

Immigration Enforcement by Local Police: The Impact on the Civil Rights of Latinos

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INTRODUCTION

Following the September 11, 2001 terrorist attacks in New York and at the Pentagon, the Department of Justice (DOJ) initiated new policies aimed at preventing future terrorist attacks. One new measure has been to enlist state and local law enforcement officers in

antiterrorism activities. While the safety and security of our communities and our country are of the utmost importance, and increased information-sharing between intelligence agencies will aid counterterrorism efforts, new policies that would allow local police departments to enforce federal civil immigration law may, in fact, hinder terrorist

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and other criminal investigations, and have a serious negative impact on Latino communities.

There has been widespread and vigorous opposition to any delegation of federal immigration law enforcement to state and local police. This opposition includes civil rights, ethnic, religious, and law enforcement leaders and organizations. They argue that this radical policy shift would be in direct conflict with long-standing legal tradition, would inevitably result in higher levels of racial profiling, police misconduct, and other civil rights violations, and would undermine – rather than strengthen – effective enforcement and antiterrorism activities. The DOJ announcement and recent events have also led to decreased willingness within immigrant communities to report crimes and suspicious behavior to the authorities.¹

This Issue Brief explores the legal status of the DOJ's announcement and discusses the implications for Latino and immigrant communities.

NEW DOJ POLICY ANNOUNCEMENTS

In June 2002, Attorney General John Ashcroft declared that state and local police have the authority to enforce civil and criminal immigration violations of immigration law. However, Ashcroft did not announce directly that state and local police would enforce immigration law; the change was included in a press conference in which Ashcroft announced a new proposed immigration regulation that would require all persons from certain designated countries arriving in the United States on nonimmigrant visas to register and submit fingerprints at the point of entry. Any

individual staying longer than 30 days would be required to appear in person at an Immigration and Naturalization Service (INS) field office and reregister by submitting proof of residency and any other required evidence of legal status. Registered individuals would then be required to reappear at an INS field office and register each year. Finally, those who registered would be required to notify the INS of their departure from the United States. Ashcroft also announced that those who fail to comply with the registration requirements, or those who overstay their visas, will be added to a national criminal database, the National Criminal Information Center (NCIC), be subject to removal, and may possibly be subject to criminal prosecution.

At the same time, the Attorney General announced that state and local police officers, who already have access to NCIC, will have the authority to arrest and detain individuals for failing to comply with the registration requirements. While the new registration requirements are of great concern to immigrant advocates, it was this final part of the announcement that signaled enormous implications for America's Latinos.

In April 2002, several months prior to Ashcroft's announcement, the press reported that the DOJ was poised to issue a new legal opinion. This new, unreleased Office of Legal Counsel (OLC) opinion purportedly declares that state and local police have the "inherent authority" to enforce civil and criminal immigration violations of immigration law. While the legal opinion has never been made public, this announcement indicates that the DOJ has reinterpreted the law and overturned decades of legal precedent, sending an immediate chill through Latino communities.

Ashcroft's June 2002 announcement appears to be based on this unreleased legal opinion.

The issue of state and local law enforcement authority to enforce immigration law has been further muddled because in the weeks and months since April 2002 and the June 2002 press conference, and several different interpretations of the law have been put forward by the Administration resulting in a great deal of confusion.

- ▶ **June 24, 2002.** White House Counsel Alberto Gonzales wrote a letter that gives a similar, albeit more limited, interpretation to that of the Attorney General – that “state and local police have inherent authority to arrest and detain persons who are in violation of immigration laws *and whose names have been placed in the National Crime Information Center (NCIC)*” (emphasis in original).
- ▶ **July 19, 2002.** The INS distributed a press release announcing a Memorandum of Agreement (MOA) between the State of Florida and the Justice Department in which 35 Florida law enforcement officers will receive training in immigration law and enforcement. The MOA implements a 1996 law that previously had been interpreted to require formal agreements between the federal government and local enforcement agencies wishing to enforce federal immigration law. The formal process of Memorandum of Agreement, as specified in the 1996 law, seems to contradict the “inherent authority” philosophy said to be the current thinking of the DOJ's Office of Legal Counsel.

