crime out of fear that working with law enforcement will trigger deportation and separation from loved ones. Our experience is consistent with findings from a 2013 University of Illinois study which found that 44 percent of Latinos surveyed were less likely to contact the police if they were victims of crimes because they feared that the police would inquire about their immigration status or that of people they know.¹ NIJC client Rafael (pseudonym) is one of many who did not report a crime to the police out of fear of deportation:

Rafael is a gay Mexican man who has lived in the United States for more than 15 years. A few years ago, Rafael was drugged and raped, and as a result contracted HIV. He never reported the crime out of fear of deportation. His rapist—a U.S. citizen—threatened to have him deported if he went to the police.

Rafael's story illustrates what many law enforcement agencies already acknowledge: the police cannot fight crime without the trust of the communities they serve.

When local law enforcement is forced to divert personnel and financial resources to immigration enforcement, it prevents them from focusing on their primary job of upholding public safety and addressing violent, dangerous crime. It also deters many women from escaping abusive situations because they fear law enforcement, deportation, and separation from their children. One of these women is NIJC client Juanita (pseudonym):

¹ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013, http://immigrantjustice.org/sites/immigrantjustice.org/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF p. i.

Margarita's (pseudonym) U.S. citizen fiancé, Will, lured her to the United States with false promises to support and care for her and her two children. As soon as she arrived, Will forced her and her children to work as cleaners at his business without pay, and forced her to have sex with him. At the time, her eldest child was only nine years old. Margarita was not allowed to leave the house or eat without asking permission. He told her that if she went to the police, she would be deported. Eventually, Will allowed her to work outside of his business, but he forced her to give him all of her wages. Through the help of friends, Margarita and her children were able to leave Will after more than a year of abuse. A local shelter referred her to NIJC, where an attorney explained that the police and immigration authorities are separate entities. Shortly after, Margarita went to the police station to report the crimes she had suffered and NIJC helped her successfully apply for a T visa. Margarita and her children are now safe and rebuilding their lives.

Many law enforcement officials oppose the incursion of immigration enforcement into their work, including the Major Cities Chiefs Association² and the President's Task Force on 21st Century Policing, which recommends that "whenever possible, state and local law enforcement should not be involved in immigration enforcement."³ In Illinois, Lake County Sheriff Mark Curran has stated that "The neighborhoods are going to be safe when citizens are involved and act as the eyes and ears of the community. And that doesn't work in communities that have large... immigrant populations where there's great fear from law enforcement."⁴

H.R. 3009 and other legislative attempts to prevent state and local law enforcement from exercising their best judgment for their own communities are misguided. Punitive efforts to cut federal funding for states and localities which choose to limit cooperation with federal immigration enforcement will only harm public safety. Congress should not prevent state and local law enforcement agencies from using their expertise to decide how best to police the communities they serve. We strongly urge lawmakers to oppose any legislation that will force state and local law enforcement to act as immigration enforcement agents. The best way to promote public safety is for Congress to provide a legal path for undocumented immigrants in our communities to come out of the shadows, live without fear of deportation, and be able to place their trust in the law enforcement agencies that serve them.

² Major Cities Chiefs Association, "Police Chiefs from Nation's Major Cities Object to Legislative Proposals Requiring Local Police to Enforce Federal Immigration Law," Sept. 2013, <http://immigrantjustice.org/sites/immigrantjustice.org/files/Major%20City%20Chiefs%20SAFE%20Act%20press%20release%202013.pdf>.

³ President's Task Force on 21st Century Policing, *Interim Report of the President's Task Force on 21st Century Policing*, Mar. 2015, http://www.cops.usdoj.gov/pdf/taskforce/interim_tf_report.pdf, p. 17

⁴ Statement of Sheriff Mark Curran during a telephonic press conference sponsored by CAMBIO, June 17, 2013, https://immigrantjustice.org/sites/immigrantjustice.org/files/2013_06_17%20Mark%20Curran%20Statement%20Oppose%20SAFE%20Act.pdf.



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Statement of National Immigration Law Center

House Judiciary Committee

HEARING:

“Sanctuary Cities: A Threat To Public Safety”

July 23, 2015

Dear Members of the House Judiciary Committee,

The National Immigration Law Center (NILC) is writing to express our strong opposition to all legislation that seeks to mandate the entanglement of state and local police and federal immigration authorities. These enforcement-only proposals would undermine the efforts of over 320 jurisdictions that have adopted policies that build community trust and cooperation with local police to enhance public safety for all of the communities they protect.

NILC is a nonpartisan organization exclusively dedicated to defending and advancing the rights of low-income immigrants and their families. Policymakers, faith and community-based organizations, legal aid attorneys, government agencies, and the media recognize NILC staff as experts on a wide range of issues that affect the lives of immigrants in the U.S. and frequently call upon us to explain the real-life impact of immigration-related laws and policies. Our experience working on immigration law enforcement, immigrant workplace issues, and due process protections for indigent and vulnerable immigrants, including unaccompanied children, who face deportation informs our view that legislation that mandates cooperation between state and local law enforcement and immigration authorities—or fiscally punishes localities that refuse this cooperation—is the wrong approach to keeping our communities safer or to addressing our nation’s complex immigration challenges.

Kathryn Steinle’s death in San Francisco several weeks ago was nothing short of tragic. We express our sincere condolences to her family and her loved ones. Some politicians have seized on this tragedy to promote harmful stereotypes and misinformation about the immigrant community. Rather than turn hastily to broad and punitive enforcement-only measures, we urge

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members of Congress to carefully examine the strong and compelling reasons behind policies — adopted by over 320 municipalities across the country — that limit entanglement of local law enforcement and federal immigration authorities. These policies represent mainstream and widely embraced practices to enhance community safety and have been adopted in states as diverse as California, Florida, Illinois, Kansas and Pennsylvania, among others.

Separating local law enforcement from immigration promotes public safety

Jurisdictions across the country have embraced community trust policies to limit immigration enforcement entanglement because policies that increase the role of state and local police in immigration enforcement – including the 287(g) program, state immigration enforcement laws, Secure Communities, among others – have proven dangerously ineffective and produced substantial public safety costs for participating localities and their communities. For example, a 2013 academic survey found that 70 percent of undocumented immigrants as well as 28 percent of U.S.-born Latinos reported that they would be less likely to contact police officers as a crime victim because they feared the officers would use the interaction to enforce immigration laws.ⁱ

This fear directly undermines public safety, impedes effective criminal law enforcement and diverts limited police resources towards immigration enforcement.ⁱⁱ As a result, many jurisdictions embraced community trust policies precisely because they felt that the Secure Communities program had seriously damaged immigrant community trust in police as federal officials asked them to help ensnare individuals and tear apart families and communities. These community trust policies have promoted public safety without insulating anyone from violations of local, state or federal laws, including our immigration laws. They have also not negatively impacted rates of crimes in the communities that have adopted them. Indeed, as confirmed by a report earlier this month, studies have shown that increased immigration to the United States has in fact coincided with a significant decrease in both violent and property crimes.ⁱⁱⁱ

Many state and local law enforcement leaders have been vocal in opposing their entanglement with immigration authorities for similar reasons. For example, the Major Cities Chiefs Police Association has argued that local immigration enforcement undermines community trust and cooperation and significantly diverts resources from the core mission of police to create safe communities.^{iv} Similarly, the President’s Task Force on 21st Century Policing recommended in its May 2015 report that, “Whenever possible, state and local law enforcement should not be involved in immigration enforcement.”^v

The Department of Homeland Security (DHS) has also emphasized that it does not support legislative proposals to increase or mandate the role of state and local authorities in immigration enforcement. DHS Secretary Johnson and other DHS officials have acknowledged the enormous failings of the Secure Communities program, which tried to mandate strong state and local immigration enforcement involvement, and recognized the need to eliminate the program.^{vi} As recently as July 14, 2015, DHS Secretary Jeh Johnson reiterated this position when he testified before the U.S. House of Representatives that, “I

do not believe that federal legislation mandating the behavior of a lot of sheriffs and police chiefs is the way to go. I believe it will lead to more litigation, more controversy, and it will be counterproductive.”^{vii}

Constitutional violations and fiscal impact of mandating cooperation with immigration

Beyond the threats to community trust in local law enforcement, mandating entanglement with immigration officials also imposes serious public safety costs and can violate fundamental constitutional rights that prevent unlawful detention of individuals. Indeed, several federal courts have found that prior federal immigration detainer policies that lead to individuals being held solely for immigration purposes violated the 4th amendment.

