

I ask unanimous consent to enter into the record statements from the City of Denver:

- 1. Letter from Congresswoman DeGette**
- 2. Statement for the Record from the City of Denver**
 - Attesting to how the City of Denver's immigration ordinance complies with all federal laws. The Denver Police Department further asserts how the Public Safety Priorities Enforcement Act does not negatively impact their ability to enforce the law in any way.
- 3. Comprehensive Background Document**
 - Highlighting the action Denver has taken on addressing the opioid crisis, the policies and training that Denver has implemented to enable law enforcement to better interact with ICE, and an elaboration on how the Public Safety Enforcement Priorities Act operates.
- 4. Copy of Denver's Public Safety Priorities Act**
 - Article VIII. – Public Safety Enforcement Priorities Act
- 5. Overview of efforts to address opioid epidemic in Denver**
 - Discussing the current state of the opioid focus areas and the specific strategies that Denver is trying to strengthen and expand to combat the crisis.
- 6. Overview of Denver Police Department's Drug Enforcement Efforts**
 - Outlining details of the investigations conducted by Front Range and Strike Force Task Forces in 2016 and 2017, a review of arrests from drug enforcement efforts in Denver, including a breakdown of arrests by race, and further data outlining the drug seizures processed by the Denver Crime Lab.
- 7. Q4 Tracker ICE Notification of Release Requests**
 - Providing data on the Immigration and Customs Enforcement Notifications of Release Requests for the 4th Quarter of 2017. This includes details of the charges, the date and time of the ICE Fax Notification to DSD and the date and time of their response.

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SUBCOMMITTEE ON HEALTH
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February 14, 2018

Raúl Labrador, Chairman
Subcommittee on Immigration
and Border Security
2138 Rayburn House Office Building
Washington, DC 20515

Honorable Zoe Lofgren, Ranking Member
Subcommittee on Immigration
and Border Security
2035 Rayburn House Office Building
Washington, D.C. 20515

Chairman Labrador and Ranking Member Lofgren:

I understand that on February 15, 2018, the Subcommittee on Immigration and Border Security is holding a hearing entitled "the Effect of Sanctuary City Policies on the Ability to Combat the Opioid Epidemic." Since one of the witnesses is the President of Denver Police Protective Association, I imagine that the hearing could include a discussion of the policies of the City and County of Denver regarding these topics.

To ensure that this discussion is productive and informed by the facts, I would like to provide the subcommittee with a statement prepared by the City and County of Denver regarding its efforts to combat the opioid epidemic and its policies regarding communication with federal immigration enforcement authorities.

Denver is a national leader in the prevention and treatment of opioid abuse and in creating welcoming city that keeps all of its resident safe. I hope you will find the attached statement useful. Do not hesitate to contact Tommy Walker with my staff at 202-225-4431 if we can provide additional information.

Sincerely,



Diana DeGette
Member of Congress

CITY AND COUNTY OF DENVER STATEMENT FOR THE RECORD

DENVER CITY ATTORNEY

In Denver, we stand firmly for the ideals of inclusion, acceptance and opportunity. These are our values, and they reinforce every action we take as a city. And one of the most important of those actions is ensuring the safety, health and well-being of those who call our city home. To fulfill that commitment to our residents, our city – and every city in this country – needs all its residents to trust our safety officials to effectively combat crime and protect them from harm.

The actions we have taken as a city to support our immigrant residents promote public safety through community trust; foster respect and trust between community members and all city officials, including law enforcement; ensure all community members the rights and liberties that are guaranteed to them; and offer everyone the opportunity and ability to succeed and thrive freely without fear.

Consistent with these same values, Denver is also on the front lines of addressing the opioid crisis currently affecting our country. Here, too, we are working diligently to keep our residents safe and help those who are addicted to access the help they need to combat their addiction. And Denver stands ready and willing, as it always has, to assist federal agencies in the investigation and enforcement of criminal offenses related to the opioid crisis in our community.

Denver's recently-enacted immigration ordinance, the Public Safety Enforcement Priorities Act, does not prohibit, limit, or frustrate our law enforcement officials' ability to investigate and enforce criminal offenses related to the opioid crisis. The Act not only allows communication with the federal government, but permits local law enforcement to actively assist in the enforcement and investigation of *any* criminal law, including federal law. The Act also makes clear that if a federal agent has a warrant signed by a federal judge or magistrate, Denver will cooperate and assist with the enforcement of the warrant.

ICE, along with the FBI, has access to biometric data (i.e., fingerprints) on every individual booked into the Denver County jail. To the extent federal law enforcement officials have probable cause to arrest any individual housed in the jail, whether it be for a civil or a criminal matter arising under federal law, they may do so by obtaining a warrant.

Also, if ICE requests notification in accordance with the policies of the Department of Homeland Security regarding an inmates' potential release date, Denver will provide that notification as soon as we become aware of an individual's potential release. This is not required of local municipalities, but was important to Denver to ensure violent criminals were not released without first alerting federal officials. The need for comprehensive immigration reform at the federal level and a robust response to the opioid crisis are two of the most critical issues facing this Congress today. It is unfortunate, therefore, that these two very important issues are being conflated for political purposes when politics will not solve either challenge, but merely exacerbate them.

As we have told Representative Buck, Denver's choice to limit its involvement in the *civil* enforcement of federal immigration laws, as reflected in the Public Safety Enforcement Priorities Act, should not be confused with our ongoing commitment to enforce *criminal* drug laws. If such individuals go on to

commit crimes – including drug crimes – while present in the United States, they are subject to arrest and criminal prosecution just as any other person would be.

Denver's immigration ordinance complies with all federal laws. Under the straightforward text of the Public Safety Enforcement Priorities Act and Denver's policies and practices, we will continue to permit our local law enforcement to actively assist in the enforcement and investigation of *any* criminal law, including federal law. We also agree that *anyone* involved in the trafficking of opioids should face the criminal consequences of their actions.

Justice should be administered with blindness to immigration status, with the focus being on holding all people accountable for their criminal actions. Denver believes that solutions to both issues can be reached if all sides have a proper understanding of the challenges that we face together.

Denver Police Department

The Denver Police Department does not believe that the Public Safety Priorities Enforcement Act in question negatively impacts our ability to enforce the law in any way. A person's immigration status is not a relevant factor in taking enforcement against criminal activity. If anything, we have found that the new ordinance has helped to solidify the relationship between the police department and the residents of Denver. It encourages people from all communities to actively participate as partners in the fight against crime by providing cooperation and information which then assists safety officials in enforcement actions against those who engage in illegal activity.

Memorandum

To: Maunica Sthanki, Democratic Counsel
Subcommittee on Immigration and Border Security, Committee on the Judiciary

From: Emily Hauber, Senior Advisor for Federal Affairs

Date: February 13, 2018

Re: City and County of Denver Background Information
"The Effect of Sanctuary City Policies on the Ability to Combat the Opioid Epidemic."

STATEMENT FOR THE RECORD

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Denver's recently-enacted immigration ordinance, the Public Safety Enforcement Priorities Act, does not prohibit, limit, or frustrate our law enforcement officials' ability to investigate and enforce criminal offenses related to the opioid crisis. The Act not only allows communication with the federal government, but permits local law enforcement to actively assist in the enforcement and investigation of *any* criminal law, including federal law. The Act also makes clear that if a federal agent has a warrant signed by a federal judge or magistrate, Denver will cooperate and assist with the enforcement of the warrant.

ICE, along with the FBI, has access to biometric data (i.e., fingerprints) on every individual booked into the Denver County jail. To the extent federal law enforcement officials have probable cause to arrest any individual housed in the jail, whether it be for a civil or a criminal matter arising under federal law, they may do so by obtaining a warrant.

Also, if ICE requests notification in accordance with the policies of the Department of Homeland Security regarding an inmates' potential release date, Denver will provide that notification as soon as we become aware of an individual's potential release. This is not required of local municipalities, but was important to Denver to ensure violent criminals were not released without first alerting federal officials. The need for comprehensive immigration reform at the federal level and a robust response to the opioid crisis are two of the most critical issues facing this Congress today. It is unfortunate, therefore, that these two very important issues are being conflated for political purposes when politics will not solve either challenge, but merely exacerbate them.

As we have told Representative Buck, Denver's choice to limit its involvement in the *civil* enforcement of federal immigration laws, as reflected in the Public Safety Enforcement Priorities Act, should not be confused with our ongoing commitment to enforce *criminal* drug laws. If such individuals go on to commit crimes – including drug crimes – while present in the United States, they are subject to arrest and criminal prosecution just as any other person would be.

Denver's immigration ordinance complies with all federal laws. Under the straightforward text of the Public Safety Enforcement Priorities Act and Denver's policies and practices, we will continue to permit our local law enforcement to actively assist in the enforcement and investigation of *any* criminal law, including federal law. We also agree that *anyone* involved in the trafficking of opioids should face the criminal consequences of their actions.

Justice should be administered with blindness to immigration status, with the focus being on holding all people accountable for their criminal actions. Denver believes that solutions to both issues can be reached if all sides have a proper understanding of the challenges that we face together.

Denver Police Department

The Denver Police Department does not believe that the Public Safety Priorities Enforcement Act in question negatively impacts our ability to enforce the law in any way. A person's immigration status is not a relevant factor in taking enforcement against criminal activity. If anything, we have found that the new ordinance has helped to solidify the relationship between the police department and the residents of Denver. It encourages people from all communities to actively participate as partners in the fight against crime by providing cooperation and information which then assists safety officials in enforcement actions against those who engage in illegal activity.

PUBLIC SAFETY ENFORCEMENT PRIORITIES ACT

Denver's choice to limit its involvement in the enforcement of federal civil immigration laws, as reflected in the Public Safety Enforcement Priorities Act, should not be confused with Denver's ongoing commitment to enforce criminal drug laws. The responsibility to enforce immigration laws resides with the federal government. Individuals who enter or remain in the country in violation of federal immigration laws are subject to removal by ICE as a civil matter. However, if such individuals go on to commit crimes—including drug crimes—while present in the United States, they are subject to arrest and criminal prosecution just as any other person would be.

The Public Safety Enforcement Priorities Act places no restrictions on the ability to enforce criminal laws and reinforces our commitment to holding all criminals accountable for their actions. In crafting Denver's Public Safety Enforcement Priorities Act, we were keenly aware of the need to reiterate our

commitment to enforcement of criminal laws, including laws that govern trafficking in opioids and other illicit drugs.

The Public Safety Enforcement Priorities Act not only allows communication with the federal government, but permits local law enforcement to actively assist in the enforcement and investigation of *any* criminal law, including federal law. Active assistance in the enforcement of criminal laws is set forth in Sec. 28-253 of the Act, which states that “nothing in the ordinance shall be construed to apply to the authority of city law enforcement officers to investigate or enforce *any* criminal law.” In addition, Sec. 28-250 of the Act specifically states that nothing in the Act shall preclude city law enforcement officers from participating in coordinated law enforcement actions with federal law enforcement agencies, as long as the primary purpose of the coordinated action is the enforcement of city, state, or federal criminal laws.” Denver stands ready and willing, as it always has, to assist federal agencies in the investigation and enforcement of criminal offenses related to the opioid crisis in our community. The Act also makes clear that if a federal agent has a warrant signed by a federal judge or magistrate, Denver will not only cooperate, but assist in the enforcement of the warrant. This was an important factor to the City Attorney in advising the Mayor to sign the Act into law.

ICE, along with the FBI, has access to biometric data (i.e., fingerprints) on every individual booked into the Denver County jail. To the extent federal law enforcement officials have probable cause to arrest any individual housed in the jail, whether it be for a civil or a criminal matter arising under federal law, they may do so by obtaining a warrant or asking in writing for information about when the individual will be released from the custody of the Denver jail.

Finally, If ICE requests notification regarding an inmates’ potential release in accordance with the policies of the Department of Homeland Security, Denver will provide notification as soon as we become aware of an individual’s potential release. This is not required of local municipalities, but was important to ensure violent criminals were not released without first alerting federal officials.

- The Denver Sheriff Department tracks ICE release notification requests and provides a quarterly report to the Denver City Council. The attached Q4 report covers October 1, 2017 – December 31, 2017 (in other words, the entire 2017 period when the new ordinance was in effect). The report shows that Denver responded to 55 inquiries from ICE about inmate release dates during that period.

IMPACT ON VICTIMS’ PARTICIPATION

Since the Trump administration announced its new immigration enforcement priorities, Denver is aware of 12 domestic violence victims who have refused to cooperate in the prosecution of their abusers because they were afraid of immigration consequences. ICE’s presence in our local courthouses also has a chilling effect on witnesses to crime who would otherwise testify.