As a result of these developments, there are now three different interpretations of the law:

1. Local police lack the legal authority to enforce civil immigration law generally, and specific agreements are needed between the INS and state and local law enforcement agencies if they are to enforce immigration law. This interpretation is bolstered by the Florida MOA, noted above. This interpretation is also strengthened by the DOJ's recent issuance of regulations regarding the authorization of certain civil law enforcement powers to state and local officers in a time of a “mass influx” of immigrants.²
2. Local police have “inherent authority” to enforce civil immigration law, as the DOJ has reportedly decided in a secret legal opinion.
3. Local police have “inherent authority” to enforce civil immigration law only if violators' names have been placed in the NCIC database, as the Attorney General and White House Counsel have stated.

These contradictory statements have resulted in a great deal of confusion among immigrant communities, immigrant and civil rights advocates, and law enforcement agencies. Yet, regardless of the current status of the OLC opinion, the mere mention that local police may have the authority to enforce immigration law has frightened Latino and immigrant communities, resulting in an increased unwillingness to cooperate with law enforcement, to report crimes, and to come forward as witnesses.

THE LAW

A. OVERVIEW

The Constitution of the United States grants Congress the exclusive power to regulate federal laws concerning the admission of immigrants.³ The Attorney General has been granted exclusive authority to enforce these laws and, in turn, delegates this power to the INS. Only agents given this power by the Attorney General have the authority and jurisdiction to enforce immigration laws. INS officers must complete immigration law and enforcement training before receiving the authority to arrest individuals for civil or criminal violations of the Immigration and Nationality Act (INA).

An INS agent must have a “reasonable cause” that can be articulated in order to interrogate any person believed to be an undocumented immigrant as to his or her right to be or to remain in the United States. The Supreme Court has ruled that the reasonable cause must not be based solely on racial heritage or ethnic appearance.⁴ INS purports to train its agents to be able to detect other characteristics that may identify a person as an undocumented immigrant, such as suspicious behavior.

Until the DOJ announcement, state and local police officers did not have authority to enforce most immigration laws. In certain circumstances, and with specific procedural safeguards in place, Congress had authorized local police to arrest and detain an individual for criminal violations of federal immigration law if such authority exists under state law. For example, the Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996 explicitly authorized state and local police to arrest and

detain immigrants who are unlawfully present in the U.S. (a violation of civil immigration law) and have “previously been convicted of a felony in the United States.” These immigrants would be deportable based on their criminal behavior, and the law does not authorize state and local law enforcement officers to arrest or detain noncitizens simply because they are unlawfully present. In doing so, this law made an explicit distinction between enforcement of civil immigration law and criminal immigration law.

As early as 1978, the Department of Justice took the position that local police should refrain from detaining “any person not suspected of a crime, solely on the ground that they may be deportable aliens.”⁵ In 1996, the Department of Justice issued an opinion that again declared, “State police lack recognized legal authority to arrest or detain aliens solely for purposes of civil immigration proceedings, as opposed to criminal prosecution.”⁶

Cooperation between the INS and state or local police, at least in theory, had been restricted to incidents in which independent and explainable reasons clearly indicated the need for coordinated action by both the INS and another law enforcement entity.⁷ An example of such a situation would be the need for local police traffic control – not including detaining suspected immigrants fleeing the scene – or a situation in which a violation of a local code would be uncovered. When INS and local police collaborated, each was supposed to remain within its legal jurisdiction. Local police could only intervene when a crime was committed or if the nature of the offense was otherwise of local interest or county concern; INS could only enforce immigration laws and certain serious felonies.⁸

B. IMMIGRATION LAW ENFORCEMENT PROVISIONS UNDER IIRIRA

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) constituted a sweeping reform regarding the way undocumented immigrants found in the United States are treated under the law. Combined with large increases in funding for INS enforcement activities, these provisions have had a major impact on the way INS is enforcing the law. Sections 133 and 642 of IIRIRA, specifically, pertain to communication and cooperation between local police or government officials and the INS.