These unlawful detentions have generated major fiscal costs for state and local jurisdictions over the past decade, including for excessive arrests and detentions of suspected immigrants and legal defense. Numerous researchers have documented how, especially in contexts of encouraged immigration enforcement involvement, state and local police officers have arrested and booked suspected immigration law violators for minor offenses at higher rates than other minor crime suspects and excessively detained them.^{viii} State and local jurisdictions nationwide have incurred millions of dollars in legal defense costs in response to allegations of immigration enforcement-related rights abuses, racial profiling, and unjustified detentions, as well as a lack of constitutional authority to enforce federal immigration laws. Local jurisdictions have paid damages from \$8,000 to \$200,000 to individuals whose rights were violated in immigration enforcement-related activities.^{ix}

Congress should look to comprehensive reform, not enforcement-only proposals

In the wake of Kathryn Steinle’s death, politicians have rushed to embrace false stereotypes of immigrant criminality and to legislate mandated increases in state and local immigration law enforcement involvement. Such enforcement-only policy proposals have had a poor track record in our communities, foster harmful stereotypes and misinformation about the immigrant community and stand contrary to the true legislative reform that our broken immigration system needs.

To be clear – the immigration system is broken and needs reform. But moving forward with reactionary and sweeping legislation on one facet of the system doesn’t solve the problem. The real solution to our immigration challenges is broad and humane immigration reform which would place undocumented immigrants on a workable and earned path to citizenship, thereby allowing them to contribute even more to their families, communities, and our country.

ⁱ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013, http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

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- ⁱⁱ Clint Bolick, Goldwater Institute, *Mission Unaccomplished: Misplaced Priorities of the Maricopa Sheriff's Department*, Policy Report No. 229, 2 December 2008, 9; Kathy A. White and Lucy Dwight, The Colorado Fiscal Institute, *Misplaced Priorities: SB90 & The Cost to Local Communities*, 1 December 2012, <http://www.coloradofiscal.org/misplaced-priorities-sb90-the-costs-to-local-communities/>; Colorado Fiscal Institute, "The Facts are In: Colorado's "Show Me Your Papers Law" Drains Economy, Threatens Civil Rights," 5 December 2012, <http://www.coloradofiscal.org/the-facts-are-in-colorados-show-me-your-papers-law-drains-economy-threatens-civil-rights/>.
- ⁱⁱⁱ Walter A. Ewing, Daniel E. Martinez, Ruben G. Rumbart, American Immigration Council, *The Criminalization of Immigration in the United States*, 8 July 2015; Kristin F. Butcher and Anne Morrison Piehl, "Why Are Immigrants' Incarceration Rates So Low? Evidence on Selective Immigration, Deterrence, and Deportation," National Bureau of Economic Research Working Paper Series, Working Paper 13229, <http://www.nber.org/papers/w13229>
- ^{iv} Chief Thomas Manger, Major Cities Chiefs Association, to Hon. Bob Goodlatte and Hon. Trey Gowdy, 13 March 2015; Major Cities Chiefs, *Immigration Policy*, 2013, https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf; Police Executive Research Forum, *Local Police Perspectives on State Immigration Policies*, July 2014.
- ^v President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, May 2015, 18, http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.
- ^{vi} Jeh Johnson, Secretary, Department of Homeland Security, Subject: Security Communities, 20 November 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.
- ^{vii} Jeh Johnson testimony before U.S. House Judiciary Committee, *Hearing: Oversight of the Department of Homeland Security*, 14 July 2015, Congressional Quarterly Transcripts.
- ^{viii} Judith A. Greene, Justice Strategies, *Responding to Immigration Detainers in California*, 22 August 2012; Amalia Greenberg Delgado and Julia Harumi Mass, ACLU of Northern California, *Costs and Consequences: The High Price of Policing Immigrant Communities*, February 2011; Azadeh Shahsahani, ACLU of Georgia, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)*, March 2010; Trevor Gardner II and Aarti Kohli, Chief Justice Earl Warren Institute on Race, Ethnicity, & Diversity, University of California at Berkeley, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program*, September 2009
- ^{ix} National Immigration Forum Staff, "Community and Courtroom Responses to Immigration Detainers," 20 October 2014, <http://immigrationforum.org/blog/community-and-courtroom-responses-to-immigration-detainers-3/>; Tim Henderson, "More Jurisdictions Defying Feds on Deporting Immigrants," *Pew Stateline*, 31 October 2014, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/10/31/more-jurisdictions-defying-feds-on-deporting-immigrants>

July 20, 2015

Dear Members of Congress,

We, the undersigned civil rights, immigrant rights, victims' services, and human rights organizations write to express our strong opposition to any legislation that would seek to undermine state and local law enforcement's efforts to build and restore community trust.

Good policies are made over time, by examining our shared values and opinions, and by working toward equality and justice for all people. They are not made based on a single, tragic incident or by taking the actions of one individual to justify a policy that criminalizes an entire community. Sadly, in response to the tragic death of Kathryn Steinle, some politicians, including Senator David Vitter, are proposing legislation that scapegoats all immigrants based on the acts of one. These reactionary policy proposals are focused on heavy-handed, enforcement-only approaches despite the fact that studies show that deportation-only policies do not reduce crime rates. Rather, those policies only foster an atmosphere of mistrust and fear, and undermine public safety in all of our communities.

Such proposals are not even supported by the federal agency they are purportedly aimed at helping – the Department of Homeland Security (DHS). As DHS Secretary Jeh Johnson himself acknowledged in a July 14, 2015 hearing before the House Judiciary Committee, “I do not believe that mandating through federal legislation conduct of sheriffs and police chiefs is the way to go. I think it will [be] hugely controversial. I think it will have problems with the Constitution.” Secretary Johnson also confirmed he is not alone in this belief, when he testified, “In my judgment, and the judgment of a lot of other border security, immigration enforcement experts, the way to most effectively work with these jurisdictions, again, is a cooperative one, not by hitting them over the head with federal legislation that will engender a lot more litigation.”¹

Policies like those introduced by Senator Vitter would undermine trust between local and state law enforcement and the communities they serve to protect. Over 320 localities in diverse geographic regions such as Kansas, California, Florida, Illinois, Pennsylvania and many other states have limited their involvement in immigration enforcement because of concerns about liability for failure to uphold Fourth Amendment protections and concerns that such involvement undermines community trust in the police, a critical component to effective policing.

States and localities should be permitted to pursue policies that foster trust and cooperation with their local communities. If victims and witnesses are afraid to come forward and work with the police, the police simply cannot do their jobs.² Moreover, as confirmed by a July 2015 report by the American Immigration Council, increased immigration to the United States has in fact

¹ Testimony of Department of Homeland Security Secretary Jeh Johnson before the United States House of Representatives Judiciary Committee, July 14, 2015.

² A 2013 study found that 44 percent of Latinos surveyed reported being less likely to contact police officers if they have been a victim of crime because they fear that such contact could provide an opportunity for police officers to inquire into their immigration status or that of a person they know. Nik Theodore, “Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement,” University of Illinois at Chicago (May 2013).

coincided with a significant decrease in both violent and property crimes nationwide.³ We know that the majority of the immigrant population comes to this country to reunite with family, work and make meaningful contributions that enrich their communities. What we need is a long-term Congressional solution aimed at addressing our broken immigration system, not reactionary policy proposals that focus on only one facet of the system.

The dialogue surrounding this tragic event only fosters stereotypes and misinformation about the immigrant community. To be clear – the immigration system is broken and needs reform. But moving forward with reactionary and sweeping legislation on one facet of the system doesn't solve the problem. The real solution to our immigration challenges is broad and humane immigration reform which would place undocumented immigrants on a workable and earned path to citizenship, thereby allowing them to contribute even more to their families, communities, and our country.

Sincerely,

National Organizations

Advancing Justice – Asian Law Caucus
Alliance for Citizenship
American Civil Liberties Union
American Immigration Lawyers Association
America's Voice Education Fund
Asian Americans Advancing Justice – AAJC
Asian Pacific American Labor Alliance
Asian Pacific Institute on Gender Based Violence
Black Alliance for Just Immigration (BAJI)
Center for Gender & Refugee Studies
Center for Popular Democracy
Church World Service
Farmworker Justice
Futures Without Violence
Immigrant Defense Project
Immigrant Legal Resource Center
Latin American Working Group Education Fund
Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
Mi Familia Vota
National Asian American Pacific Islander Mental Health Association (NAAPIMHA)
National Coalition Against Domestic Violence
National Council of La Raza (NCLR)
National Day Laborer Organizing Network (NDLON)
National Domestic Workers Alliance
National Education Association

³ Walter A. Ewing, Ph.D., *et al.*, "The Criminalization of Immigration in the United States," Immigration Policy Center (July 2015).