POLICIES AND TRAINING

Prior to implementing the Public Safety Enforcement Priorities Act, the Denver City Attorney’s Office provided training on the Act to all of Denver’s 11,000 city employees. City employees who do not routinely interact with ICE were required to take an on-line training course. The City Attorney’s Office provided customized training to all City employees who are more likely to interact with ICE—including

all Denver law enforcement agencies—through additional on-line training, videos, and in-person training sessions.

The training provided to the Denver Police Department and other Denver law enforcement agencies made it clear that the purpose of Denver's new Public Safety Enforcement Priorities Act is to limit Denver's participation in the enforcement of federal civil immigration laws. Specifically, the Act prohibits City employees from assisting the federal government with the enforcement of civil immigration laws, and prohibits City employees from asking for information about a person's national origin, immigration, or citizenship status. The Act does **not** change or limit our law enforcement officers' ability to investigate or enforce any local, state, or federal criminal law, and specifically permits Denver law enforcement officers to cooperate with federal law enforcement agencies when the primary purposes of the coordinated action is the enforcement of criminal (as opposed to civil) laws.

It has been said that the ordinance somehow prohibits the active investigation of drug offenders. This is simply not true. The act specifically states that "nothing in the ordinance shall be construed to apply to the authority of city law enforcement officers to investigate or enforce *any* criminal law." Additionally, the Act specifically allows for cooperation between local law enforcement and federal authorities in the investigation of potential violations of local, state and federal criminal offenses. The only prohibitions apply to the enforcement of federal civil immigration laws

The Act is also clear that Denver may ask for information about a person's national origin, immigration, or citizenship status when required to do so by any federal, state, or city law or regulation. See Sec. 28-250(a). Denver's training materials and the more in-depth training provided to our law enforcement agencies discuss this exception, including the federal, state, and local laws and regulations that apply to specific agencies, including 8 U.S.C. Section 1373.

DENVER'S RESPONSE TO THE OPIOID EPIDEMIC

The City and County of Denver is on the front line in battling the opioid crisis, and experience has shown us that there is no one solution to the problem.

The rising opioid epidemic in Denver necessitates a coordinated and comprehensive response that draws on the expertise of service providers, policymakers and systems-level actors. The Mayor commissioned an opioid working group to develop creative approaches to combatting opioid abuse in our community. Additionally, the response must allocate sufficient resources for the delivery of individual services and for the alignment, coordination, and development that will ensure that services have the maximum impact. The Mayor's office and Denver's Department of Public Health and Environment (DDPHE) staff have initiated a collective impact process to coordinate the multi-sectoral efforts underway to address the opioid epidemic. The Collective Impact Group works closely with Colorado state leadership and with leadership and subject matter experts across the U.S. and Canada to benefit from lessons learned and common approaches to reduce incidents of opioid misuse.

See appendix A, Overview of Denver's Response to Opioid Epidemic

From the law enforcement perspective, Denver's narcotics efforts have increased over the last few years, with much of those efforts focused on heroin dealing. The Denver Police Department is the lead agency in the Front Range Task Force, which works with the DEA, and focused on dismantling national and international Drug Trafficking Organizations. DPD is participating in a statewide heroin enforcement

surge. This is a conjoined effort in response to the heroin epidemic. The Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) is coordinating this effort. The idea for this enforcement effort came out of the Heroin Response Group, which includes local, state and federal law enforcement, Colorado Department of Health and the Environment, Denver Department of Health and the Environment, and treatment and recovery groups.

See appendix B, Denver Police Department Drug Enforcement Summary

ARTICLE VIII. - PUBLIC SAFETY ENFORCEMENT PRIORITIES ACT^[8]

Sec. 28-250. - Use of city funds and resources limited; exceptions.

- (a) Except as specifically authorized in this article VIII, no department, agency, board, commission, officer or employee of the city, including without limitation, county court administrative and clerical employees, probation, pre-trial services and community corrections, shall use any city funds or resources to assist in the enforcement of federal immigration laws. The prohibition set forth in this section shall include but not be limited to:
- (1) Assisting or cooperating in one's official capacity with any investigation, detention, or arrest procedures relating to alleged violations of the civil provisions of federal immigration laws.
 - (2) Requesting information about the national origin, immigration or citizenship status of any individual or engaging in activities designed to ascertain such information, except to the extent required by any federal, state or city law or regulation, or any international treaty to which the United States is a party.
 - (3) Including on the application for any city services or benefits any question regarding national origin, immigration or citizenship status of the applicant, or conditioning the provision of city services or benefits upon the national origin, immigration or citizenship status of any individual, except to the extent required by any federal, state or city law or regulation.
 - (4) Disseminating information about the national origin, immigration or citizenship status of any individual except to the extent required by any federal, state or city law or regulation, including by way of example 8 U.S.C. §1373 and 8 U.S.C. §1644, or any international treaty to which the United States is a party.
 - (5) Initiating any law enforcement contact solely for purposes of determining the person's national origin, immigration or citizenship status, or arresting or detaining any individual solely on the basis of the individual's immigration or citizenship status.
- (b) Nothing in subsection (a) of this section shall preclude any city officer or employee from cooperating or assisting federal immigration enforcement authorities in the execution of a warrant issued by a federal judge or magistrate or honoring any writ issued by any state or federal judge concerning the transfer of a prisoner to or from federal custody. The time and resources expended by any city law enforcement officer investigating and determining whether an immigration-related warrant listed in any crime information database is judicial or administrative in nature shall not be considered a violation of subsection (a) of this section.
- (c) City law enforcement officers may respond to calls for assistance from federal immigration enforcement authorities to the extent necessary to keep the peace, protect public safety, or enforce any applicable state and city criminal laws beyond the scope of effectuating an immigration arrest. Nothing in subsection (a) of this section shall preclude city law enforcement officers from participating in coordinated law enforcement actions with federal law enforcement agencies, as long as the primary purpose of the coordinated action is the enforcement of city, state or federal criminal laws.
- (d) Nothing in subsection (a) of this section or in section 28-251 shall restrict the authority of the city to enter into agreements concerning the transport of persons who are already in federal custody through Denver International Airport, to the extent such agreements are deemed necessary to ensure that city officials are made aware whenever federal prisoners are being transported through the airport by federal immigration authorities, and to make space available to federal immigration officials for the safe and secure transport of such prisoners within the airport.

(Ord. No. 940-17, § 1, 8-28-17)

Sec. 28-251. - City contracts related to enforcement of federal immigration laws prohibited.

The city shall not enter into any contractual agreement that would commit or require any city officer or employee to directly or indirectly assist in the enforcement of federal immigration laws, including by example any agreement authorized by 8 U.S.C. §1357(g) (commonly known as "287(g) Agreements") or any intergovernmental services agreement entered into with the U.S. Department of Homeland Security under the authority of 8 U.S.C. § 1103(a)(11)(B). The city shall not enter into any contractual agreement requiring the collection or dissemination of individually identifiable information about the national origin, immigration or citizenship status of any person, over and above the extent to which the city is required to collect or disseminate such information in accordance with any federal, state or city law or regulation.

(Ord. No. 940-17, § 1, 8-28-17)

Sec. 28-252. - Limitations on access to secure areas of city and county jails and related facilities.

- (a) Unless federal immigration authorities present a warrant issued by a federal judge or magistrate, federal immigration authorities shall not be granted access or allowed to use the secure areas of any city or county jail or other city-owned law enforcement facility for the purpose of conducting investigative interviews or any other purpose related to the enforcement of federal immigration laws. For purposes of this section the term "secure area" means any area of the facility that is not generally open and accessible to the general public, but instead requires special permission for admittance by a city officer or employee on an individual basis.
- (b) Nothing in subsection (a) of this section or in section 28-250 shall prevent city law enforcement officials from coordinating telephone or video interviews between federal immigration authorities and individuals incarcerated in any city or county jail to the same extent as telephone or video contact with such individuals is allowed by the general public; provided, however, that no such interview shall be allowed until the individual has been advised of certain legal rights in writing in the individual's language of choice, including but not limited to:
 - (1) The interview is being sought by federal immigration authorities;
 - (2) The individual has the right to decline the interview and remain silent;
 - (3) The individual has the right to speak to an attorney before submitting to the interview; and
 - (4) Anything the individual says may be used against him or her in subsequent proceedings, including in a federal immigration court.

(Ord. No. 940-17, § 1, 8-28-17)

Sec. 28-253. - Civil immigration detainers and requests for voluntary notification.

- (a) *Purpose.* The purpose of this section is to address requests for non-mandatory civil immigration detainers, voluntary notification for release of individuals from custody, transmission of personal information, and other civil immigration documents based solely on alleged violations of the civil provisions of federal immigration laws. Nothing in this section shall be construed to apply to the authority of city law enforcement officers to investigate or enforce any criminal law.
- (b) *Definitions.*
 - (1) "Eligible for release from custody" means that the individual may be released from custody because one (1) of the following conditions has occurred:
 - a. All criminal charges against the individual have been dropped or dismissed.
 - b. The individual has been acquitted of all criminal charges filed against him or her.

- c. The individual has served all the time required for his or her sentence.
 - d. The individual has posted a bond or has been released on his or her own recognizance.
 - e. The individual has been referred to pre-trial division services.
 - f. The individual is otherwise eligible for release under state or city law.
- (2) "Civil immigration detainer" means a non-mandatory request issued by federal immigration enforcement authorities under Section 287.7 of Title 8 of the Code of Federal Regulations, to city law enforcement officers to maintain custody of an individual for a period not to exceed forty-eight (48) hours, including by way of example any such request appearing on an I-247A form or any similar form promulgated by federal immigration enforcement authorities.
- (3) "Notification request" means a non-mandatory written request issued by federal immigration enforcement authorities to a city law enforcement officer asking for notification to the federal immigration enforcement authorities of an individual's release from city custody prior to such release, including by way of example any such request appearing on an I-247A form or any similar form promulgated by federal immigration enforcement authorities.
- (4) "Personal information" means any confidential, identifying information about an individual, including but not limited to home or work contact information, and family or emergency contact information; but not including any information about the national origin, immigration or citizenship status of the individual if known to a city law enforcement officer.
- (c) *Detainers and other civil enforcement actions.* A city law enforcement officer shall not detain an individual solely on the basis of a civil immigration detainer. City law enforcement officers shall not arrest or detain an individual, or provide any individual's personal information to federal immigration enforcement authorities on the basis of an administrative warrant regardless of whether or not the administrative warrant is accompanied by a final order of removal or deportation, any prior deportation order, or any other civil immigration document based solely on alleged violations of the civil provisions of federal immigration laws. Nothing in subsection (c) of this section shall preclude any city officer or employee from cooperating or assisting federal immigration enforcement authorities in the execution of a warrant issued by a federal judge or magistrate.
- (d) *Notification requests.* Notwithstanding the restrictions set forth in [section 28-250](#), the sheriff department may respond to a notification request and provide such notifications to the extent the department is reasonably capable of doing so. In no event shall a notification request be deemed to create any obligation on the part of the department to detain the inmate who is the subject of the notification request beyond the date and time the inmate is eligible for release from custody, unless the request is accompanied by a warrant issued by a federal judge or magistrate. Upon receipt of any notification request, the sheriff department shall as promptly as practicable advise the inmate who is the subject of the notification request that federal immigration enforcement authorities have requested information concerning the date and time when the inmate will be released. The advisement to the inmate shall be given in writing in the inmate's language of choice, shall be accompanied by a copy of the notification request, and shall also advise the inmate that he or she enjoys certain legal rights if contacted by federal immigration enforcement authorities while in custody or after having been released from custody, including but not limited to:
- (1) The individual has the right to refuse to speak to federal immigration enforcement authorities and remain silent;
 - (2) The individual has the right to speak to an attorney before speaking to federal immigration enforcement authorities; and
 - (3) Anything the individual says may be used against him or her in subsequent proceedings, including in a

federal immigration court.

If the sheriff department does give notice of an inmate's release to federal immigration authorities pursuant to a notification request, the written advisement of rights to the inmate shall be provided to the inmate again when the inmate is released.