1. COOPERATION AGREEMENTS BETWEEN LOCAL POLICE AND INS

Section 133 of IIRIRA allows the Attorney General to enter into agreements to delegate immigration powers to local police, but only through negotiated agreements, documented in Memoranda of Understanding (MOUs). These MOUs were to be negotiated between the INS and the local authorities and would include delegation of authority to a limited number of police officers. In authorizing these MOUs, Congress specifically required that any officer or employee of a state performing a function under the agreement should have written certification that s/he has received adequate training regarding the enforcement of relevant federal immigration laws. Furthermore, the statute requires that any and all local law enforcement officials performing these functions shall be subject to the direction and supervision of the Attorney General. The statute clearly does not authorize local law enforcement officials who have no training or experience in immigration laws to enforce

those laws during their normal course of business.

MOUs have been attempted several times, and until recently, had never been executed due to opposition by the Latino community and by local officials themselves. For example, a proposal to delegate authority under Section 133 to local police in Salt Lake City, Utah was defeated when the Salt Lake City Council rejected an MOU negotiated between the INS and the police department. A similar proposal was soundly rejected in Marshalltown, Iowa.

As mentioned previously, the State of Florida became the first state to enter into an MOU with the INS. The July 2002 announcement makes clear that, by the terms of the MOU, “[t]he authority to enforce federal immigration laws does not extend to the more conventional enforcement actions that the INS carries out every day in Florida. State law enforcement officers covered by the MOU will not be involved in immigration enforcement activities that do not involve terrorism or domestic security issues.”

2. COMMUNICATION BETWEEN LOCAL GOVERNMENT EMPLOYEES AND INS

In addition to Section 133, Section 642 of IIRIRA states that, notwithstanding any other provision of law – including city, county, or state ordinances – a public employee cannot be prohibited by his or her employer from reporting immigration-related information to the INS gathered during the course of his or her job. The section further outlines the obligation of the INS to respond to inquiries made by federal, state, or local government agencies to verify the citizenship or immigration status of an individual.⁹

Additionally, Section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, requires certain federal and state entities to notify the INS of any individual the entity “knows” is not lawfully present in the United States.

Over the past several years, a number of cities have passed ordinances prohibiting certain forms of communication regarding immigration status. It is still unclear how these legislative provisions affect these local ordinances.

- ▶ **New York, NY:** After enactment of IIRIRA in 1997, the City of New York filed a lawsuit against the federal government, arguing that Section 642 violated the Tenth Amendment, the guarantee clause, and the principles of federalism. A federal district court judge ruled against the City on all of its motions; New York City appealed the ruling and lost.¹⁰ This decision does not necessarily mean that Section 642 is constitutional, and it does not mean that the law is necessarily going to be enforced. But it is still unclear whether or to what extent the law is enforceable. To date there are no cases on record in which the federal government has attempted to enforce Section 642.

New York recently changed its charter to state that “the mayor may promulgate rules requiring that information obtained by city employees be kept confidential to the extent necessary to preserve the trust of individuals who have business with city

agencies. To the extent set forth in such rules, each agency shall, to the fullest extent permitted by the laws of the United States and the state of New York, maintain the confidentiality of information in its possession relating to the immigration status or other private information that was provided by an individual to a city employee in the course of such employee’s duties.”¹¹

- ▶ **Salem, OR:** In December 1997, well after the enactment of IIRIRA, the city of Salem, Oregon implemented an ordinance clarifying its relation to the INS. Among the provisions in the Salem ordinance is a guideline prohibiting city employees and representatives from performing duties dictated by the INS or agents of the INS. Because this ordinance was enacted after the passage of IIRIRA and PRWORA, the extent to which this ordinance can and will be enforced remains unclear.
- ▶ **Austin, TX:** In July 1998, the report of a special task force on immigration issues in Austin, Texas made strong recommendations to increase public safety by dispelling fears within the immigrant community that the report of crimes to local law enforcement would result in intervention by the INS. Their recommendation included calls for less cooperation with the INS and special training for local and county officers in all policies and regulations that impact immigrants and immigration laws.