National Guestworker Alliance
National Immigration Forum
National Immigrant Justice Center
National Immigration Law Center
National Korean American Service and Education Consortium
National Latin@ Network: Casa de Esperanza
National Lawyers Guild
National LGBTQ Task Force Action Fund
National Queer Asian Pacific Islander Alliance (NQAPIA)
PICO National Network
Service Employees International Union (SEIU)
South Asian American Leading Together (SAALT)
Southeast Asia Resource Action Center (SEARAC)
United We Dream
We Belong Together

Regional, State, and Local Organizations

Alliance San Diego
Asian Americans Advancing Justice – Chicago
Asian Americans Advancing Justice – LA
Asian Counseling and Referral Service
California Immigrant Policy Center
California Immigrant Youth Justice Alliance
Canal Alliance
Capital Region Organizing Project
Central American Resource Center (CARECEN-LA)
Chinese for Affirmative Action
Chula Vista Democratic Club
CLEAN Carwash Campaign
Community Leadership Association (ALC)
Council on American-Islamic Relations San Diego Chapter
Enlace
Florida Immigration Coalition (FLIC)
Gamaliel of California
Genesis
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Law Center of Minnesota
Inland Empire Immigrant Youth Coalition
Justice Overcoming Boundaries
Kitsap Immigrant Assistance Center
Korean Resource Center
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
MAAC Project
Make the Road New York

Massachusetts Immigrant and Refugee Advocacy Coalition
Nebraska Appleseed Center for Law in the Public Interest
New Orleans Workers' Center for Racial Justice
New York Immigration Coalition
North Bay Organizing Project
Northwest Immigrant Rights Project
OneAmerica
Orange County Immigrant Youth United (OCIYU)
San Diego and Imperial Counties Labor Council
San Diego Dream Team
San Diego Immigrant Rights Consortium
San Joaquin Immigrant Youth Collective
Services, Immigrant Rights, and Education Network (SIREN)
Skagit Immigrant Rights Council
South Asian Network
Tennessee Immigrant and Refugee Rights Coalition
Unitarian Universalist Refugee and Immigrant Services and Education (UURISE)
VA Coalition for Immigrant Rights
Washington Community Action Network
Washington State Coalition Against Domestic Violence
Workers Defense Project

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AFL-CIO Says No to Racism and Scapegoating of Immigrants

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The AFL-CIO extends our deepest sympathy to the Steinle family. They have experienced an unthinkable and senseless tragedy that no family should have to endure.

At the same time, it is a gross distortion to suggest this isolated, terrible act indicates a systemic problem with refusals to embrace local policing of immigration laws. Politicians should be ashamed of themselves for exploiting this moment to demonize all immigrant workers and their families. Moreover, they should not suggest that preventing sound local policies, such as TRUST acts and detainer reforms, is an appropriate solution.

The groundswell of anti-detainer policies passed by hundreds of jurisdictions around the country have made it harder for abusive employers to use the threat of deportation as a weapon to keep workers quiet, and as such help to prevent our broken immigration system from being used as a tool of exploitation.

Effective public safety requires trust between law enforcement and community members. That trust is broken when unjust immigration laws are improperly imposed on immigrant communities. Responding to this tragic act by eroding constitutional protections would lend credence to the corrosive narrative of racist politicians and undermine the type of real reforms we need to address the issues of our overly punitive immigration and criminal justice systems.

AFL-CIO opposes enforcement-only strategies that criminalize immigrant workers and their families and instead will continue to call for comprehensive reform legislation, as well as measures at the local, state and federal level that strengthen due process protections for all workers, regardless of immigration status.

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AMERICAN
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ASSOCIATION

Statement of the American Immigration Lawyers Association

Submitted to the Committee on the Judiciary of the U.S. Senate Hearing on "Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims"

July 21, 2015

Contact:

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The American Immigration Lawyers Association (AILA) is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members. AILA has 14,000 attorney and law professor members.

In the aftermath of the recent tragic shooting of Kathryn Steinle in San Francisco, many are asking what additional steps federal and local law enforcement authorities should take to protect our communities. The unauthorized immigration status of the alleged perpetrator, Juan Francisco Lopez-Sanchez, has also inflamed discussions about immigration enforcement. AILA agrees that law enforcement authorities must take reasonable and lawful steps to protect the public from anyone—regardless of immigration status—who poses a threat to our safety. However, the facts and circumstances of this particular situation remain unclear. AILA cautions both local and national elected leaders from making immediate changes to law or policy based on this incident before an investigation is completed. A reactionary response in the absence of full information may undermine community safety.

AILA also hopes that this incident will not be used to scapegoat immigrants. As law enforcement officials have clearly stated the mission of law enforcement is to protect the safety of all our communities. But already, some have gone too far by labeling immigrants as criminals. This claim could not be further from the truth. The American Immigration Council and the Cato Institute recently released separate reports presenting overwhelming data that immigrants are no more likely than anyone else to commit crimes. In fact, the data demonstrate the opposite—that the rate of criminality is lower in the immigrant population, including undocumented immigrants, than in those born in the U.S.

No less faulty are the claims that the federal government is not enforcing immigration law. By nearly every objective measure, recent immigration enforcement levels have been at all-time highs. The federal government has committed unprecedented resources to enforcement efforts at

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the border and in the interior. Annually, federal immigration enforcement spending is \$18.5 billion and exceeds that of all other federal criminal law enforcement combined. As a result of the federal government's increased enforcement efforts, apprehensions at the border have decreased and are at a nearly 40-year low. At the same time removals have reached an all-time high with this Administration—it has been removing about 400,000 individuals every year, more than any other president. While the Department of Homeland Security (DHS) still targets people who have convictions for non-violent offenses and should not be priorities for enforcement, DHS has increased its focus on those with more serious offenses who pose threats to public safety.

Ensuring Public Safety and Maintaining Trust of the Community

While the federal government is charged with enforcing immigration laws, the primary function of state and local law enforcement is to ensure the safety of their communities. AILA recommends that greater examination and oversight be done of federal programs that engage local authorities in immigration enforcement to make sure the mission of protecting the public is not compromised. Many of these programs have been fraught with policy and legal problems.

Notably, the controversial Secure Communities program severely undermined community trust by making immigrants fearful of contact with local law enforcement agencies. Effective policing efforts require the building of trust between law enforcement and the communities they serve. The University of Illinois-Chicago conducted a comprehensive survey in 2013 finding that 44 percent of Latinos surveyed reported they are less likely to contact police if they have been a crime victim because they fear that police officers will inquire into their immigration status. For this reason, domestic violence organizations, such as the National Task Force to End Sexual Assault and Domestic Violence and the California Partnership to End Domestic Violence, oppose programs that intertwine local law enforcement authorities with the activity of immigration enforcement.

Many local law enforcement authorities have voiced concerns that federal immigration detainers undermine local policing efforts, strain their resources, and leave them open to liability for constitutional violations. In fact, several federal courts issued decisions last year holding that local law enforcement agencies are liable for holding people beyond their release times solely on the basis of the detainers. In November 2014, Secretary Johnson announced that these courts had found “detainer-based detention by state and local law enforcement agencies violates the 4th Amendment.” As a result of these concerns, nationwide over 320 law enforcement jurisdictions have adopted policies limiting or ending the practice of honoring immigration detainers issued by Immigration and Customs Enforcement (ICE).

Priority Enforcement Program (PEP)

In an effort to address the flaws in Secure Communities, the Secretary announced the establishment of the new Priority Enforcement Program (PEP), which is currently being introduced across the country. As of yet, DHS has not disclosed many details about how PEP

will function, making it difficult for law enforcement and other government officials to evaluate whether they should participate.

Before government officials endorse PEP, they should examine whether PEP makes meaningful changes to the Secure Communities program and detainers. Importantly, the Secretary's November 2014 memorandum states that PEP will still be used to lodge detainers. Detainers will be used to detain in more limited circumstances, but DHS has yet to define those circumstances. In the past, such detainers have not been obtained based on probable cause that is promptly reviewed by a judge or with the backing of a judge-issued warrant. As yet DHS has given no indication that PEP will correct this problem, meaning local authorities may still be liable for unconstitutional detention practices. In recent comments about PEP, Chief Thomas Manger of Montgomery County, who is also president of the Major Cities Chiefs Association, explained: "We can't hold them. Basically, you're falsely imprisoning an individual without legal foundation to hold them."

Another problem with PEP—which was a major criticism of Secure Communities—is that it will still result in enforcement against individuals with misdemeanors and non-violent offenses or offenses that are very old from which the individual has long since been rehabilitated. By its name, PEP should prioritize enforcement against those who actually pose a threat to our communities. But PEP will likely also capture first-time border crossers and non-violent misdemeanor offenders. AILA's immigration lawyer members have identified several individuals who committed an offense five or ten years ago and since then have been living without incident in the community with a family and a job. None of these individuals should be a priority for immigration enforcement let alone local law enforcement involvement.

Local officials should have flexibility to determine how to engage DHS in a way that both protects public safety and adequately responds to their community's concerns. Still, that flexibility must have a baseline. There is a vast difference between the approaches of Sheriff Joe Arpaio, who appears determined to arrest every unauthorized person no matter the consequences, and the efforts of other law enforcement officials who acknowledge that they cannot protect the public without the community's trust. A baseline for PEP practices must be established to restrain the practices of law enforcement officials who are not only willing but may be motivated to alienate the immigrant community and violate the Constitution. Before Congress or local officials endorse PEP, they should insist that DHS be more transparent about how it will implement the program to guard against these pitfalls.