- (e) *Records related to notification requests.* In accordance with the city's record retention policy, the sheriff department shall maintain a record of all notification requests received by the department, which shall include the following information for each individual notification request:
- (1) Date and time the notification request was received.
 - (2) Whether the department responded to the notification request, and if so, the date and time upon which the response was given.
 - (3) The charges for which the inmate who was the subject of the notification request was being held by the city prior to being released from custody.
 - (4) Whether the inmate who was the subject of the notification request was detained or arrested by federal immigration authorities after being released from city custody, if such information is made known to the department.
- (f) *Reporting of notification request records.* The sheriff department shall prepare a report concerning notification requests and distribute the report quarterly to both the city council and the mayor beginning on October 1, 2017. The report shall contain a year-to-date summary of the total number of notifications received by the department, along with the information for each notification request set forth in subsection (e) of this section.

(Ord. No. 940-17, § 1, 8-28-17)

DENVER'S RESPONSE TO THE OPIOID CRISIS

The rising opioid epidemic in Denver necessitates a coordinated and comprehensive response that draws on the expertise of service providers, policymakers and systems-level actors. Additionally, the response must allocate sufficient resources for the delivery of individual services and for the alignment, coordination, and development that will ensure that services have the maximum impact. The Mayor's office and Denver's Department of Public Health and Environment (DDPHE) staff have initiated a collective impact process to coordinate the multi-sectoral efforts underway to address the opioid epidemic. The Collective Impact Group works closely with Colorado state leadership and with leadership and subject matter experts across the U.S. and Canada to benefit from lessons learned and common approaches to reduce incidents of opioid misuse.

CURRENT STATE

Focuses on five main areas:

1. Promoting increased access and use of life-saving overdose-reversing medication
2. Improving access to treatment and recovery services
3. Continuing and strengthening our commitment to public health through providing and promoting harm reduction strategies, including syringe access
4. Understanding Denver's epidemic through the continued research and evaluation of diverse models and innovative public health strategies, thorough analysis of Denver's data related to opioid deaths and usage, and active community engagement. Implement strategies that align with Denver-specific needs.
5. Aligning and supporting efforts with our partners to increase provider education regarding prescribing and dispensing medication, informing consumers about alternative pain management, and educating our community on prevention strategies especially those targeting youth.

Efforts include:

- All 26 Denver Public Library locations are equipped and trained with Narcan/Naloxone
 - 13 overdose reversals at Central Public Library in 2017
 - Added social workers and "peer navigators"
- Increased Medication Assisted Treatment and overdose-prevention funding for jail inmates
- Allocated an additional \$500K for 2018 for improved and increased access to treatment and services using a low barrier model; actively seeking additional matching funds from foundations
- Increased funding at two syringe access programs by \$150K in 2017
- Launched co-responder program and expanded specialty courts (Drug, Sobriety, Wellness and Homeless Outreach)
- Dedicated two full-time employees to specifically address opioid and substance misuse
- Conducted a needs assessment survey of injection drug users in our urban core
- Engaging with state efforts and working in partnership to develop comprehensive, collaborative "collective impact" strategies specific to Denver

WHAT'S NEXT

Overarching goal:

To strengthen and expand strategies that include a combination of prevention, treatment, harm-reduction, enforcement and emergency sheltering/housing.

Anticipated outcomes:

- Increase access to treatment and co-located services
- Reduce fatal and non-fatal overdoses
- Minimize associated public health and safety complications of overdoses, including thousands of EMS calls for service annually
- Plan, prepare and attempt to prevent the availability and use fentanyl

Specific strategies:

- Launch treatment-on-demand in 2018
- Obtain and distribute test strips and other drug-testing devices; continue to closely monitor findings from DPD, Crime Lab and Office of the Medical Examiner for fentanyl
- Monitor and engage all relevant Colorado state legislation, developments in other U.S./int'l cities, signals from the federal government, and litigation.
- Continue to explore and research the concept of supervised injection/overdose prevention sites
- Expand used-needle collection efforts (mobile app, 1-800 hotline, mobile collection, bike collection, disposal boxes, etc)
- Potentially host an opioid action summit in 2018 to convene leaders in public health, public safety, human services and other relevant disciplines from U.S. cities to share best practices, formulate solutions and activate change

Actionable exploration with internal/external partners:

- Harm-reduction efforts in existing shelters
- Harm-reduction efforts in DHA, VOA and other public housing
- Installation of storage lockers
- Open a smaller no-barrier replacement facility
- A social enterprise off-shoot of Denver Day Works modeled after East Van Roasters in Vancouver
- Leverage the co-responder program to better address the addiction crisis
- Develop new and/or expand addiction-related partnership opportunities with Denver Health, including efforts in our jails

Denver PD Drug Enforcement Efforts

January 1, 2016 through January 31st, 2017



Enforcement

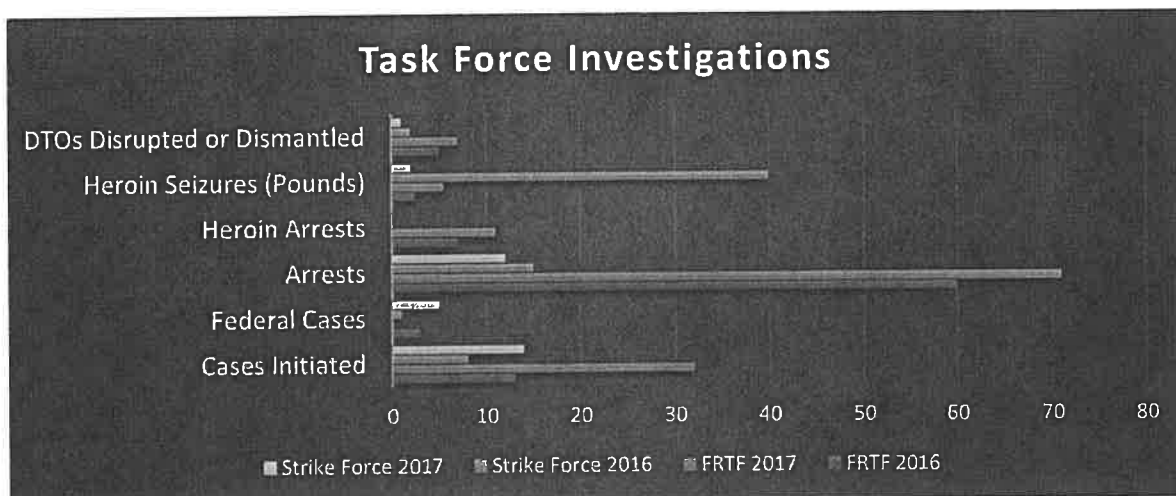
There are approximately **120** law enforcement officers who are assigned to and actively work narcotics investigations in and around the **City** and **County** of **Denver**. Of those assigned investigators, approximately **70** of them are employed by the **Denver Police Department (DPD)**. This includes **33** imbedded in **District** operations, **28** assigned to the **VICE/Narcotics Section**, and **nine** who are serving alongside our partners on **Federal Task Forces**.

In addition to the personnel outlined above, all **DPD** officers remain focused on constant narcotics enforcement throughout the **City**. In fact, the majority of arrests and seizures are a result of the street operations patrol officers engage in daily. From these low-level contacts to high-level investigations, the **DPD** has increased narcotics enforcement efforts over the last several years. From serving as the lead **Agency** in the **Front Range Task Force**, which partners with the **Drug Enforcement Administration (DEA)** and **Homeland Security Investigations (HIS)** to focus on dismantling national and international Drug Trafficking Organizations, to being a key partner in the **Denver Heroin Response Working Group**, the **DPD** is committed to being on the front lines of the opioid crisis.

Task Force Investigations

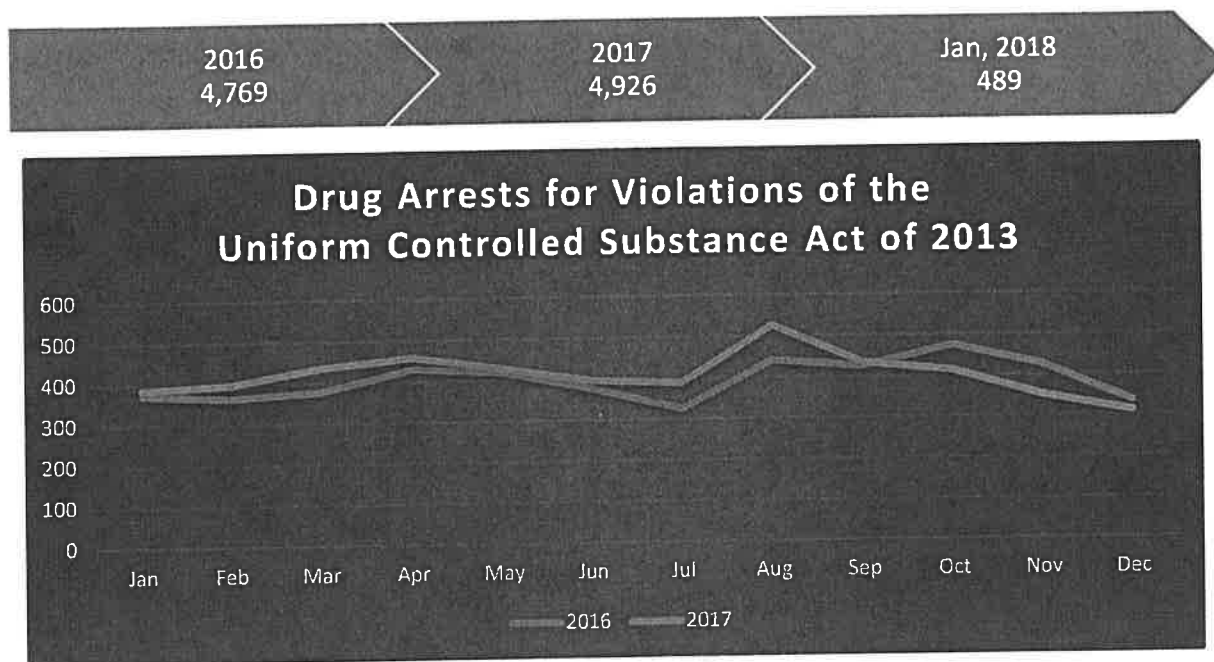
The table and chart below outline the investigations conducted by the **Front Range** and **Strike Force Task Forces** for **2016** and **2017**, to which a total of **seven** **DPD** personnel are assigned.

Investigations	2016		2017	
	Front Range	SF	Front Range	SF
Cases Initiated	13	8	32	14
Federal Cases	3	1	0	5
Arrests	60	15	71	12
Heroin Arrests	7	0	11	0
Heroin Seizures (Pounds)	2.4	39.9	5.5	1.98
DTOs Disrupted/Dismantled	5	2	7	1



Arrests

A review of arrests from drug enforcement efforts in **Denver** by year are included below for review. Of note, there was a **3.3%** increase in such arrests from **2016** to **2017**.



Arrests by Race

The table below outlines narcotics related arrests made by race of arrestee and year for **2016** and **2017**.

Race	2016		2017		January, 2018	
	Count	%	Count	%	Count	%
Asian	34	0.7%	41	0.8%	1	0.2%
Black	1,508	32%	1,448	29%	138	28%
Hispanic	1,208	25%	1,039	21%	115	24%
Am. Indian	28	0.6%	31	0.6%	4	0.8%
White	1,955	41%	2,320	47%	226	46%
Unknown	36	0.8%	47	1%	5	1.0%
Total	4,769	100.0%	4,926	100.0%	489	100.0%

Drug Seizures

The table below outlines the drug seizures processed by the **Denver Crime Lab** by gram. Of note, there was a **50% increase** in Heroin seizures and a **187% increase** in Methamphetamine seizures from **2016** to **2017**.