C. COURT DECISIONS REGARDING LOCAL LAW ENFORCEMENT AUTHORITY TO ENFORCE IMMIGRATION LAW

The courts have made it clear that the federal government has the exclusive power to regulate immigration and create immigration law.¹² However, the question of whether local law enforcement has the authority to enforce federal immigration laws has been brought up many times. For example:

The leading case on the issue is *Gonzalez v. The City of Peoria*, a civil rights suit brought by 11 plaintiffs of Mexican descent who challenged the practice of police enforcement of federal immigration law.¹³ In *Gonzalez*, the Ninth Circuit Court of Appeals held that local police are precluded from enforcing the *civil* provisions of the Immigration and Nationality Act (INA). The civil provisions constitute “a pervasive regulatory scheme as would be consistent with exclusive federal power of immigration.”¹⁴ *Civil* provisions of the INA are the exclusive enforcement domain of the INS and include *unlawful presence* and *unauthorized employment* in the United States. “Expiration of a visitor’s visa, change of student status, or acquisition of prohibited employment” are examples of *civil* violations of the INA for which local police cannot make arrests (emphasis added).¹⁵

In *LULAC v. Wilson*¹⁶ the Ninth Circuit Court struck down those portions of California’s Proposition 187 which required state agents to question applicants for state services about their immigration status, to obtain and examine documents relating to their immigration status,

to identify “suspected illegal” immigrants and report them to state and federal authorities, and to instruct these individuals either to obtain legal status or leave the country. The court characterized these provisions as a “comprehensive scheme to detect and report the presence and effect the removal of illegal aliens” and found that they were preempted by federal law.¹⁷

In other cases, such as those outlined below, settlement agreements have been reached which recognize the limitations on local law enforcement officials to enforce federal immigration law.

- ▶ **1984.** A joint operation between local police and INS agents targeting 16 Hispanic business establishments occurred in Sanger, California. During the joint operation, customers in each of these businesses were detained and questioned by the INS. The individuals subjected to this treatment filed a suit and later signed a settlement agreement with the defendants. The agreement outlined that INS agents were not to direct, propose, or request that joint operations with state and local law enforcement officers be carried out when INS agents know that these operations will be beneficial only to the INS.¹⁸
- ▶ **1992.** U.S. Border Patrol agents and Farmersville, California police officers searched the private residences of suspected undocumented immigrants during a predawn raid. Fifteen farmworker families filed suit against the United States and the City of Farmersville. The settlement agreement reached in February 1998 outlined specific procedures that the

police of Farmersville are to undertake when cooperating with INS agents.²⁰

- ▶ **1995.** County and city officers in Oakland, California aided the INS in interrogating, searching, and arresting individuals from 18 families of Mexican descent. The homes of these families were searched without search or arrest warrants. A resulting settlement provided that county sheriff's deputies and local police officers would be barred from conducting raids with the purpose of searching for undocumented immigrants. The agreement also prohibited the city from requesting or disseminating information regarding the immigration status of any individual unless authorized to do so by state or federal statute or court order. The settlement further instructed police officers to become more informed about conduct and procedures when acting jointly with INS officers.¹⁹

Both the Oakland and Farmersville cases contained an order prohibiting the defendants in each case from requesting or disseminating information about an individual's immigration status. However, neither agreement in Oakland or Farmersville is self-enforcing. In light of Section 642, it is unclear whether and how these court-ordered agreements would be enforced.

D. DUBIOUS LEGAL JUSTIFICATION FOR THE NEW DOJ LEGAL OPINION

DOJ has dramatically shifted its legal position despite the fact that no new law has been passed

since IIRIRA. The new legal opinion apparently simply overturns existing DOJ legal opinions, as well as decades of legal tradition. The new opinion reportedly is based on Tenth Circuit Court cases that deal with criminal immigration law enforcement, not civil law. Given the current state of law and other court decisions issued over the past decade, the legal justification for the new DOJ legal opinion is dubious, at best.