Recent Congressional Proposals

AILA urges lawmakers to reject legislation that would withhold federal funding from or otherwise punish so-called "sanctuary cities," such as the proposals by Senators Vitter and Cotton. The term "sanctuary city" is used to describe localities that have passed laws and policies that limit the role that law enforcement officers should play when enforcing federal immigration law. These policies are designed to promote community safety and are premised on the community policing model. They are not designed to harbor dangerous or violent criminals.

Many local law enforcement agencies have refrained from asking about the immigration status of a victim or witness precisely to ensure public cooperation and trust. As Dayton Police Chief Richard Biehl recently wrote: inquiring about immigration status “detracts from the investigation” and “is detrimental to relations with members of our community. We must balance investigative approaches that will encourage (and not discourage) public cooperation with investigations.”

AILA also recommends that Congress refrain from mandating local participation or cooperation with federal immigration programs, not only for the policy reasons articulated by Chief Biehl and other law enforcement leaders but also to avoid 10th Amendment “commandeering” concerns that will demand local resources and commitment. In fact many localities have resisted participation in DHS programs in order to ensure their limited resources are dedicated to their primary mission of protecting the public rather than taking on the federal responsibility of immigration enforcement. State and local police know their communities best, and they should not be compelled to enforce federal immigration laws at the expense of the safety and security of their communities.

America Needs Immigration Reform

What America needs is for Congress to pass reforms to the legal immigration system and legalization, which taken together will significantly reduce illegal immigration. Effective, commonsense immigration reform would make our nation safer and bring people who are already members of our communities more completely into our society. Enactment of enforcement-only legislation is not a solution. The SAFE Act and similar proposals are premised on the criminalization of immigrants and immigrant communities and do little to improve public safety. As our nation’s leaders seek to respond to the incident in San Francisco, AILA hopes the focus will be on solutions that protect all members of our communities.

March 4, 2014

The Honorable Patrick Leahy
Chair, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Robert Goodlatte
Chair, House Judiciary Committee
2309 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
Ranking Member, House Judiciary Committee
2426 Rayburn House Office Building
Washington, DC 20515

Dear Sirs:

We, the undersigned groups, representing a broad cross section of the criminal justice system, are concerned when the Byrne Justice Assistance Grant (Byrne JAG) program is used as a penalty for noncompliance with new federal legislation. We respectfully ask that Congress instead create incentives or supports to encourage state and local compliance with any new statutory requirements. These need not be financial incentives, but could be training and technical assistance or off-the-shelf software to help jurisdictions implement new laws.

We know first-hand the enormous impact Byrne JAG-funded programs have had in improving the functioning of the criminal justice system across our nation. As the cornerstone federal crime prevention and crime-fighting program, Byrne JAG allows practitioners to test and refine evidence-based approaches to some of the most vexing criminal justice problems. Many Byrne JAG-funded programs have gone on to become successful national programs, such as offender reentry programs and drug courts. Byrne JAG supports all segments of the justice system, from prevention and pre-trial services, to diversion and community corrections, courts, law enforcement, reentry programming, and crime victim services.

States already are subject to substantial penalties under three statutes. First, the Sex Offender Registration and Notification Act (SORNA), which became law in 2006, penalizes states 10 percent of their Byrne JAG funds for failure to meet a wide range of costly requirements for sex offender management. To date, only 17 states and three territories are in compliance with the Act and it appears unlikely that many more will choose to adopt the federal standards.

Second, the Prison Rape Elimination Act (PREA), which became law in 2003, penalizes states 5 percent, not only of their Byrne JAG, but also their juvenile justice and violence against women grants. Although the law was passed 10 years ago, the standards and guidance were finalized only this year. Audits, performed at state and local expense, by DOJ-trained and certified auditors have only just begun. States will suffer the penalty, for at least the first three-year audit cycle, before they are able to assess and confirm compliance with the requirements of the law. The monetary penalty means successful crime reduction strategies will be forced to cease operations in every state.

Third, the NICS Improvements Amendments Act of 2007 sets a schedule for states to digitize and upload their criminal history records into the national criminal background check system. To date, no states are out of compliance with the Act. However, complex policy considerations

may prevent states from meeting the next threshold because of the difficulty of entering mental health and criminal justice system records and adopting “relief from disability” policies.

In recent years, other bills have been introduced that include a Byrne JAG penalty. The Juvenile Justice Accountability and Improvement Act of 2009 would have required states to establish an opportunity for parole for child offenders sentenced to life in prison, and the Managing Arson Through Criminal History Act of 2009 would have required states and territories to manage the criminal arsonists and criminal bomber registry. This Congress, the Death in Custody Reporting Act requires states to report information regarding deaths of individuals in custody or risk 10 percent of their Byrne JAG funds.

Perhaps most troubling, penalty-driven decision-making distorts the strategic planning and policy prioritization process in states and localities, in effect pushing the penalty-bearing programs to positions of importance above all other needs. Strategic planning and data-driven analysis is a key feature of the Byrne JAG program. Requiring spending on the penalty-based programs means the states and territories are investing a significant share of their grant awards outside their strategic plan and often on tasks that are better supported by state or local funds.

We understand that Byrne JAG is a tempting target as a penalty for noncompliance with other mandates because the program is so broad in scope. However, it is also true that its utility as a penalty diminishes as funding drops. Since FY10, funding for the Byrne JAG formula program has dropped by about one-third. Worthy programs have been withdrawn from the field for lack of funding. These programs and the individuals they serve should not be diminished further because of penalties unrelated to the purposes and goals of the Byrne JAG program.

Byrne JAG is one of the most successful justice assistance programs in history. It supports a broad range of prevention and crime fighting programs. Withholding its funding as penalty for noncompliance penalizes these efforts and the people they serve. Therefore, we respectfully request that Byrne JAG is not used as a penalty for other federal mandates in bills now pending or in the future.

Thank you for listening to our concerns.

Sincerely,



Jack Cutrone
President
National Criminal Justice Association (NCJA)



Donny Youngblood
President
Major County Sheriffs' Association (MCSA)



Darrel W Stephens
Executive Director
Major Cities Chiefs Association (MCCA)



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors (USCM)



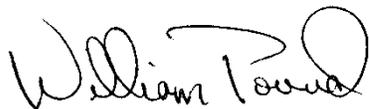
Yousry Zakhary
President
International Association of Chiefs of Police (IACP)



Aaron Kennard
Executive Director
National Sheriffs Association (NSA)



Michael Thompson
Executive Director
Council of State Governments Justice Center (CSG)



William T. Pound
Executive Director
National Conference of State Legislatures (NCSL)



Scott Burns
Executive Director
National District Attorneys Association (NDAA)



Bob Bushman
President
National Narcotic Officers' Associations' Coalition (NNOAC)



Matt Hodapp
Chairman
National Troopers Coalition (NTC)



Bill Johnson
Executive Director
National Association of Police Organizations (NAPO)



Ronald C. Sloan
President
Association of State Criminal Investigative Agencies (ASCIA)



Clarence E. Anthony
Executive Director
National League of Cities



David LaBahn
President/CEO
Association of Prosecuting Attorneys (APA)

Copies to:

The Honorable Sheldon Whitehouse

Chair, Senate Judiciary Subcommittee on Crime and Terrorism

The Honorable Lindsey Graham

Ranking member, Senate Judiciary Subcommittee on Crime and Terrorism

The Honorable James Sensenbrenner

Chair, House Judiciary Subcommittee on Crime, Terrorism, Homeland Security and Investigations

The Honorable Robert C. Scott

Ranking member, House Judiciary Subcommittee on Crime, Terrorism, Homeland Security and Investigations

Praying for Healing: Faith Community Call for Solidarity with San Francisco

Last week, the life of Kathryn Steinle was tragically cut short by a senseless act of gun violence. Today, as united members of the faith community, we offer our heartfelt condolences to Kathryn's family and friends. We join the broader San Francisco community as we grieve, and pray for peace and healing for all who are impacted by this tragedy. Her death is a tremendous loss. In this moment, as our country has been shaken by a series of recent shootings that have resulted in the loss of life, we must come together to share both grief and resilience.

As we mourn, we must resist the inclination to allow grief and despair to turn us against one another, or to blame an entire community for the actions of one individual. The resiliency of our community must triumph over knee-jerk reactions that would harden our hearts. The City of San Francisco's policies are rooted in core constitutional principles and promote the safety of all community members, regardless of immigration status. These policies do not protect individuals from the criminal justice system, nor do they promote the release of individuals who have been convicted of violent offenses. These ordinances and policies build trust between local law enforcement and community members, so all individuals can report dangerous situations and seek protection from violence without the fear of being deported and separated from their families. More than 320 jurisdictions across the United States, including almost all of California, have adopted similar policies that limit or end detainer requests by Immigration and Customs Enforcement. These ICE "holds" seriously undermine due process and have been found by federal courts, most recently in the U.S. District Court for Oregon, to be unconstitutional as they violate the Fourth Amendment prohibition against unreasonable search and seizure.