Drug Type (in Grams)	2016	2017	Change
Buprenorphine/Methadone/Suboxone	41	12	-70%
Cocaine	14,506	12,959	-11%
Heroin	3,787	5,690	50%
Meth	34,273	98,394	187%
Fentanyl	12	212	1667%
Synthetic Marijuana	1,183	2,995	153%
Other Opioids	291	796	174%
Total	54,093 Grams	121,058 Grams	124%

Public Safety Enforcement Priorities Act

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October 2017	15	Q4
November 2017	22	
December 2017	18	
Total	55	

****Charge Severity level is based on when the person was taken into custody. Severity Level is subject to change upon court disposition.****

Common Acronyms & Symbols

FTA – Failure to Appear	NPOI – No Proof of Insurance	DUI – Driving Under the Influence
PCS – Possession of a Controlled Substance	MVT – Motor Vehicle Theft	DL – Drivers License
DWAI – Driving with Ability Impaired	P/N/D – Person/Non-Person Crime/Drug Crime	DUR – Driving Under Restraint

#	CD Number	Current Charge(s) including any change of charge while in custody	Date and Time of ICE Fax Notification to DSD	Date and Time of DSD Fax Notification to ICE	ICE Detained?	Fel/Misd	P/N/D
1.	850042	Denver – Warrant/PCS	08/15/17 @ 2216	10/03/2017 @ 0059	Unknown	Fel	D
2.	873375	Denver – Criminal Mischief/Child Abuse	No date/time stamp on fax copy	10/15/17 @ 1455	Unknown	Fel	P
3.	650033	Denver – DUI/DUR	10/16/17 @ 0458	10/16/17 @ 1235	Unknown	Misd	N
4.	562472	Arapahoe – Warrant/False Reporting, NPOI Denver – Warrant/DUI x 2, NPOI, Careless Driving, Driving w/out lic.	10/05/17 @ 0610	10/05/17 @ 1254	Unknown	Misd	N
5.	797159	Denver – Warrant/NPOI, Driving w/out a Lic.	09/27/17 @ 0120	10/05/17 @ 2355	Unknown	Misd	N
6.	872841	Denver – Threats	10/03/17 @ 0717	10/04/17 @ 0108	Unknown	Misd	P
7.	872807	Denver – Theft	10/02/17 @ 1601	10/03/17 @ 2306	Unknown	Fel	N
8.	844055	Denver – Warrant/PCS	09/29/17 @ 0323	10/06/17 @ 0037	Unknown	Fel	N
9.	557553	Arapahoe – Warrant/MVT, DUI	10/20/17 @ 1722	10/23/17 @ 2032	Unknown	Fel	N
10.	534812	Denver – Theft	No date/time stamp on fax copy	10/16/17 @ 0945	Unknown	Fel	N

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		Writ – Federal Bureau of Prisons						
11.	873654	Denver – PCS	10/20/17 @ 2230	10/22/17 @ 1535	Unknown	Fel	D	
12.	873785	Denver – DUI, NPOI, No DL	10/24/17 @ 1238	10/24/17 @ 2118	Unknown	Misd	N	
13.	866492	Denver – Crim. Mis., Viol. Prot. Order., Reckless Endanger. Brighton – Warrant/Speeding 20+ Adams – Warrant/3 rd Degree assault Adams – Warrant/Protection Order Viol.	09/07/17 @ 0631	10/25/17 @ 2312	Unknown	Fel		
14.	874099	Denver – Assault 3 rd Deg., Felony Menacing	10/30/17 @ 1220	10/31/17 @ 0104	Unknown	Fel	P	
15.	874073	Denver – DUI x 3, NPOI	10/29/17 @ 1328	10/30/17 @ 1139	Unknown	Misd	N	
16.	874162	Denver – PCS	10/31/17 @ 0826	11/01/17 @ 1400	Unknown	Fel	D	
17.	804996	Aurora – Warrant/Public Peace	11/09/17 @ 1910	11/09/17 @ 2007	Unknown	Misd	N	
18.	874444	Denver – PCS Wheat Ridge – Warrant/DUR	11/07/17 @ 2014	11/09/17 @ 1348	Unknown	Fel	D	
19.	874172	Denver – Trespass Douglas – Warrant/DV Harassment	11/01/17 @ 0559	11/08/17 @ 1808	Unknown	Misd	P	
20.	855819	Arapahoe – Warrant / Dangerous Drugs	11/10/2017 @1046	11/10/2017 @ 1947	Unknown	Fel	D	
21.	874630	Denver-DUI / Failure to Drive in Single Lane Driving While Revoked	11/11/2017 @ 0726	11/11/2017 @ 1452	Unknown	Misd	N	
22.	684958	Denver- Vehicular Assault	11/12/2017 @ 0413	11/14/2017 @ 1014	Unknown	Fel	P	
23.	817609	Denver -FTA x 2 / Arapahoe MVT / Adams Alcohol Under 21	11/07/2017 @ 0626	11/14/2017 @ 2224	Unknown	Fel	N	
24.	874828	Denver - PCS	11/16/2017 @ 0317	11/16/2017 @ 2024	Unknown	Fel	D	
25.	874871	Denver - PCS	11/17/2017 @ 0652	11/17/2017 @ 1428	Unknown	Fel	D	
26.	725518	Denver – DUR, No DL +Denver – No Insurance, Speeding 10-14 over, No DL	11/19/2017 @ 0809	11/19/2017 @ 1130	Unknown	Misd	N	
27.	875126	Denver – PCS	11/23/2017 @ 0750	11/24/2017 @ 1424	Unknown	Fel	D	
28.	500060	Denver – PCS	11/23/2017 @ 0019	11/24/2017 @ 1952	Unknown	Fel	D	
29.	875196	Denver – Felony Menacing	11/24/2017 @ 2230	11/25/2017 @ 1847	Unknown	Fel	P	
30.	846694	Denver - PCS	11/24/2017 @ 2250	11/25/2017 @ 2029	Unknown	Fel	D	

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31.	810258	Denver – 2 nd degree assault/ Criminal Mischief	11/27/2017 @ 0730	11/27/2017 @ 1811	Unknown	Fel	P
32.	875287	Denver – DUI/Careless Driving	11/26/2017 @ 1421	11/27/2017 @ 2023	Unknown	Misd	N
33.	744247	Denver – Warrant/PCS Arapahoe – Warrant\	10/30/2017 @ 1541	11/28/2017 @ 0227	Unknown	Fel	D
34.	860379	Denver – Warrant/PCS	05/04/2017 @ 0458	11/28/2017 @ 0023	Unknown	Fel	D
35.	806770	Denver – Warrant – Damaging Property	Received from DOC when transported 11/27/2017	11/28/2017 @ 1610	Unknown	Misd	N
36.	875371	Denver – Warrant/No DL, NPOL, Speeding 10-14 over	11/28/17 @ 0426	11/29/2017 @ 1942	Unknown	Misd	N
37.	685796	+Denver – Warrant/No DL, DUR, NPOL, DUI x 2, DUI 3 rd subsequent alc related offense	11/29/2017 @ 2245	11/30/2017 @ 0015	Unknown	Misd	N
38.	670642	Denver – FTA Traffic	12/01/2017 @ 0948	12/03/2017 @ 0215	Unknown	Misd	N
39.	875597	Warrant Arapahoe County - DWAI	12/04/2017 @ 0801	12/05/2017 @ 1643	Unknown	Misd	N
40.	766489	Denver – False Imprisonment	12/05/2017 @ 1500	12/05/2017 @ 1839	Unknown	Misd	P
41.	875642	Denver – DUI x 2, No DL, Careless Driving	12/05/2017 @ 2134	12/06/2017 @ 2009	Unknown	Misd	N
42.	873375	Denver – Protection Order Violation	12/06/2017 @ 0721	12/06/2017 @ 1914	Unknown	Misd	P
43.	875422	Denver - Assault, Burglary 2 nd deg, Assault 3 rd	12/04/2017 @ 1725	12/06/2017 @ 1742	Unknown	Fel	P
44.	875867	Denver – Assault	12/10/2017 @ 1240	12/10/2017 @ 1615	Unknown	Misd	P
45.	662754	Denver – PCS	12/09/2017 @ 1011	12/09/2017 @ 1436	Unknown	Fel	D
46.	766489	Denver – False Imprisonment	12/05/2017 @ 1501	12/12/2017 @ 0023	Unknown	Misd	P
47.	687556	Denver – motor vehicle theft	12/10/2017 @ 1402	12/11/2017 @ 1746	Unknown	Fel	N
48.	657926	Denver- PCS+ Arapahoe - Warrant	12/12/2017 @ 0851	12/12/2017 @ 2324	Unknown	Fel	D
49.	679481	Denver - Assault	11/28/2017 @ 0916	12/14/2017 @ 1959	Unknown	Misd	P
50.	779649	Warrant Arapahoe County DUI	12/15/2017 @ 1124	12/15/2017 @ 1336	Unknown	Misd	N
51.	646155	+ Denver – DUI	12/17/2017 @ 0651	12/17/2017 @ 1651	Unknown	Misd	N
52.	876253	+ Denver – DUR	12/18/2017 @ 1414	12/19/2017 @ 1654	Unknown	Misd	N
53.	876486	+ Fug Hold Aurora – Fraud/False Statement	12/24/2017 @ 1806	12/24/2017 @ 1823	Unknown	Misd	
54.	813094	+ Denver DUI	12/24/2017 @ 0350	12/24/2017 @ 1634	Unknown	Misd	
55.	785027	+Denver DUR	12/22/2017 @ 1140	12/22/2017 @ 2028	Unknown	Misd	



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I ask unanimous consent to enter into the record statements from the following individuals and organizations:

1. **Law Enforcement Action Partnership**
 - Expressing the views of more than two dozen current and former police, prosecutors, judges, and corrections officials, who urge the Subcommittee to recognize that without the trust of their communities, their law enforcement efforts are futile.
2. **American Immigration Council**
 - Submitting a report on the 'Criminalization of Immigration in the United States' which evidences that immigration is associated with *lower* crime rates and immigrants are *less likely* than the native-born to be serious criminals and express concerns about the tendency for U.S. policymakers to draft immigration policy on the basis of stereotype rather than substance.
3. **Tahirih Justice Center**
 - Explaining that the hallmark of so-called "Sanctuary City" policies is the preservation of community trust and that contrary to common misperceptions regarding such policies, they *do not* provide a safe haven for criminals, or immunize individuals from immigration enforcement, but rather enhance the ability of local law enforcement to keep communities safe.
4. **Church World Service (CWS)**
 - Urging Members of Congress to support long-standing efforts of law enforcement officials to foster trusting relationships with the communities they protect and serve.
5. **Immigrant Legal Resource Center (ILRC)**
 - Expressing the view that this Subcommittee's hearing connecting sanctuary cities to the opioid epidemic is a misguided and intentional attempt to malign local policies enacted to uphold constitutional policing practices and building confidence between immigrant communities and the law enforcement officers sworn to protect them.
6. **Drug Policy Alliance**
 - Opposing policies that predominantly rely on the criminal justice system to address drug use instead of focusing on the underlying reasons for their demand and offering smart, evidence-based strategies.



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Statement of Current and Former Police and Criminal Justice Professionals

House Judiciary Committee, Subcommittee on Immigration and Border Security Hearing on Sanctuary Policies

February 15, 2018

Chairman Labrador, Ranking Member Lofgren, and Members of the
Immigration and Border Security Subcommittee of the House Judiciary
Committee:

Today this Subcommittee considers legislative and policy efforts to
force or coerce local law enforcement authorities into cooperation
with federal immigration enforcement. We, more than two dozen
current and former police, prosecutors, judges, and corrections
officials—urge you to consider these questions not in the context of
political rhetoric but rather in sober consideration of the safety of
communities across the United States of America.

Cumulatively, we have spent hundreds of years working to prevent
crime and protect our communities. Without the trust of our
communities, our efforts are futile. Programs that deputize local
police to enforce federal immigration law (1). and coercive efforts to
force localities into arresting and detaining non-citizens for
immigration purposes (2) destroy that trust, making people afraid to
report crime or work with us to prosecute and prevent crime. When
trust is destroyed, crime goes up, and innocent victims suffer. Policies
that force cooperation between local police and federal immigrant
enforcement are harmful to the public policy goals we all share:
reducing crime and protecting the safety of our communities.

The key to improving police effectiveness and public safety is
increasing trust between the police and the community and
preventing crime instead of reacting to crime.

We often say that 50% of being a police officer is doing police work, and the other 50% is building relationships. Strong ties between police and the community are essential for us to do our jobs effectively and keep our communities safe. As police officers, we are charged to gather information, analyze it, and deploy personnel on the basis of crime patterns and incidence. In order to do this work our most valuable currency is the trust we have built with our communities. This trust lays the foundation for consistent crime reporting, for witnesses to cooperate with police questioning, and for cooperative investigations. When trust breaks down, people report less crime and fail to provide information that would help solve cases, and we are forced to resort to pressure tactics to facilitate cooperation. This sort of standoff between the police and community makes everyone less safe.

When local policing and federal immigration enforcement are entwined—in practice or perception—immigrant communities lose their trust in the police, cooperation with law enforcement decreases, and crime goes up.