The Department of Justice reportedly cites as justification for its legal opinion the 1984 decision in *United States v. Salinas-Calderon*,²¹ as well as other Tenth Circuit Court cases. In the *Salinas-Calderon* case, the court found that a local law enforcement officer has general investigatory powers to inquire into "immigration violations." However, the court did not define what it meant by an immigration violation and did not discuss – or even appear to recognize – the difference between civil and criminal immigration offenses.

In *U.S. v. Vasquez-Alvarez*,²² the Tenth Circuit Court used the general reference to an "immigration violation" found in *Salinas-Calderon* to uphold a police officer's arrest of an individual for the *civil* immigration violation of unlawful presence in the country. However, the court relies only on cases that authorize police enforcement of federal *criminal* offenses, and thus there is no support for an expanded interpretation covering civil offenses. In the final Tenth Circuit case, *United States v. Santana-Garcia*,²³ the defendants faced both drug possession charges and a criminal immigration offense. On appeal, the court upheld the legality of a pre-arrest detention of the defendants by a state trooper finding, among other things, that the trooper had probable cause to arrest for an unspecified

immigration “violation.” Furthermore, in reaching its conclusion, the court in *Vasquez-Alvarez* erroneously determined that state law authority for an arrest for a federal offense is unnecessary, so long as state law does not prohibit it. It is well settled, however, that the legality of an arrest by a state or local officer for a federal offense is to be determined by state law.²⁴ It is not sufficient that state law not prohibit the arrest; instead, state law must specifically provide the officer the “power” to make the arrest.²⁵

INS-LOCAL LAW ENFORCEMENT COLLABORATION

A. OVERVIEW

Immigration law is extremely complex and subject to frequent changes, and enforcement requires a great deal of training and experience. All INS officers must attend a 17-week Immigration Agent Basic Training, and agents in the field complete additional on-the-job training. Even so, this training does not guarantee that well-trained INS agents will not make mistakes. A worksite raid in Miami in 1997, in which several Nicaraguans (potential beneficiaries of the Nicaraguan Adjustment and Central American Relief Act of 1997) were unnecessarily detained and removed from their place of work, serves as an example of how even trained INS agents sometimes detain the wrong people.²⁶ Deputizing untrained, inexperienced local law enforcement personnel to enforce immigration law is likely to lead to increased racial profiling, civil rights violations, and mistakes.

B. INS MISCONDUCT

INS agents have been allowed immense discretion in their use of appearance in formulating their reasons to stop and question a suspected undocumented immigrant. For example, among the criteria which INS has used (and which some courts have approved) as reasonable cause for stopping a vehicle is that a particular route has had previous experience with “alien traffic.” Other factors have included manner of dress, hygiene, and hairstyle.²⁷ Used in conjunction with the ethnic appearance of an individual, these factors have been justified in some courts as reasonable cause for a stop. This discretion has traditionally been used in border regions; interior enforcement has not until recently been an issue for the INS. In the last few years, concurrent with the massive increase in resources available to the INS for interior enforcement, complaints of ethnically selective enforcement and INS agents’ targeting of individuals based solely on their ethnicity have also risen in the interior of the United States. The most blatantly discriminatory incidents, some of which are described below, have involved local police officers.

Contrary to the relatively free reign that the INS previously enjoyed at the border, the courts have repeatedly circumscribed their independence where ethnicity has clearly been a factor in the execution of their functions. Using information gathered from the “I-44” forms that border patrol agents are advised to fill out at traffic stops, the Ninth Circuit Court of Appeals in the class action *Durgin v. De La Vina* found in 1998 that the plaintiffs could in fact show a pattern and practice of Border Patrol stops made without reasonable suspicion. In a 1984 decision, a federal district court order in Michigan prohibited the Border Patrol

from such stops as a violation of a person's civil rights (*Ramirez v. Webb*).