We urge all people of faith and good will, including our political leaders and members of the media, to support the long-standing efforts of law enforcement officials to foster trusting relationships with the communities they protect and serve. We believe the ordinances uphold the dignity of every person, regardless of their immigration status, and strengthen our communities.

Faith communities in the United States organized a sanctuary movement decades ago, in an effort that saved thousands of lives from death squads in Central America. More recently, congregations have opened their doors in an act of sanctuary to keep families and communities together when faced with deportations. Though some have chosen to use this tragedy to further a political agenda based on fear and racial profiling, we respectfully ask that they not conflate or confuse this isolated tragedy with the commitment of cities and congregations to welcome and provide sanctuary to undocumented individuals.

We mourn Kathryn Steinle's death and pray for healing and peace for her family and friends. We also stand with the city of San Francisco with purpose in our resolve that to be hospitable is to be whole.

Christian Church (Disciples of Christ), Refugee and Immigration Ministries
Church World Service
Columban Center for Advocacy and Outreach
Conference of Major Superiors of Men
Franciscan Action Network
Ignatian Solidarity Network
Leadership Conference of Women Religious
Missionary Servants of the Most Holy Trinity
PICO Network
Presbyterian Church (U.S.A.)
Sisters of Mercy of the Americas
United Methodist Church, General Board of Church and Society
United Church of Christ Justice and Witness Ministries

WRITTEN TESTIMONY OF LOS ANGELES MAYOR ERIC GARCETTI

JULY 21, 2015

IMMIGRATION ENFORCEMENT POLICIES

The murder of Kate Steinle was a senseless death perpetrated by a repeat offender of both our criminal and immigration laws. She was walking down the street with her father when a stranger, an undocumented immigrant, randomly shot and killed her.

It was a horrific crime and we all feel angry for her family and the community's loss. But we cannot hold every undocumented immigrant accountable for his actions. Her murder not only affected the Steinle family, but it also law abiding immigrants who share in that nation's compassion for the Steinle family.

Nor should our feelings compromise the safety of city residents across the country where immigrants reside.

It is important to understand that contrary to rumors and assumptions being made in the media and beyond, it has been empirically proven that an increase in the immigrant population does not increase violent crime in a city. It does, however, impact local law enforcement policing tactics.

Los Angeles, one of the nation's safest big cities, is nearly 400 miles away from where Kate was murdered. It has one the nation's largest and most diverse immigrant populations. Over the years, Los Angeles has learned a hard lesson on policing diverse communities. But our struggles have made our police department better, our neighborhoods safer, and our city stronger.

Unfortunately, the anger over Kate Steinle's death has triggered a spate of amendments to restrict law enforcement funding to "sanctuary cities."

Los Angeles is not a "sanctuary city." The term itself has no legal definition, and is often wrongly used to suggest that the City works against the federal government's enforcement efforts. That is not the case. Our top priority is ensuring the safety of our residents - all of our residents.

In 1979, then-Chief Daryl F. Gates approved Los Angeles Police Department (LAPD) Special Order Number 40, which is still in effect today. The purpose of this policy is to assure immigrant communities within the City of Los Angeles that there is no need to fear contact with the LAPD when they have been the victim or a witness to a crime. It ensures that LAPD officers will not initiate investigations solely to determine a person's immigration status, and that LAPD officers will treat all people with respect and dignity. The LAPD recognizes that criminals often prey on those who are most vulnerable, and those living without legal sanction often are vulnerable to crime and criminals.

But Special Order Number 40 does not prevent officers from turning over those arrested for “multiple misdemeanors, a high grade misdemeanor, or felony offense” to immigration authorities. In fact, it specifically directs officers to contact the federal government if the individual arrested is in the country without proper documentation.

As the *Los Angeles Times* reported, in 1985, the City Council formally expressed its opposition to the deportation of known law-abiding Central American refugees who have fled their homelands for the fear of losing their lives. Even then, however, the City Council insisted that its support for those refugees should not be construed as sanctioning the violation of any law or encouraging interference in law enforcement efforts. At no point did the City of Los Angeles protect immigrants from federal authorities.

The police regularly cooperate with immigration officials; recent joint efforts include gang and drug cases and investigations of organized crime. Every suspect booked by the LAPD or Sheriff's Department is fingerprinted, and those prints are shared with immigration authorities. On a daily basis, there are undocumented immigrants being removed from Los Angeles and sent home.

Despite this, Los Angeles may be swept up in the broad language of the “sanctuary city” amendments currently under consideration by Congress. Enacting a “sanctuary city” funding restriction may help abate the anger over a murder, but it will also create major vulnerabilities in the safety and security of nationally significant infrastructure and deal a serious blow to our entire region's counterterrorism, security, and emergency preparedness efforts.

The amendments under consideration would jeopardize Urban Areas Security Initiative (UASI), State Homeland Security Grant Program (SHSGP), and Justice Assistance Grants (JAG) funding for the Los Angeles Region, which the Department of Homeland Security (DHS) recently named as the second most vulnerable region to terrorism.

For fiscal year 2015, the Los Angeles region was awarded \$69.5 million through UASI, \$10 million through SHSGP, and \$1.7 million through JAG.

These grants are used to fund equipment, training, staff and exercises to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other hazards. Examples of some of the critical projects that will be impacted if funding is withdrawn are below:

1. The Joint Regional Intelligence Center (JRIC) is a critical asset for inter-jurisdictional interdisciplinary coordination of homeland security intelligence in the region. Through this program, intelligence is funneled from the national level to local law enforcement to identify threats quickly and coordinate jurisdictions and disciplines. UASI funds are used to support law enforcement JRIC staffing, training, software and equipment needed for intelligence gathering.

2. UASI funds are also dedicated to the protection of the region's critical infrastructure, particularly at the Ports of Los Angeles and Long Beach, as well as the Los Angeles International Airport (LAX). The Port of Los Angeles and the Port of Long Beach are the first and second busiest container ports in the nation, respectively. LAX annually processes more than \$91 billion in air cargo. The twin ports and LAX wield tremendous economic impact regionally and nationally. With UASI funds, LAX has purchased equipment to effectively respond to active-shooter incidents and other crises that may occur, not unlike the LAX shooting that occurred in November 2013. Without the support of the UASI grant, the region's critical assets would be left extremely vulnerable.
3. UASI funds are also used to support law enforcement staff participating in the national Joint Terrorism Task Force. Through this program, federal law enforcement requests the assistance of local law enforcement and arson investigators to assist with local investigations. Without UASI funding, Los Angeles would no longer be able to fund those investigators to assist and coordinate with the Department of Justice. Again, a cut of funds locally will have impacts on national counterterrorism efforts.
4. UASI funds are used to purchase specialized response vehicles for local fire departments too. The Urban Search and Rescue (USAR) and Heavy Rescue vehicles are regional assets that are deployed throughout the state and around the country. The grant provides funding to purchase new vehicles, and train a cadre of specialists to use these vehicles. Without funding, the ability to maintain a certified fleet is diminished, and our ability to deploy to emergencies nationwide will be severely impacted.
5. The UASI grant also supports the construction of communication towers for police and fire communication interoperability in the region. The system will establish public safety communications interoperability and improved radio and broadband communication for public safety providers across the entire Los Angeles region. The grant is also being used to upgrade law enforcement radio platforms to support interoperability.
6. Training of first responders in CBRNE (chemical, biological, radiological, nuclear, explosive) hazards is also funded through the UASI grant. Responders trained in this field are deployed at the state and national level. Without the equipment, tools, and training funded by these grants, the large team of specialists will not be able to respond to national threats.
7. The grant also funds the purchase of antibiotics for first responders in the event of a biological attack.
8. Through the grant, we are building a fleet of emergency power generators to be staged strategically across the City and region. The generators can power anything from a command post to a large building, and are intended to improve Los Angeles' regional preparedness and capacity for response during a disaster.

9. The UASI grant is also helping the City of Los Angeles establish one of the most robust cybersecurity systems in the nation. Los Angeles has partnered with the Department of Homeland Security, FBI, and Secret Service and collaborated with the National Cybersecurity Coordination and Integration Center (NCCIC). Through these partnerships, we are helping develop a common operating picture of the cyber health of the city and quickly identify cybersecurity threats, helping protect both City and national interests.
10. The City of Los Angeles typically uses the SHSGP grant to fund Multi-Assault Counter Terrorism Action Capabilities (MACTAC) and Weapons of Mass Destruction training for law enforcement, as well as Incident Command System (ICS) training for fire services.