It is well established that when historically marginalized communities see the police as complicit in their marginalization, these communities become cynical in their perception of the police and crime reporting plummets. This pattern is well documented among communities reacting to incidents of excessive police violence. A 2016 study of crime reporting in the black community found that “publicized cases of police violence not only threaten the legitimacy and reputation of law enforcement; they also—by driving down 911 calls—thwart the suppression of law breaking, obstruct the application of justice, and ultimately make cities as a whole, and the black community in particular, less safe.” (3) The year following the 2004 beating of an unarmed black man named Frank Judge by white police officers in Milwaukee, for example, saw a net loss of approximately 22,200 calls to 911, with over half of the total loss occurring in black neighborhoods.¹

Real or perceived police involvement in federal immigration enforcement produces a nearly identical breakdown of trust among immigrant and Latino communities. We know this to be true from our own experiences, from qualitative studies completed on the subject, and from recent reporting in the wake of this administration’s increased immigration enforcement.

- Latino communities are already mistrustful of the police because of ongoing cooperation with federal immigration enforcement: In a 2012 survey of more than 2,000 Latinos living in the Chicago, Houston, Los Angeles and Phoenix areas, 44 percent of Latinos reported they are less likely to contact the police should they be the victim of a crime because of fear that police will use the opportunity to inquire

into their immigration status or the status of loved ones (4). In the same study, 45 percent of Latinos said they are less likely to voluntarily offer information about crimes or report a crime for fear that the police will inquire about immigration status. These findings extended beyond non-citizens. Nearly 30 percent of Latinos born in the United States reported they would be less likely to contact the police if they were victims of crime because of fear the police would inquire into immigration status (5).

- Immigrant victims of domestic violence and other crime are increasingly afraid to seek protection as immigration enforcement escalates: The Tahirih Justice Center recently conducted a nationwide survey of immigration advocates, immigrant women, and legal and social service providers regarding systemic challenges facing immigrant women and girls (5). The results found many women afraid to contact the police for fear their abusers will call the immigration authorities. Service providers explained they are increasingly unable to effectively assure clients that the police are there to help and protect: "The fear is undermining access to safety and justice, and increasing vulnerability to exploitation as abusers know that they can exploit the fear." At least one advocate noted that this fear is often exacerbated among women fleeing countries where "traffickers and abusers use or threaten to the legal system against their victim." (4)
- Law enforcement officials across the nation are reporting that crime reporting is falling among Latino communities in light of increasing immigration enforcement: Police chiefs in Los Angeles and Houston have announced that reports of certain types of crime by Latinos are down, and analysis of data from other major cities including Dallas, Denver, and Philadelphia suggests that immigrants and Latinos more broadly are reporting fewer crimes under the new administration (6). In Los Angeles the data is stark, with reports of sexual assault by Latinos down by 25 percent and reports of domestic violence down by 10 percent, with no similar decreases seen for other ethnic groups (4). In Denver, the City Attorney has reported that more than a dozen women dropped domestic abuse cases since the beginning of the administration, afraid of the possibility of deportation. And in Chicago, reports of domestic incidents and sexual reports by Hispanic victims dropped by seven percent in the first eight months of the Trump administration (7).

These trends should alarm all policy makers and elected officials who are concerned about public safety. This administration's escalation of immigration enforcement (8) and disregard for concepts of prosecutorial discretion (9) have already created a crisis for local law enforcement officials attempting to build and maintain trust with their communities. Policies and legislation that would further the involvement of local law enforcement in this

heightened enforcement will push us deeper into crisis. When members of our communities—regardless of their race or citizenship status—are too scared to report crime and too frightened to cooperate with police investigations and criminal prosecutions, we cannot do our jobs.

Community-based efforts to address the opioid epidemic are a particularly salient example of an area of law enforcement where injecting federal immigration enforcement would cause a myriad of harms. The solution to our addiction problem is not found in a jail cell or any of the other tools police use to fight crime. Drug addiction has been and always will be a health issue, but we've tasked the justice system with addressing it – despite decades of failure and rising overdose rates that for several years now has been the leading cause of accidental death in the U.S. The opioid crisis is everywhere – from the most populated urban areas to the quietest rural communities. People from all walks of life use and sell drugs. Focusing drug enforcement on immigrants is nothing more than a politically convenient attack on one group of people that fully ignores the scope and complexity of the opioid crisis and falsely paints all immigrants with the same brush. We can address the opioid crisis by investing in more effective treatment methods, making treatment programs widely available at low cost in all hospitals, and opening supervised consumption facilities and medication assisted-treatment programs nationwide. Immigration enforcement must have no part in that conversation.

Entangling local law enforcement with federal immigration enforcement leads to more crime and less secure communities. It is therefore not surprising that jurisdictions that do not detain individuals under detainer requests issued by Immigration and Customs Enforcement (ICE) have lower crime rates and stronger economies than similar jurisdictions without such policies (10). Those of us who work or have worked in jurisdictions that formally limit cooperation with ICE within the bounds of current law are grateful for our ability to work hand in hand with immigrant communities and provide assurances that cooperating with us will not trigger an immigration arrest or deportation. We are also well aware that these policies do not in any way preclude us from exercising our discretion to communicate and cooperate with ICE or other federal agencies in those few, discrete instances where such cooperation is necessary and warranted to advance public safety.

As this subcommittee considers legislative options that increasingly force or coerce jurisdictions into intensified cooperation with federal immigration enforcement, we urge you: please listen to law enforcement voices urging you to reverse course.

We are not politicians. We are, all of us, current or former law enforcement, prosecutors, judges, and corrections officials. We have over the course of more than a year now heard administration officials and elected officials call for the increased use of local

law enforcement resources to enforce federal immigration law as a "force multiplier." Programs such as 287(g) and Secure Communities and the use of local jails for immigration detention put local cops on the front lines of immigration debate. Legislative efforts to force jurisdictions to comply with detainers or policy efforts to coerce such compliance through threats to deny critical federal funds strip us of our autonomy to police in the way we know will best protect our communities.

We join a chorus of law enforcement officials when we say these policies are harmful to public safety, divert our scarce resources away from where they are truly needed, and open us up to liability for violations of the law and Constitution.

We urge you to heed the advice of the Major Cities Chiefs Association, whose Immigration Committee warned as far back as 2006 that:

Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that they will be deported or subjected to an immigration status investigation, then they will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts." (11)

These words echo in the more recent warnings of Sheriffs Edward Gonzalez and Lupe Valdez, on the front lines in Harris County and Dallas County, Texas, who state: "We are among many police chiefs and sheriffs around the country whose departments have spent years developing relationships of trust with our immigrant communities. We need everyone in the community, no matter where they were born, to feel comfortable calling on first responders in an emergency, including when they are a victim or witness of crime. To put it simply, fears that law enforcement and immigration enforcement are one and the same have a chilling effect on reports of crime among minority communities." (12)

Across our nation, the number of jurisdictions eager to publicly jump into the business of federal immigration enforcement is relatively miniscule. Ninety-eight percent of our nation's counties operate without a 287(g) agreement, and 94 percent operate without a local contract to detain non-citizens for immigration purposes (13). We urge the Members of this Subcommittee and Members of Congress at large to respect the will and the voices of those men and women doing the hard work every day to keep our communities safe. There are real threats out there: the devastation caused by opioid addiction, the lives lost and families broken by gun violence, and the endless terror caused by everyday violence in homes and on our streets. The solutions to these problems all require a common strategy: smart policing tactics that nurture community trust. Policies that put police in the business of federal immigration enforcement are anathema to keeping the public safe.

Signatories:

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Executive Director, The Law Enforcement Action Partnership
White Hall, MD

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Executive Board Chair, The Law Enforcement Action Partnership

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Seattle, WA

Kenyen Brown
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Mobile, AL

Inge Fryklund
Assistant State's Attorney (Fmr.) and Policy Advisory to Afghanistan
Cook County, IL

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Ken Abraham
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Dover, DE

Sgt. Steve Miller (Ret.)
Canton Township Police Department
Howell, MI

Sources:

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STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE HOUSE JUDICIARY SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY

HEARING ON "THE EFFECT OF SANCTUARY CITY POLICIES ON THE ABILITY TO COMBAT
THE OPIOID EPIDEMIC"

February 15, 2018

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The American Immigration Council is a non-profit organization which for over 30 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 analysis and research regarding immigration and its impact on communities.

As explained in our widely-cited publication *The Criminalization of Immigration in the United States* (attached), there is abundant evidence that immigration is not linked to higher crime rates. Empirical data shows that immigration is associated with *lower* crime rates and immigrants are *less likely* than the native-born to be serious criminals. As our report details, high rates of immigration are associated with lower rates of violent crime and property crime. Our analysis of population and FBI data indicates that between 1990 and 2013, as immigration rates grew the violent crime rate in the United States declined 48 percent. This 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.¹

Further, according to a report discussed in our factsheet *"Sanctuary" Policies: An Overview* sanctuary counties have lower crime rates and higher economic indicators than non-sanctuary counties.² The statistical analysis revealed, there are, on average, 35.5 fewer crimes committed per 10,000 people in sanctuary counties compared to non-sanctuary counties.³ Crime is defined in the

¹ Doris Marie Provine, Monica W. Varsanyi, Paul G. Lewis, and Scott H. Decker, *Policing Immigrants: Local Law Enforcement on the Front Lines* (Chicago, IL: The University of Chicago Press, 2016), 76.

² The report defined sanctuary counties as those that do not assist federal immigration enforcement officials by holding people in custody beyond their release date. Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy* (Washington, DC: Center for American Progress, 2017), 6, <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.

³ Ibid.

report as the total number of violent crimes (murders, rapes, robberies, and assaults) and property crimes (burglaries, larceny, motor vehicle thefts, and arsons) per 10,000 people.

Despite this evidence, many U.S. policymakers succumb to fear and prejudice 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. The enforcement apparatus designed to support these laws has grown dramatically in the last three decades; we have spent billions of taxpayer dollars deporting millions of people who have committed only immigration violations. Such enforcement actions focus on maximizing the number of deportations rather than focusing on bona fide public safety concerns, while separating families and removing individuals with long-time residence and equities in the United States.

There is no doubt that our nation is safer when everyone can trust law enforcement, regardless of immigration status. American communities would also benefit from policies designed to update our immigration system, policies that would ensure every person in this country is "on the grid" of U.S. life—with driver's licenses, Social Security numbers, and other forms of identification. Working toward such practical policies is a benefit to all Americans, and more productive than demonizing an entire group of people for the actions of a few.

* * *

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

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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} 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

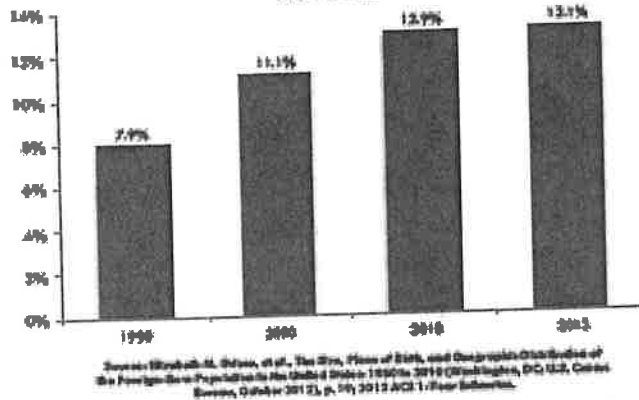


Figure 2: Number of Unauthorized Immigrants in the U.S., 1990-2012

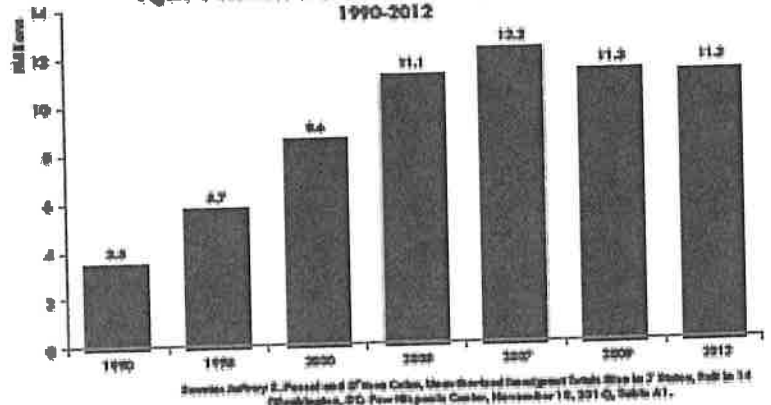


Figure 3: U.S. Violent Crime Rates, 1990-2013

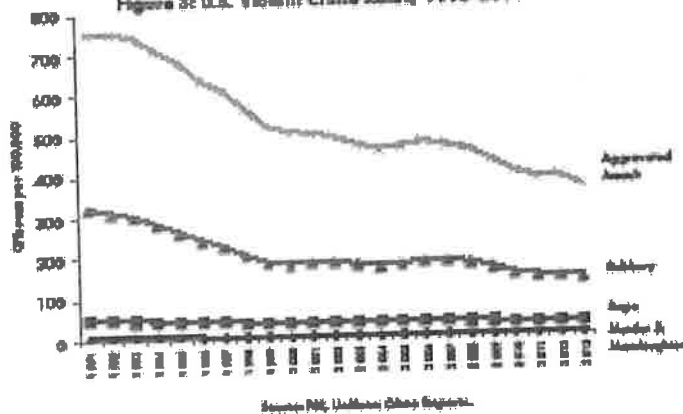
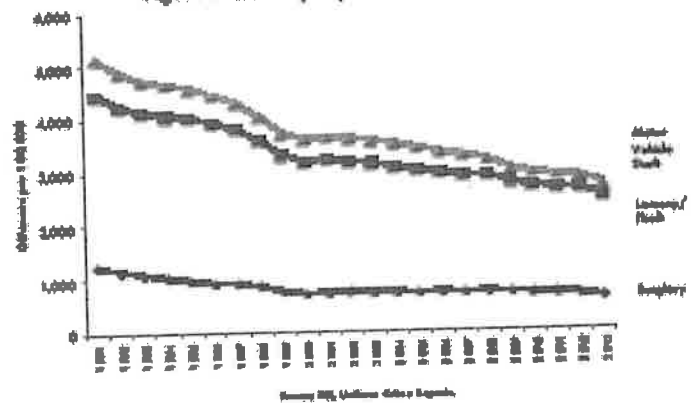