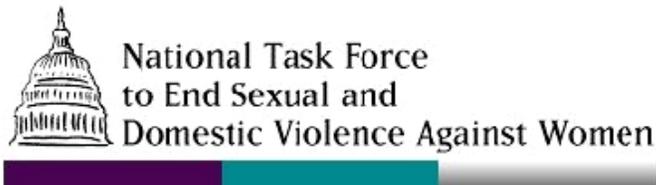
The Justice Assistance Grant (JAG) is used to fund the Community Law Enforcement and Recovery (CLEAR) Program. The funds go toward salaries of Deputy City Attorneys, Deputy District Attorneys, and Deputy Probation Officers in gang prosecution in multiple districts of the City of Los Angeles.

These grants support a range of law enforcement programs, including:

- prosecution and court programs including indigent defense;
- prevention and education programs;
- corrections and community corrections;
- drug treatment and enforcement;
- crime victim and witness initiatives; and
- planning, evaluation, and technology improvement programs.

Los Angeles has no interest in protecting anyone who commits a serious crime. Those who commit serious crimes will be prosecuted, and LAPD will work with DHS officials just as it always has.

Our priority is investment in our people and our security. This means protection of our nation's borders and integration of our immigrant communities. For these reasons, I urge you to please not jeopardize our cities' ability to protect residents and secure them from threats.



July 21, 2015

Dear Representative,

As the Steering Committee of the National Taskforce to End Sexual and Domestic Violence (“NTF”), comprising national leadership organizations advocating on behalf of sexual and domestic violence victims and women’s rights, we represent hundreds of organizations across the country dedicated to ensuring **all** survivors of violence receive the protections they deserve. For this reason, we write to express our deep concerns about the impact of the “Enforce the Law for Sanctuary Cities Act” (H.R. 3009), which amends section 241(i) of the Immigration and Nationality Act.

As government officials, we ask you to approach this issue from the perspective of a leader and be sure of the implications this bill can have on entire communities. All parties have the common goal of making communities safer. This bill will encourage law enforcement to enforce immigration law, and will significantly hinder the ability of certain communities to build trust and cooperation between vulnerable and isolated victims of domestic and sexual violence and law enforcement. Last year marked the twentieth anniversary of the bipartisan Violence Against Women Act (“VAWA”), which has, since it was first enacted, included critical protections for immigrant victims of domestic and sexual violence. This bill undermines the spirit and protections of VAWA and will have the effect of pushing immigrant survivors and their children (many of whom are likely U.S. Citizens) deeper into the shadows and into danger.

As recognized in VAWA, bipartisan legislation supporting our nation's response to domestic and sexual violence and stalking, immigrant victims of violent crimes are often fearful of contacting law enforcement due to fear that they will be deported. A recent and comprehensive survey shows that 41% of Latinos believe that the primary reason Latinos/as do not come forward is fear of deportation.¹

Policies that minimize the intertwining of local law enforcement with ICE help bring the most vulnerable victims out of the shadows by creating trust between law enforcement and the immigrant community, which in turn helps protect our *entire* communities.² Fear of deportation also strengthens the ability of abusers and traffickers to silence and trap their victims. Not only are the individual victims harmed, but their fear of law enforcement leads many to abstain from reporting violent perpetrators or coming forward, and, as a result, dangerous criminals are not

¹ <http://m.huffpost.com/us/entry/7112130?>; <http://nomore.org/nomas/>

² A study conducted by the University of Illinois- Chicago found that increased involvement of local police and immigration enforcement eroded trust between the police and immigrants, undocumented and documented. 45% of documented immigrants were less likely to report a crime while 70% of undocumented immigrants responded similarly. <http://www.motherjones.com/politics/2015/07/sanctuary-cities-public-safety-kate-steinle-san-francisco>



National Task Force
to End Sexual and
Domestic Violence Against Women

identified and go unpunished. These criminals remain on the streets and continue to be a danger to their communities.

This bill undermines policies that local communities have determined are appropriate for their localities, and decrease the ability of law enforcement agencies to respond to violent crimes and assist all (immigrant, citizens, etc.) victims of crime. As recognized in VAWA, law enforcement plays a critical role in our coordinated community response to domestic and sexual violence. Federal law enforcement funding supports critical training, equipment, and agency staffing that assists domestic and sexual violence victims. H.R. 3009 will allow violent crimes to go uninvestigated and leave victims without redress due to reductions in funding.

For these reasons, we urge you to affirm the intent and spirit of VAWA and oppose the provisions above. Thank you very much for taking this important step to protect and support immigrant survivors of domestic violence and sexual assault.

For more information, please contact Grace Huang, Washington State Coalition Against Domestic Violence at grace@wscadv.org, or (206) 389-2515 x 209, or Andrea Carcamo, National Latin@ Network: Casa de Esperanza, at acarcamo@casadeesperanza.org or (703) 942-5582.

Sincerely,

The National Task Force to End Sexual and Domestic Violence



Statement of Andrea Cristina Mercado and Miriam Yeung, co-chairs of We Belong Together

**Submitted to the United States House of Representatives Judiciary Committee
Subcommittee on Immigration and Border Security**

Hearing on “Sanctuary Cities: A Threat to Public Safety”

July 23, 2015

Chairman Gowdy, Ranking Member Lofgren and members of the Subcommittee, we are Andrea Cristina Mercado and Miriam Yeung, co-chairs of We Belong Together. Thank you for the opportunity to submit testimony for inclusion in the record for today’s hearing.

We Belong Together is a campaign co-anchored by the National Domestic Workers Alliance and the National Asian Pacific American Women’s Forum to mobilize women in support of common-sense immigration reform that will keep families together and empower women. We Belong Together was launched on Mother’s Day in 2010 and has exposed the dangerous impact of immigration enforcement on women and families, advocated for comprehensive immigration reform legislation and campaigned President Obama to take executive action within his legal authority to improve the broken immigration system.

We are saddened by the tragic death of Kathryn Steinle in San Francisco. We now face an important opportunity to thoughtfully debate policy solutions to address the prevention and aftermath of violence and its impact on individuals, families and all those living in our country today. The tragic death of Ms. Steinle should not be used to scapegoat immigrants or promote negative and divisive stereotypes.

Since its inception the We Belong Together campaign has demanded an end to harsh immigration enforcement policies that separate families, traumatize children and infringe upon the rights and dignity of women and immigrants. Women make up over half of all immigrants in the U.S., and immigrant women – who are community leaders, mothers, workers, and survivors of gender-based violence – continue to get ensnarled in the over-funded and punishing immigration enforcement system.

Immigrant women are disproportionately vulnerable to exploitation and abuse in the workplace and in the home:

- Immigrant women are three to six times more likely to experience domestic violence because immigration status is often used as a tool of control to force women to remain in violent relationships.
- An estimated 70% of women crossing the U.S./ Mexico border without family are sexually assaulted during their journey to the U.S.
- Immigrant women workers are the lowest paid demographic in our country. They also experience alarmingly high rates of wage theft, compensation below minimum wage requirements, physical abuse and human trafficking.
- Immigration status and fear of retaliation makes many immigrant women fearful of asserting their labor and human rights.

State policies that criminalize immigrants and entangle the responsibilities of local law enforcement and federal immigration authorities, such as Arizona's notorious SB 1070; federal policies like 287(g) and Secure Communities; and informal partnerships between police and Immigration and Customs Enforcement (ICE) exacerbate the barriers women face to accessing safety and justice.

In November of 2014, the Department of Homeland Security (DHS) announced that the Secure Communities program would be replaced by a new program, PEP. Unfortunately, like Secure Communities, PEP is based on the flawed model of local and state police acting as immigration agents or in concert with immigration authorities. Such a model erodes community trust of law enforcement and discourages immigrant survivors of violence from going to the police. It has the collateral effect of prohibiting mothers from seeking medical help, assistance from non-governmental organizations or other services for themselves or their children. We Belong Together continues to call for the end to any entanglement between local police and immigration authorities, including programs like PEP, which by design result in due process violations, racial profiling and destroy the trust of communities of color which is necessary to achieve the core law enforcement mission of protecting all of our communities.

Throughout the country, immigrant women have waged campaigns to end the entanglement of policing and immigration. Many state and local law enforcement agencies have responded to the serious concerns of immigrant women and families and adopted policies that limit cooperation between police and DHS and ensure constitutional safeguards are met. Over 300 counties, 32 cities and four states have adopted no detainer, limited detainer or sanctuary city policies. These policies reflect a commitment to building trust with communities of color; enhancing access to safety and legal protections for survivors of domestic violence, sexual assault and human trafficking; and respecting due process protections for all community members. We Belong Together stands firm in its defense of these policies.

We Belong Together denounces any federal proposals that infringe on the ability of states and localities to engage in policies that promote public safety and community policing. Increased criminalization of immigrant communities will only further shatter an already broken system and endanger immigrant survivors who are particularly vulnerable to arrest as they face cultural and linguistic barriers, which often lead to miscommunications when interfacing with law

enforcement. Misguided policies that prosecute and jail migrants for reuniting with family members fail to recognize the transnational nature of American families today and cost taxpayers billions of dollars to the benefit of private prison companies.

We Belong Together urges the Obama Administration to enhance protections for women, families and survivors of violence by ending the entanglement of immigration enforcement with state and local policing. ICE should also end federal immigration enforcement in states or localities that have anti-immigrant laws or a record of racial profiling or other civil rights abuses.

Congress should end the current era of legislative inaction and enact permanent, humane and comprehensive reforms to our immigration system that address the needs of women and families. These reforms must include a broad pathway to citizenship for all members of the undocumented community, relief for families shattered by the visa backlogs, humanity and discretion in the immigration enforcement system, protections for women workers including the expansion of humane opportunities for women and their families to enter or remain in the U.S. to work, and enhanced protections for survivors of gender-based violence and human trafficking.



CITIES UNITED FOR IMMIGRATION ACTION

July 23, 2015

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C.

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, D.C.

The Honorable John Boehner
Speaker of the House
United States House of Representatives
Washington, D.C.

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
Washington, D.C.

Dear Majority Leader McConnell, Minority Leader Reid, Speaker Boehner, and Minority Leader Pelosi:

The undersigned are members of Cities United for Immigration Action, a coalition of mayors and county leaders committed to strengthening our communities by keeping families together, growing our economies, and fostering trust in law enforcement and government. We write to oppose legislation that would undermine our efforts to maintain welcoming communities and uphold the safety of all residents.

Our hearts go out to the family and friends of Kathryn Steinle. At this time of mourning, we urge our members of Congress to refrain from politicizing this tragedy and fueling an anti-immigrant sentiment.

Our cities and counties are home to millions of immigrant residents who live, work, and contribute to the vitality of our communities. As local leaders, we are uniquely positioned to make the best decisions about serving our residents and ensuring public safety.

Local policies on immigration detainers and cooperation with Immigration Customs and Enforcement reflect informed judgments on how best to promote public safety through strong relationships between immigrant communities and local government. Overbroad immigration enforcement undermines safety for all. A 2013 study found that 44% of Latinos surveyed reported being less likely to contact police officers if they have been the victim of a crime due to concerns about immigration enforcement. When immigrant residents can report crime without fear of deportation, immigrants are more willing to engage with local police and government institutions, our streets and neighborhoods are safer, and those who commit crime are more likely to be brought to justice.

As the Department of Homeland Security institutes the Priority Enforcement Program, we seek to work with DHS and ICE to focus on risks to public safety while maintaining welcoming communities.



CITIES UNITED FOR IMMIGRATION ACTION

Policies that support immigrant integration make our communities stronger. Instead of penalizing localities that seek to create safe and welcoming communities, we call on Congress to address our broken immigration system by enacting comprehensive immigration reform that reflects welcoming values.

Sincerely,

Stephanie Rawlings-Blake, Mayor of Baltimore, MD

James Diossa, Mayor of Central Falls, RI

Mark Kleinschmidt, Mayor of Chapel Hill, NC

Rahm Emanuel, Mayor of Chicago, IL

Nan Whaley, Mayor of Dayton, OH

Domenick Stampone, Mayor of Haledon, NJ

Pedro E. Segarra, Mayor of Hartford, CT

Dawn Zimmer, Mayor of Hoboken, NJ

Paul Soglin, Mayor of Madison, WI

Bill de Blasio, Mayor of New York, NY

Ras Baraka, Mayor of Newark, NJ

Michael Nutter, Mayor of Philadelphia, PA

William Peduto, Mayor of Pittsburgh, PA

Adrian O. Mapp, Mayor of Plainfield, NJ

Charlie Hales, Mayor of Portland, OR

Javier Gonzales, Mayor of Santa Fe, NM

Kevin McKeown, Mayor of Santa Monica, CA

Edward Murray, Mayor of Seattle, WA

Marilyn Strickland, Mayor of Tacoma, WA

Muriel Bowser, Mayor of Washington, D.C.

Fredrick Sykes, Mayor of West Covina, CA

cc: Chairman Chuck Grassley
Chairman Bob Goodlatte
Ranking Member Patrick Leahy
Ranking Member John Conyers, Jr.

STATEMENT OF THE NATIONAL COUNCIL OF LA RAZA

Hearing on
“Sanctuary Cities: A Threat to Public Safety”

Submitted to
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Immigration and Border Security

Submitted by
Clarissa Martínez-De-Castro
Deputy Vice President
Office of Research, Advocacy and Legislation

July 23, 2015

The National Council of La Raza (NCLR) is the largest national Hispanic civil rights and advocacy organization in the United States, an American institution recognized in the book *Forces for Good* as one of the highest-impact nonprofits in the nation. We represent nearly 300 Affiliates—local, community-based organizations in 41 states, the District of Columbia, and Puerto Rico—that provide education, healthcare, housing, workforce development, and other services to millions of Americans and immigrants, annually.

To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas—assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families.

NCLR has a long history of fighting for sensible immigration laws, evidenced through our work in the Hispanic community, in the states and in Washington, DC. Most of our Affiliates teach English, provide health care services, promote financial literacy, and otherwise ease the integration of immigrants into the mainstream. We support and complement the work of our Affiliates by advocating for public policies here in Washington and at the state level. For America's Latino community, 75% of who are United States citizens, real immigration solutions are a top concern and priority both as a matter of policy and of civil rights.

The nation's immigration system is experiencing a systemic failure. Its multiple components are designed to work in tandem to (1) achieve a legal and regulated flow of workers and the reunification of families, (2) implement enforcement measures that advance national security and public safety and help ensure employers maintain a legal workforce, (3) support the successful integration of immigrants into society, and (4) conduct itself in way that upholds the nation's values and traditions respecting the legal and civil rights of America's diverse community. A breakdown in any one area has an impact on the effectiveness of all the others, and on the ability to maintain a legal and orderly process.

Congress has long had in its reach a solution that the vast majority of Americans supports—laid out in bipartisan legislation passed in the Senate in 2013—yet that solution continues to be blocked. The recent tragic death of Kathryn Steinle in San Francisco again puts in high relief the consequences of Congressional inaction.

First and foremost, our sympathies and prayers are with the Steinle family, who has suffered the tragic loss of a loved one. This loss is made more acute, if that were possible, by the refusal of Republican leadership to bring to a vote S744, which among other things included measures to strengthen community safety and allow law enforcement efforts to focus on the detention and removal of dangerous criminals.

While we see some members rush to introduce reactionary legislation arguing the need to act, we cannot oversee the fact that those very members have at every turn opposed sensible solutions from becoming a reality. We urge a respectful and serious conversation following this recent tragedy instead of a rush to pass measures that would criminalize communities wholesale, making law enforcement's ability to focus on those who mean us harm even more challenging.

In the current context, we should keep in mind that:

Community policing is an important tool for local law enforcement. Data and statements from law enforcement officials show that police need cooperation from everyone in the community to do their job and keep the public safe. They need witnesses and victims to be able to come forward. While misrepresentation about so-called “sanctuary cities” abound, these policies are designed to promote community safety, are premised on the community policing model, and are not designed to protect dangerous criminals.

States and localities should be permitted to pursue policies that foster trust and cooperation between communities and police. If victims and witnesses are afraid to interact with police, the police simply cannot do its job. A 2013 study found that nearly half of all Latinos surveyed reported being less likely to contact police officers if they have been a victim of crime out of fear that such contact could provide an opportunity for police officers to inquire into their immigration status or that of a person they know.¹ The same study found that 70% of undocumented individuals reported that they are less likely to contact police if they are the victim of a crime due to local police entanglement with federal immigration enforcement.

Many local law enforcement agencies have refrained from asking about the immigration status of a victim or witness precisely to ensure public cooperation and trust. In a recent opinion editorial, Dayton Police Chief Richard Biehl stated “Sanctuary policies and practices are not designed to harbor criminals. On the contrary, they exist to support community policing, ensuring that the community at large — including immigrant communities — trusts state and local law enforcement and feels secure in reporting criminal conduct. Cooperation with federal immigration enforcement officials still can exist, but state and local law enforcement should carefully tailor policies to ensure that community policing is not undermined. What everyone wants is a safe community.”

This tragedy should not be used to scapegoat immigrants or allow for widespread racial profiling. During this time, we urge a respectful dialogue that protects all communities. Labeling immigrants as criminals is not only harmful, it is incorrect. A report by the American Immigration Council demonstrates that increased immigration to the United States has in fact coincided with a significant decrease in both violent and property crimes nationwide.² We know that the majority of the immigrant population comes to this country to reunite with family and work, and make meaningful contributions that enrich their communities.

Furthermore, what we have seen as a result of the entanglement of immigration enforcement and local law enforcement is an increase in racial profiling. There is widespread evidence that delegating to states and localities the enforcement of federal immigration laws threatens civil rights and subjects entire communities to unlawful law enforcement stops, arrests, and detention.