Figure 4: U.S. Property Crime Rates, 1990-2013



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

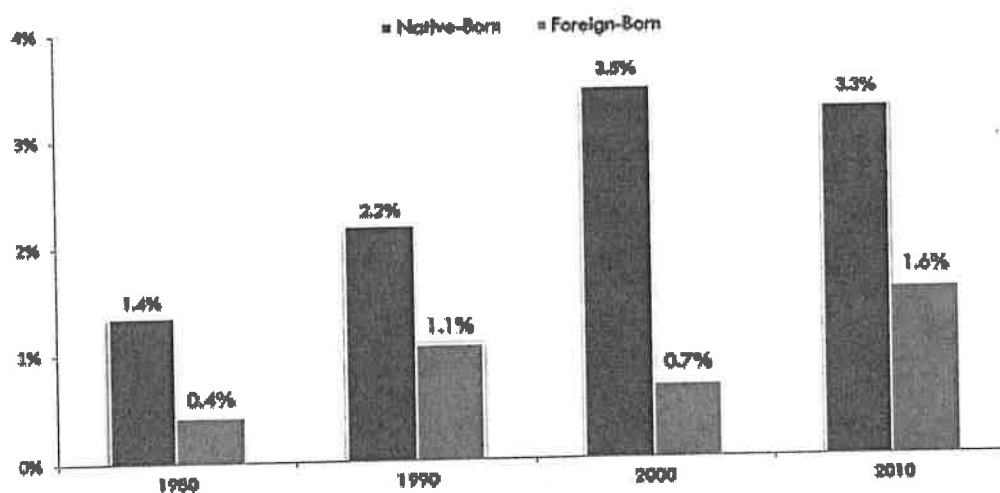
There is a sense of *déjà vu* in these modern-day findings. In the first three decades of the 20th century, during the last era of large-scale immigration, three government commissions studied the relationship between immigrants and crime and came to the same conclusion as contemporary researchers. The 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

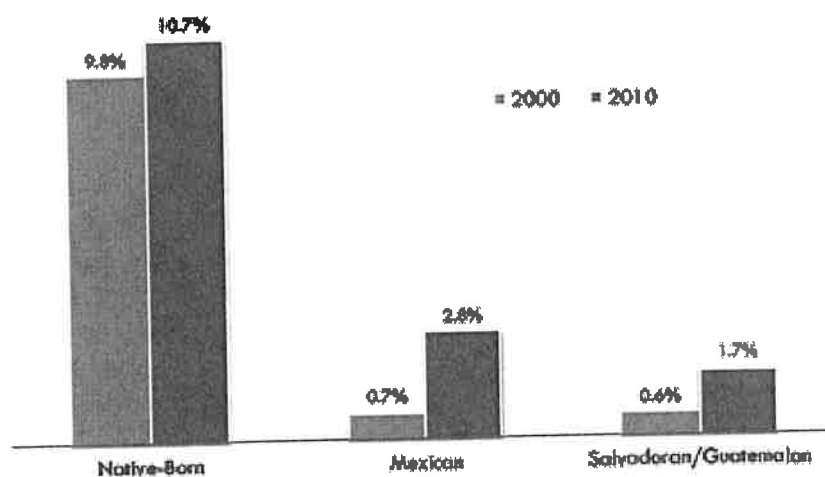
Figure 5: U.S. Incarceration Rates of Men Age 18-39, by Nativity, 1980-2010



Sources: 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



Sources: 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.

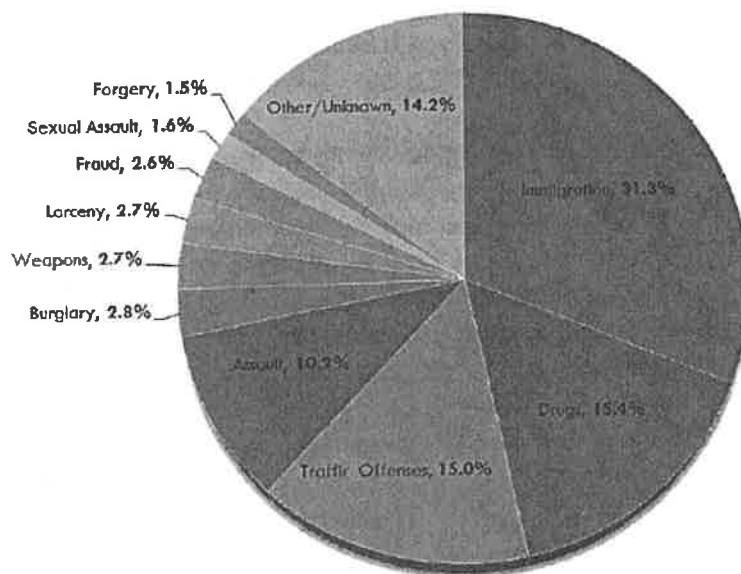
Of course, these increasingly punitive laws are only as effective as the immigration-enforcement apparatus designed to support them. And this apparatus has expanded dramatically over the past three decades.⁴¹ More and more immigrants have been ensnared by enforcement mechanisms new and old, from worksite 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.

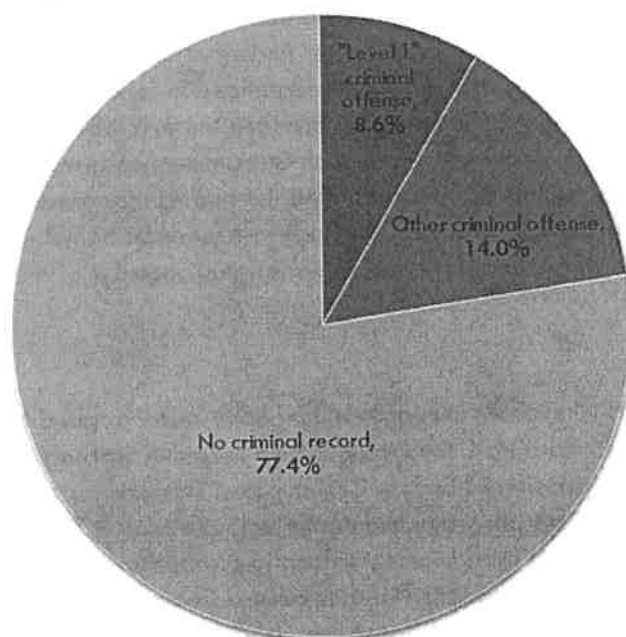
Secure Communities

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 As of September 30, 2013, 306,622 immigrants convicted of crimes had been removed from the United States after identification through Secure Communities.

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 as 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” (a 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

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**Statement of the Tahirih Justice Center:
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY
HEARING:
“The Effect of Sanctuary City Policies on the Ability to Combat the
Opioid Epidemic”
February 15, 2018**

The Tahirih Justice Center (“Tahirih”) respectfully submits this statement to the United States House of Representatives, Committee on the Judiciary, Subcommittee on Immigration and Border Security, as it considers “The Effect of Sanctuary City Policies on the Ability to Combat the Opioid Epidemic.”

Tahirih is a national nonpartisan organization that has assisted over 20,000 immigrant survivors of gender-based violence over the past 20 years. Our clients include women and girls who have endured horrific abuses such as rape, domestic violence, and human trafficking and are in dire need of humanitarian relief.

The hallmark of so-called “Sanctuary City” policies is the preservation of community trust. Contrary to common misperceptions regarding such policies, they *do not* provide a safe haven for criminals, or immunize individuals from immigration enforcement. Rather, by keeping immigration enforcement in the hands of the Department of Homeland Security, such policies ensure that all survivors of crime feel safe calling 911 and ultimately serving as key witnesses in criminal cases. Pinellas County, FL Sheriff Bob Gualtieri noted last fall that “If [immigrants] think that local law enforcement is going to arrest them and put them in jail every time we have contact with them, *it’s about impossible for us to effectively do our job.*”ⁱ

It is well-documented that commingling federal immigration enforcement with local law enforcement erodes immigrants’ trust of police.ⁱⁱ According to a January 2018 report published by Tahirih, victims are now too afraid to call 911 because they do not believe that the police are there to help them: “The fear is undermining access to safety and justice, and increasing vulnerability to exploitation [by abusers]...[t]he overall chilling effect on women is woven throughout many aspects of their lives —some are even afraid to seek health insurance for U.S. Citizen children or enroll them in school.”ⁱⁱⁱ

In the context of domestic violence and human trafficking, perpetrators deliberately manipulate and isolate victims to limit their access to information about their legal rights. Both the longstanding Violence Against Women Act (VAWA) and the Trafficking Victims

Protection Act (TVPA) were enacted with bipartisan support precisely to encourage immigrant survivors of domestic violence, human trafficking, and other crimes to come forward and assist law enforcement. Immigration enforcement by local police, however, directly thwarts Congressional intent in passing these critical laws. When immigrants know they can call the police without fear of deportation, it is perpetrators of all types of crimes – and not victims or their children – that are deterred and punished. Following passage of a state law last year entangling federal and local immigration enforcement, a client aptly remarked, “*This is exactly what [my abuser] has been waiting for.*” Despite longstanding protections under VAWA, even victims who *hold lawful immigration status* succumb to intimidation particularly in a heightened climate of fear. For some, the risk of deportation also means sentencing a US citizen child to the custody of a violent abuser.

It is becoming increasingly clear that *we are all less safe* when we deter victims from calling 911 and embolden perpetrators to abuse victims with impunity. Tahirih assists women whose abusers have committed various unrelated crimes and pose a significant danger to others. One client was severely abused by a US Citizen who was also engaged in sex trafficking of young girls. She reported him to police, and went on to serve as a key witness and even wore a wire to help federal prosecutors secure a conviction. He is currently serving a prison sentence. Another client’s abusive husband, also a US Citizen, faced criminal charges for grand larceny, DWI, burglary, and assault on a police officer.

Researchers are also taking note of the overlap between mass shootings and domestic violence: “[W]hat perpetrators of terrorist attacks turn out to often have in common...are histories of domestic violence...an alarming number of those who have been accused of domestic abuse pose serious and often lethal threats, not just to their intimate partners but to society at large.”^{iv} Another researcher has documented how a striking number of those responsible for killing law enforcement officers have a history of domestic violence.^v As a result, some advocate viewing domestic violence as a potential “national security risk.”^{vi} Recognizing the link between domestic violence and overall public safety presents a critical opportunity to prevent crime that afflicts all members of our communities. As explained above, survivors of domestic violence have firsthand, eyewitness information that can help police get violent criminals off the streets before they inflict grave, and potentially large scale damage on others as well.

In light of the above, we urge you carefully consider our perspective as you evaluate the impact of “Sanctuary” policies on the ability of law enforcement to combat the opioid epidemic. Thank you for the opportunity to submit this statement to the Subcommittee.



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**CWS Statement to the House Judiciary Committee, pertaining to its hearing
"The Effect of Sanctuary City Policies on the Ability to Combat the Opioid Epidemic"
Thursday, February 15, 2018**

As a 72-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions and 22 refugee resettlement offices across the country, Church World Service (CWS) urges all Members of Congress to support long-standing efforts of law enforcement officials to foster trusting relationships with the communities they protect and serve. Communities are safer when they pursue policies that strengthen trust and cooperation between local law enforcement, community leadership and institutions, and all residents regardless of immigration status. The federal government should not hurt intentional, community-based policing efforts that are vital in communities across the country.

When local police collaborate with Immigration and Customs Enforcement (ICE), more crimes go unreported¹ because victims and witnesses are afraid of being deported if they contact the police. Many local law enforcement agencies and community leaders have spoken out about the harm that this collaboration inflicts on their communities. Local police departments that opt out of enforcing ICE detainer requests – especially when they are made without probable cause or a signed warrant from a judge – see an increase in public safety due to improved trust in its police force. It is precisely this trust that enables community members to report dangerous situations without the fear of being deported. Many cities also recognize how requests by ICE to hold individuals beyond their court-appointed sentences violate due process and have been found unconstitutional by federal courts.² CWS supports the more than 600 jurisdictions across the United States that limit collaboration with ICE, and we strongly oppose legislation that would punish or attempt to stop states, cities, localities, and/or police departments from regulating how they interact with ICE. 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.

CWS is also opposed to mandatory minimum sentences for individuals who re-enter the United States. Such proposals would punish millions of individuals, including parents, grandparents, and young children who are unjustly deported from the United States and then make the journey again to be reunited with their families and communities. It is not in the best interest of these individuals or our communities to further criminalize illegal re-entry. Due to the unjust and inhumane nature of the U.S. immigration system, many of our long-standing community members have been deported. For them, and especially for individuals who have fled indescribable violence, their only option is to return to their homes and families in the United States. It is also important to note that many individuals have been charged with misdemeanors and immigration-related offenses that have been unjustly categorized as "aggravated felonies" because they are not U.S. citizens, making discussions around immigrants and felonies very misleading.³ Further criminalizing individuals who simply wish to live with their families, or who are fleeing threats of homicide, gang-conscription, and gender-based violence in their home countries will do nothing to improve our U.S. immigration system.

Immigrants come to this country to reunite with family, work, and make meaningful contributions that enrich our communities. Several studies over the last century have affirmed that all immigrants, regardless of nationality or immigration status, are less likely than American citizens to commit violent crimes.⁴ A recent report found a correlation between the immigration and the sharp decline in violent and property crime rates.⁵ Immigration is correlated with significantly higher employment growth and a decline in the unemployment rate.⁶

CWS stands ready to work with members of both chambers to this end. CWS urges all Members of Congress to support immigration policies that treat our neighbors with the dignity and respect that all people deserve, and to affirm local law enforcement officer's efforts to build trust with their communities.

¹ Anita Kashu, "The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties," The Police Foundation, April 2009, <[www.policefoundation.org/sites/default/files/q798246/ikhashu%282009%29-The Role of Local Police.pdf](http://www.policefoundation.org/sites/default/files/q798246/ikhashu%282009%29-The%20Role%20of%20Local%20Police.pdf)>.

² Maria Miranga-Olivares, Plaintiff, v. Clackamas County, Defendant, United States District Court, D. Oregon, Portland Division, 11 April 2014, <https://scholar.google.com/scholar_case?case=7183853698243436215&hl=en&as_sdt=20006>.

³ "Aggravated Felonies: An Overview," Immigration Policy Center, March 2012, <www.immigrationpolicy.org/sites/default/files/docs/aggravated-felony-fact-sheet-march-2012.pdf>.

⁴ Jason L. Riley, *The Mythical Connection Between Immigrants and Crime*, The Wall Street Journal, July 14, 2015, <http://www.wsj.com/articles/the-mythical-connection-between-immigrants-and-crime-1436916799>.

⁵ Walter A. Ewing, Daniel E. Martinez, Rubén G. Rumbaut, *The Criminalization of Immigration in the United States*, American Immigration Council (July 2015), <http://immigrationpolicy.org/special-reports/criminalization-immigration-united-states>.

⁶ Jack Strauss & Hailong Qian, *Immigrants or Jobs: Which Comes First to a Metro?*, Jan. 23, 2014, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2339192.



**Immigrant Legal Resource Center
Statement for the Record
House Judiciary Committee
Sub-Committee on Immigration and Border Security Hearing
The Effect of Sanctuary City Policies on the Ability to Combat the Opioid Epidemic
February 15, 2017**

The Immigrant Legal Resource Center (ILRC) submits the following statement for the record for the hearing “The Effect of Sanctuary City Policies on the Ability to Combat the Opioid Epidemic.” The ILRC’s mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. To that end, we train attorneys, paralegals, and community-based advocates who work with immigrants around the country, inform the media, elected officials, and public to shape effective and just immigration policy and law, and work with grassroots immigrant organizations to promote civic engagement and social change.

With a budget of over \$18 billion - more than all other federal law enforcement agencies combined - the capacity of the Department of Homeland Security (DHS) to detain and deport immigrants is vast. It also relies heavily on the voluntary assistance of local governments, particularly local law enforcement agencies, to remove individuals from the families and livelihoods they have built in the U.S. Localities have no legal authority to enforce immigration laws and no legal obligation to assist DHS with its immigration enforcement actions. Yet local assistance with federal immigration work continues across the country.

Currently, an overwhelming majority of counties are involved in assisting ICE with deportations to varying degrees, all voluntarily. In fact, three out of every four counties voluntarily detain individuals at the request of ICE. When local police and sheriffs participate in deportations, immigrants need not be convicted of an offense to find themselves trapped in this system. Every encounter with local law enforcement provides ample opportunity for immigrants to be racially profiled and flagged for deportation, regardless of their immigration status. After fully satisfying their sentencing or rehabilitation terms in the criminal legal system, unlike U.S. citizens, immigrants with convictions are being forced to pay double punishment for their actions by then being turned over to ICE for detention and deportation.

On top of this, our immigration system is considered civil law, and offers none of the due process protections afforded in our criminal legal system. Immigrants have no right to a public defender to fight their deportation, and many do not even get a hearing in court or the chance to have a judge use discretion to consider the full merits of their case. Many immigrants facing deportation are imprisoned, without access to counsel or even a right to a bond hearing, in for-profit detention centers, devastating their families.

When communities view local law enforcement as a direct gateway to permanent separation from their families, the already-fragile relationship of community trust with police becomes completely severed. As a result, victims of domestic and other violence choose to suffer in silence rather than seek assistance; key witnesses of crime refuse to come forward out of fear that they themselves will become a target; a climate of fear grips entire neighborhoods; and anxiety-ridden children struggle in school. The public safety of all of the county's residents becomes endangered - a safety that rests solidly on the premise that police are there to protect and to serve all residents equally.

Counties hold tremendous power in making a real difference in keeping families together by providing clear, policy-based distinctions between their local responsibility to enforce criminal law and the federal government's responsibility to enforce civil immigration law. The continuous blurring of those lines puts millions at risk of being unjustly targeted for deportations and destabilizes entire communities.

Through the adoption and strengthening of sanctuary policies, city, county and state governments can and must limit their involvement in the federal work of deportations. Communities have continued to respond with resilience and to organize at the local level, demanding that their city and county officials act to protect immigrants and restrict the use of local resources going to federal enforcement. As a result, over 400 counties moved to decrease their engagement with ICE in the last year. Beyond counties, hundreds of cities and municipal agencies enacted policies to reduce discrimination against immigrants and separate their municipal functions from immigration authorities.

In the federal courts, the Department of Justice's (DOJ) efforts to restrict federal funding to certain localities on the basis of their sanctuary policies have been stymied. The courts also continued to criticize the use of ICE detainees, which has been one of the major mechanisms for sweeping immigrants into detention and deportation proceedings. Rather than embrace the comprehensive anti-immigrant police state that the Trump Administration envisions, the courts have continued to find that local governments have extremely limited authority to engage in immigration enforcement.

It is the ILRC's view that this Subcommittee's hearing today connecting sanctuary cities to the opioid epidemic is a misguided and intentional attempt to malign local policies enacted to uphold constitutional policing practices and building confidence between immigrant communities and the law enforcement officers sworn to protect them. The attack on sanctuary policies is part of a larger agenda to use the criminal justice system and state and local authorities to assist in the mass deportation of immigrants.

As the Trump administration makes plans to surveil, arrest, detain, and deport immigrants at a breathtaking pace in 2018, the time is ripe for the many jurisdictions that have not yet done so to set clear policy boundaries that disentangle local officers from ICE. Now more than ever, strong sanctuary policies help keep families together and the fabric of local communities intact, rather than torn apart by the jailing and deporting of loved ones.

February 15, 2018



The Honorable Raúl Labrador
Chairman
Subcommittee on Immigration and Border Security
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Zoe Lofgren
Ranking Member
Subcommittee on Immigration and Border Security
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Labrador and Ranking Member Lofgren:

The Drug Policy Alliance appreciates the opportunity to submit testimony before this committee for the record of today's hearing titled "The Effect of Sanctuary City Policies on the Ability to Combat the Opioid Epidemic."

The Drug Policy Alliance (DPA) works to increase the degree to which problematic drug use is treated as a health issue and advances evidence-based drug policy grounded in compassion and human rights. We accordingly oppose policies that predominantly rely on the criminal justice system to address drug use. DPA believes that we can best protect the public's health, not through criminalizing drugs, but by focusing on the underlying reasons for their demand and offering smart, evidence-based strategies for preventing their use, reducing their harm, and treating those who may be using them problematically.

In recent years, a bipartisan consensus has emerged in Congress that urgent action is needed to address this public health crisis. Both parties have come together to pass measures such as the Comprehensive Addiction and Recovery Act and 21st Century CURES Act that treat the opioid overdose crisis as a public health – not enforcement – challenge.¹ Just in this current session alone, there have been numerous committee hearings that have explored evidence-based and health-based solutions to the opioid overdose crisis. Most recently Congress approved, as part of budget negotiations, six billion dollars in new funding to address this crisis. Although there is still a tremendous amount of work to be done, Congress has made a lot of progress in addressing the opioid overdose crisis. We are very disappointed then to see the Committee take up this topic, which does not reflect our understanding of the evidence-based and unmet needs of communities impacted by the opioid overdose crisis.

Despite evidence that immigrants are no more likely than nonimmigrants to engage in crime, misconceptions and stereotypes about relationships between immigrant communities and crime have long been provoked by political figures and others with an agenda to aggressively pursue

deportations. These purposeful and patently racist attempts to connect immigrant communities with criminality and drugs have manifested in President Trump's push for a border wall and his administration's aggressive enforcement actions by ICE and other federal law enforcement agencies targeting 'criminal' immigrants.

We view the subject of today's hearing as another manifestation of these aims -- to scapegoat immigrant communities in ways that serve a deportation agenda. We should be focusing instead on the necessary public health measures needed to make a real impact on the opioid overdose crisis. We should also be focusing on the ways in which the decades old war on drugs has, in fact, been a major driver of overdose death and drug misuse.

Sanctuary communities are associated with lower crime rates

The notion that crime risk increases in sanctuary city communities is not supported by the evidence. To the contrary, evidence suggests that crime rates in communities that maintain sanctuary city policies are statistically lower than crime rates in communities that have no such policy. One study found that there are, on average, 35.5 fewer crimes committed per 10,000 people in sanctuary counties compared to non-sanctuary counties.² Another study found that increasing levels of protection for undocumented immigrants coincides with progressively declining level of violent crime and drug deaths.³ In California, over recent decades, crime rates have dropped as the number of undocumented immigrants residing in the state has increased. An estimated two million undocumented immigrants reside in the state.⁴ In 2017, California became the first state in the nation to enact a statewide sanctuary policy.⁵

In terms of drug-related crime, evidence suggests that whites are more likely to sell drugs than people of color, even though the latter group is far more likely to be sentenced for doing so.⁶ Considerable evidence indicates that immigrants are statistically no more likely than US citizens to engage in criminal activity, and in fact higher immigration rates are associated with lower crime rates. This is also evident during the recent period of rising immigration to the United States from 1990 to 2013 which also corresponded with a nearly 50 percent reduction in crime rates across the country.⁷

In order to best address the opioid overdose crisis, it is crucial to concentrate on harm reduction, overdose prevention and supporting a public health approach.

Criminalizing immigrants exacerbates the opioid crisis

The US war on drugs has long provided a pretext to scapegoat, criminalize and deport immigrants. The very first drug prohibition laws to be enacted in the US, in fact, targeted Chinese immigrants in San Francisco and Mexican immigrants in the US South.⁸ Rather than target problematic drug use and apply health-based solutions, the war on drugs has targeted marginalized communities, for example, based on race and immigration status.