¹ Nik Theodore, “Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement,” University of Illinois at Chicago (May 2013).

² Walter A. Ewing, Ph.D., *et al.*, “The Criminalization of Immigration in the United States,” Immigration Policy Center (July 2015).

July 20, 2015

Dear Members of Congress,

We, the undersigned civil rights, immigrant rights, victims' services, and human rights organizations write to express our strong opposition to any legislation that would seek to undermine state and local law enforcement's efforts to build and restore community trust.

Good policies are made over time, by examining our shared values and opinions, and by working toward equality and justice for all people. They are not made based on a single, tragic incident or by taking the actions of one individual to justify a policy that criminalizes an entire community. Sadly, in response to the tragic death of Kathryn Steinle, some politicians, including Senator David Vitter, are proposing legislation that scapegoats all immigrants based on the acts of one. These reactionary policy proposals are focused on heavy-handed, enforcement-only approaches despite the fact that studies show that deportation-only policies do not reduce crime rates. Rather, those policies only foster an atmosphere of mistrust and fear, and undermine public safety in all of our communities.

Such proposals are not even supported by the federal agency they are purportedly aimed at helping – the Department of Homeland Security (DHS). As DHS Secretary Jeh Johnson himself acknowledged in a July 14, 2015 hearing before the House Judiciary Committee, “I do not believe that mandating through federal legislation conduct of sheriffs and police chiefs is the way to go. I think it will [be] hugely controversial. I think it will have problems with the Constitution.” Secretary Johnson also confirmed he is not alone in this belief, when he testified, “In my judgment, and the judgment of a lot of other border security, immigration enforcement experts, the way to most effectively work with these jurisdictions, again, is a cooperative one, not by hitting them over the head with federal legislation that will engender a lot more litigation.”¹

Policies like those introduced by Senator Vitter would undermine trust between local and state law enforcement and the communities they serve to protect. Over 320 localities in diverse geographic regions such as Kansas, California, Florida, Illinois, Pennsylvania and many other states have limited their involvement in immigration enforcement because of concerns about liability for failure to uphold Fourth Amendment protections and concerns that such involvement undermines community trust in the police, a critical component to effective policing.

States and localities should be permitted to pursue policies that foster trust and cooperation with their local communities. If victims and witnesses are afraid to come forward and work with the police, the police simply cannot do their jobs.² Moreover, as confirmed by a July 2015 report by the American Immigration Council, increased immigration to the United States has in fact

¹ Testimony of Department of Homeland Security Secretary Jeh Johnson before the United States House of Representatives Judiciary Committee, July 14, 2015.

² A 2013 study found that 44 percent of Latinos surveyed reported being less likely to contact police officers if they have been a victim of crime because they fear that such contact could provide an opportunity for police officers to inquire into their immigration status or that of a person they know. Nik Theodore, “Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement,” University of Illinois at Chicago (May 2013).

coincided with a significant decrease in both violent and property crimes nationwide.³ We know that the majority of the immigrant population comes to this country to reunite with family, work and make meaningful contributions that enrich their communities. What we need is a long-term Congressional solution aimed at addressing our broken immigration system, not reactionary policy proposals that focus on only one facet of the system.

The dialogue surrounding this tragic event only fosters stereotypes and misinformation about the immigrant community. To be clear – the immigration system is broken and needs reform. But moving forward with reactionary and sweeping legislation on one facet of the system doesn't solve the problem. The real solution to our immigration challenges is broad and humane immigration reform which would place undocumented immigrants on a workable and earned path to citizenship, thereby allowing them to contribute even more to their families, communities, and our country.

Sincerely,

National Organizations

Advancing Justice – Asian Law Caucus
Alliance for Citizenship
American Civil Liberties Union
American Immigration Lawyers Association
America's Voice Education Fund
Asian Americans Advancing Justice – AAJC
Asian Pacific American Labor Alliance
Asian Pacific Institute on Gender Based Violence
Black Alliance for Just Immigration (BAJI)
Center for Gender & Refugee Studies
Center for Popular Democracy
Church World Service
Farmworker Justice
Futures Without Violence
Immigrant Defense Project
Immigrant Legal Resource Center
Latin American Working Group Education Fund
Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
Mi Familia Vota
National Asian American Pacific Islander Mental Health Association (NAAPIMHA)
National Coalition Against Domestic Violence
National Council of La Raza (NCLR)
National Day Laborer Organizing Network (NDLON)
National Domestic Workers Alliance
National Education Association

³ Walter A. Ewing, Ph.D., *et al.*, "The Criminalization of Immigration in the United States," Immigration Policy Center (July 2015).

National Guestworker Alliance
National Immigration Forum
National Immigrant Justice Center
National Immigration Law Center
National Korean American Service and Education Consortium
National Latin@ Network: Casa de Esperanza
National Lawyers Guild
National LGBTQ Task Force Action Fund
National Queer Asian Pacific Islander Alliance (NQAPIA)
PICO National Network
Service Employees International Union (SEIU)
South Asian American Leading Together (SAALT)
Southeast Asia Resource Action Center (SEARAC)
United We Dream
We Belong Together

Regional, State, and Local Organizations

Alliance San Diego
Asian Americans Advancing Justice – Chicago
Asian Americans Advancing Justice – LA
Asian Counseling and Referral Service
California Immigrant Policy Center
California Immigrant Youth Justice Alliance
Canal Alliance
Capital Region Organizing Project
Central American Resource Center (CARECEN-LA)
Chinese for Affirmative Action
Chula Vista Democratic Club
CLEAN Carwash Campaign
Community Leadership Association (ALC)
Council on American-Islamic Relations San Diego Chapter
Enlace
Florida Immigration Coalition (FLIC)
Gamaliel of California
Genesis
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Law Center of Minnesota
Inland Empire Immigrant Youth Coalition
Justice Overcoming Boundaries
Kitsap Immigrant Assistance Center
Korean Resource Center
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
MAAC Project
Make the Road New York

Massachusetts Immigrant and Refugee Advocacy Coalition
Nebraska Appleseed Center for Law in the Public Interest
New Orleans Workers' Center for Racial Justice
New York Immigration Coalition
North Bay Organizing Project
Northwest Immigrant Rights Project
OneAmerica
Orange County Immigrant Youth United (OCIYU)
San Diego and Imperial Counties Labor Council
San Diego Dream Team
San Diego Immigrant Rights Consortium
San Joaquin Immigrant Youth Collective
Services, Immigrant Rights, and Education Network (SIREN)
Skagit Immigrant Rights Council
South Asian Network
Tennessee Immigrant and Refugee Rights Coalition
Unitarian Universalist Refugee and Immigrant Services and Education (UURISE)
VA Coalition for Immigrant Rights
Washington Community Action Network
Washington State Coalition Against Domestic Violence
Workers Defense Project

Just last week, Maricopa County settled with the U.S. Department of Justice (DOJ) in litigation stemming from the rampant discrimination and raids targeting Latinos under the pretense of immigration enforcement. There is an upcoming federal court trial that will address the DOJ finding that he targeting Latino drivers.

The solution has been and continues to be in the hands of Republican leadership—it is time to pass immigration reform. The Senate passed bipartisan legislation in 2013 that among other things would have required that undocumented immigrants prove their identity, pass a criminal background check, and pay taxes in order to earn their legalization, allowing ICE to focus on dangerous elements. It is time for Congress to finish the job. We firmly believe that the moral, economic and political imperatives for action are aligned, and Congress has an opportunity and a responsibility to deliver immigration reform that:

- Restores the rule of law by creating a roadmap to legalization and earned citizenship for 11 million aspiring Americans, and promoting smart enforcement that improves safety, supports legal immigration, and prevents discrimination;
- Preserves the rule of law by creating workable legal immigration channels that reunite families, strengthen our economy, and protect workers' rights; and
- Strengthens the fabric of our society by adopting proactive measures that advance the successful integration of new immigrants.

The intertwined nature of these elements make a comprehensive approach a necessity and piecemeal efforts will fall short in addressing legitimate frustration over the consequences of this outdated system. This is illustrated by the fact that annually, federal immigration enforcement has reached \$18.5 billion and exceeds that of all other federal criminal law enforcement combined, yet that alone cannot solve the issues we face.

There is a reason why 326 counties, 32 cities, and 4 states chose to limit their cooperation with Immigration and Customs Enforcement (ICE): although the Secure Communities program was established to target the most dangerous criminals, more than half the people deported were non-criminals or people with traffic violations. In 2013 alone, only 12% of the people deported through the program were the agency's top priority. Additionally, two federal courts ruled that ICE requests for local law enforcement to hold individuals beyond when they would otherwise be released, violated the Constitution.

Donald Trump was widely condemned for his inflammatory remarks seeking to paint a whole community as criminals. Congress should not follow his reprehensible path by turning his remarks into legislation.