In recent years, deportations of non-citizens whose most serious conviction was for a drug offense increased 22 percent from 2007 to 2012, totaling more than 260,000 deportations over that period. More than 34,000 people whose most serious conviction was marijuana possession

were deported between fiscal years 2007 and 2012.⁹ The deportation of noncitizens for marijuana possession is very troubling given that more than 60 percent of polled US residents support making marijuana legal and nine US states plus the District of Columbia have already done so.¹⁰

The Trump administration has indicated that federal immigration authorities are expected to not only target noncitizens who have been charged but whose charges have not been resolved, and even those who have “committed acts that constitute a chargeable criminal offense” for which they have not even been charged.¹¹ This widening of the net of conduct considered criminal for immigration purposes appears to include people who have been found guilty of nothing at all.

Law enforcement should not hold individuals for prosecution when there is insufficient evidence to charge them. Often charges and conviction do not follow a police arrest. This is also true for immigrants, both documented and undocumented. Immigrants who are released from law enforcement custody for lack of evidence that criminal wrongdoing occurred should no longer be detained. This is especially true given the fact that the evidentiary bar to charge an individual is very low. A person’s immigration status should have no bearing on whether they are granted Fourth Amendment and due process rights.

Immigrants who face deportation are separated from family, friends and communities and deported to a country they often have not lived in for decades. Those who are removed from the country are usually barred from reentering, often for life – no matter if they have children or family members who are US citizens or decades-long ties to their communities in the US. Knowing contact with the criminal justice system is a trigger for deportation along with the severity of conditions surrounding deportation can deter immigrants from getting help when needed. Furthermore, immigrants might be discouraged from seeking help for others, for fear of criminal implications. This does not help anyone at-risk of overdose and minimizes precious resources that could be used towards increasing and expanding the implementation of harm-reduction, and overdose prevention policies.

In cases where a non-citizen is at-risk of overdose and other drug-related harm, criminalization and stigmatization of people who use and sell drugs are additional factors that create major barriers to treatment, health care and other vital services.¹² For example, fear of arrest is the most common reason that witnesses do not immediately call 911 in the event of an overdose.¹³

Officials and law enforcement implementing sanctuary city policies have cited concern that immigrant fear of deportation could act as a deterrence in involving local police in situations where law enforcement intervention is needed.¹⁴ Fear of police involvement and an individual’s immigration status can stymie individual’s trust and willingness to receive health care, drug treatment and other services that protect both personal and public health. This could lead to an increase rather than decreases in drug-related harm and overdose deaths.

Punitive policies worsen the opioid crisis

Individuals with unmet overdose prevention and treatment needs are not being served or protected by supply-side strategies. Billions of dollars are wasted each year on supply-side

programs that lack real oversight. This money should be invested in evidence-based harm reduction and treatment programs that save lives and prevent overdose instead.

A heavy reliance on law enforcement and the criminal justice system to prevent addiction has failed to reduce rates of opioid use and overdose. The consequences for having a lopsided criminal justice approach to the opioid crisis have been severe. For instance, there is convincing evidence that the recent surge in heroin overdoses across the US has been driven in large part by efforts to restrict access to prescription opioids.¹⁵ As supply of illicit prescription opioids dwindled, and street price increased following law enforcement activity and physicians adjusting prescribing practices, opioid-dependent individuals unable to find or afford prescription opioids switched to cheaper and readily available heroin.

A recent survey, in fact, found that ninety-four percent of opioid-dependent individuals who switched from prescription opioids to heroin reported doing so because prescription opioids “were far more expensive and harder to obtain.”¹⁶ Deaths from heroin overdose nearly tripled from 2010 to 2013.¹⁷ This dramatic shift from opioid use to heroin use has increased potential health harms to individual users and the public, and has exposed more users who would most benefit from health-centered interventions to the criminal justice system instead.

Across the general population as well as within the academic and scientific communities, it is widely accepted that increased arrests or increased severity of criminal punishment for drug-related offenses do not, in fact, result in less use (demand) or sales (supply).¹⁸ Heavy handed enforcement has historically had the opposite intended effect of severely undermining efforts to prevent opioid dependence and overdose.

Policies formulated to address the opioid crisis must effectively mitigate risks associated with use, dependence and overdose. Shifting resources from enforcement and incarceration to treatment and public health program funding would save more lives and realize substantial savings for taxpayers. Congress should take a hard look at the role that the war on drugs has played in exacerbating the opioid overdose crisis.

Prioritizing health-based responses will mitigate opioid crisis

The United States is, according to the Centers for Disease Control and Prevention, in the midst of the “worst drug overdose epidemic in history.”¹⁹ In 2016, drug overdoses accounted for over 64,000 U.S. deaths, including over 42,000 – the most ever – from misuse of opioids, typically in combination with other drugs.²⁰ Overdose deaths are the leading cause of accidental death in the U.S., easily surpassing traffic accidents and firearm-related deaths. On average, 175 Americans are dying each day from overdoses.²¹

Members of Congress on both sides of the aisle have asserted that we cannot arrest our way out of the opioid overdose crisis. There is wide recognition in Congress that the most effective ways to reduce opioid related harm and overdose involve boosting access to health-based approaches like medication-assisted treatment and naloxone in hard-hit communities.

The vast majority of people in the U.S. who want treatment for a substance use disorder cannot readily access it. According to a 2015 estimate, only about 22% of the estimated 23.5 million people in this country who would benefit from drug treatment received it.²² This severe treatment gap persists in large because of inadequate facilities and funding for services, government red tape and stigma in health care settings.

These barriers to care especially impact the provision of methadone and buprenorphine, the most effective forms of opioid treatment for managing withdrawal symptoms that otherwise can trigger relapse and sustaining an individual's long-term recovery from opioid use disorder.²³ People who are in custody in the U.S. are also typically denied access to evidence-based methadone and buprenorphine, putting incarcerated individuals with a history of substance use at unnecessary risk of overdose and death. This is true even in cases where a person is receiving medication-assisted treatment when they begin a period of incarceration, and the federal Bureau of Prisons has long prohibited access to medication-assisted treatment for incarcerated individuals.²⁴

Syringe services programs have been proven to reduce the spread of HIV and hepatitis C without increasing drug use,²⁵ and to serve as a bridge between the most marginalized drug using populations and services that help protect public health.²⁶ Although many large U.S. cities have invested in syringe service programs,²⁷ rural areas dealing with increasing opioid and heroin rates often do not have access to syringe services.

Approximately half the states in the country have either no syringe service programs (14 states) or only have programs available in one or two cities in the entire state (12 states).²⁸ The result has been devastating for people in rural communities where opioid use is on the rise. Naloxone should also be widely and readily available to first responders and other bystanders who can intervene with the medication on behalf of a person experiencing an opioid overdose. The first people on the scene of an overdose are often friends or family members and they should have naloxone on hand.

Opioid analogues are sourced from China

The adulteration of heroin and other opioid products with fentanyl and other more potent opioid analogues like carfentanil has recently emerged as a serious public health challenge. Adulterated substances lead to higher numbers of hospitalizations and fatal overdoses.²⁹ Increased fentanyl use, either intentionally or, more often, without the user's knowledge, is most common in areas where white powder heroin is prevalent—particularly across the eastern United States—because fentanyl is often mixed with or disguised as white powder heroin.³⁰

Illicit fentanyl is generally manufactured in China and imported into the United States through international mail, courier services and other means.³¹ DEA spokesman Rusty Paine has stated: "China is by far the most significant manufacturer of illicit designer synthetic drugs. There is so much manufacturing of new drugs, [it's] amazing what is coming out of China. Hundreds of [versions], including synthetic fentanyl and fentanyl-based compounds."³²

While there is some limited evidence that illicit fentanyl is being obtained through the darknet (commercial websites functioning as black markets) from China and pressed into counterfeit opioid pills in the United States,³³ the DEA has not found any illicit fentanyl labs operating in the United States³⁴ and has found, according to a spokesperson, “little evidence” that fentanyl is added to heroin from locations within the United States.³⁵

Even if fentanyl were added to heroin in the United States, it would most likely be done at the top of the distribution chain. Many street-level sellers, like users, are unaware of the composition and potency of the drugs they distribute. An individual may believe he is selling heroin but may be prosecuted for selling heroin and fentanyl and given a stiffer sentence that carries with it severe, life-long consequences. People often use the drugs they sell, and typically sell drugs in small amounts simply to fund their own addiction.

The risks associated with fentanyl, including overdose, may be attributed more to the lack of knowledge of what one has ingested as opposed to an inherent danger of the drug itself. Lawmakers should be looking for ways to make greater use of technology that tests opioids and other drugs for adulterants. This technology enables a person who uses drugs to determine if their drugs are adulterated, which makes it possible for to avoid using substances adulterated with fentanyl and other potent analogues. In Canada, a pilot program of fentanyl test strips “found that about 80 per cent of the drugs tested contained fentanyl, and that people were less likely to overdose after getting their drugs checked.”³⁶

The White House is failing in its response to the opioid crisis

President Trump has said that he considers the opioid overdose crisis a priority for his administration, but the record shows otherwise. Although President Trump has repeatedly said that he wants to boost treatment access, his first two budget submissions to Congress requested more money for law enforcement programs at the expense of treatment and prevention programs. Just two years ago, President Obama’s budget focused more money on treatment and prevention than enforcement and interdiction. Trump’s budget is a reversal of that approach. The president’s FY 19 submission includes a request for billions of dollars to build a wall at the border with Mexico with the twin goals of stopping the flow of drugs and immigrants, when evidence shows it will do neither and is an astonishing waste of money.³⁷ The president and other members of his administration, including Attorney General Jeff Sessions, have perpetuated a false narrative that immigrants are responsible for the hardship that drug addiction and other social problems have wrought on communities.

The president’s efforts to repeal the Affordable Care Act and roll back the Medicaid expansion threatened healthcare for millions of people vulnerable to opioid dependence, including treatment coverage for nearly three million people struggling with opioid use disorder. Millions of people could have lost health coverage that helps cover the cost of accessing medication-assisted treatment and mental health care had the president been successful in rolling back the Medicaid expansion and repealing the Affordable Care Act. States that have been deeply impacted by the opioid overdose crisis, like Kentucky, Ohio and West Virginia, would have been hit especially hard by repeal.

President Trump has commented on numerous occasions that he sees "strong law enforcement" and hardline approaches on drugs as the priority for responding to the overdose crisis. The president's attorney general, Jeff Sessions, has frequently characterized the overdose crisis as a crime issue. Sessions has taken numerous steps to escalate the war on drugs and has vowed to "use every tool we have" to crack down and has promised a "new intensity" to drug enforcement.

There have been many studies and evaluations of the appropriate steps that are needed to end the opioid overdose crisis and there is broad consensus on interventions that work. President Trump chose still to have his own commission to study the overdose crisis and come up with recommendations. The commission met for more than six months and issued two reports that provided dozens of health-based recommendations. The president has failed to act on most of these recommendations, in part because they emphasize a public health and robust federal government response to the opioid overdose crisis. This vision has clashed with the Trump administration's efforts to address the crisis as a law enforcement issue.

For example, the president's opioid commission recommended he declare the opioid overdose crisis a national emergency, which would unlock millions in emergency aid and enable the federal government to boost its public health response. The president refused to call the opioid overdose crisis a "national emergency", therefore failing to release the additional funding. Instead, he has called it a "public health emergency", which released a paltry \$57,000.³⁸

The Trump administration's failure to provide effective leadership on the overdose crisis and insistence of escalating the war on drugs is wasting billions of dollars and jeopardizing many lives who won't be helped as a result. Congress should focus its attention on providing effective oversight over this administration and the very troubling direction it is taking this country on drug policy.

Conclusion

We cannot allow the subject of this hearing to distract from our government's failures to effectively respond to the overdose crisis, as well as the very real harm that the war on drugs is doing to immigrant communities. Congress needs to focus on ways to effectively reduce overdose and treat opioid use disorder rather than get caught up in spurious debates that distract from the solutions at hand.

Respectfully Submitted,



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Drug Policy Alliance

¹ See for example, Sen. Rob Portman statement titled “Portman Announces Bipartisan Agreement Fully Funds CARA, CURES, & Increases Opioid Funding,” May 1, 2017, <https://www.portman.senate.gov/public/index.cfm/2017/5/portman-announces-bipartisan-agreement-fully-funds-cara-cures-increases-opioid-funding>

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