The pattern and practice of INS "racial profiling" continues. In Ohio in 1997, a federal district court temporarily ordered the Ohio State Highway Patrol to stop confiscating green cards from motorists being pulled over for routine traffic stops after the Ohio State Highway Patrol had stopped, searched, and detained two Hispanic migrant workers. Allegedly, the Ohio police had been asked to inquire about immigration status by the Border Patrol.²⁸

The following are other examples of recent INS misconduct:

- ▶ **April 1998, Fresno, California.** The INS had to bring a Fresno minor back from Mexico into his mother's custody after the Border Patrol arrested him, advised him to sign a voluntary departure statement, and deported him. Although INS has a policy to stay off of school grounds, Border Patrol agents came onto school grounds at the request of local police to arrest suspected gang members. Local police had already been harassing children at the school, quizzing them about their immigration status. The minor who was returned said, "the cops just think that all the Mexican kids who hang out together at school are in a gang. And that's not true."²⁹
- ▶ **January 1998, Bethesda, Maryland.** Waitress Allegra Foley was preparing tables for lunch at the Thymes Square Café when plainclothes INS officers entered the restaurant. They headed directly to the kitchen, where they questioned a number of Latino employees; six were arrested.³⁰ Foley was particularly upset that employees at the Café were clearly targeted for questioning based on their perceived racial appearance. In a notarized affidavit, Foley testified that "at no time did they ever question a White, Black, or Asian employee on duty at the restaurant... with sole exception of the manager... who... voluntarily provided his green card."³¹
- ▶ **July 1997, Portland, Oregon.** INS agents in unmarked vehicles began arresting almost 50 Latino day laborers who were waiting for work on street corners along East Burnside Street. The agents did not identify themselves and arrested the majority of the people without asking questions. Most of the agents were dressed in plainclothes, although some of them later donned Border Patrol jackets when their colleagues arrived in bulletproof vests and uniforms. "I only saw one man questioned. It happened right in front of me. The INS agent came right up close to his face, leaned over him, and asked him where he was from and to show his papers. The worker didn't answer but started to fumble in his wallet in an effort to extract a document and was arrested before he could get it out. The entire interchange took less than a minute. Only Latino men were arrested. Other people on the scene, including a light-skinned Mexican, were not even questioned," recalled Lucy Bernard, a witness from the Workers' Organization Committee in Portland.³²

- ▶ **August 1996, Jackson Hole, Wyoming.** INS agents conducted a raid in which 153 suspected illegal immigrants were rounded up and detained. According to press reports, some of the suspects were picked up off the street merely because their skin was brown. It was reported that agents picked one man off his bicycle as he rode down the street; “They failed to ask him to stop, they simply ran him down, took him off his bike, put him in handcuffs, and stuffed him in the police car,” stated an eyewitness.³³ Some of those picked up had large numbers written on their arms with black felt pen, as though they were cattle. Further press reports stated that 18 of those picked up were “hauled away in a dirty horse trailer lined with fresh manure.” In the end, 40 of the “suspects” were released after proving they were citizens or documented workers.³⁴

As a result of these instances and many others, the INS is constantly in a position to explain “bad judgment calls” by its own agents. INS headquarters has had to reiterate INS policies on nondiscrimination and probable cause to its own agents twice in the last three years, and in 1998 insisted on an immediate “refresher training” of its agents.³⁵

A May 1, 2001 *New York Times* article provides further evidence that INS engages in racial profiling. In this article, a review of 37 INS worksite raids in the district of New York City showed that agents frequently cited skin color, use of Spanish, foreign accents, and clothing “not typical of North America” as primary evidence that workers were likely to be undocumented. For example, one INS agent

conducting a surveillance of a delicatessen between 34th and 35th Streets in New York City reported that some workers appeared to be of South or Central American descent. Some spoke Spanish, the agent noted, and others spoke English “with a foreign accent.” The Times investigation confirmed that the INS explicitly uses ethnicity to guide its enforcement efforts, a tactic the agency previously has denied using.

Given that the INS must take greater steps to ensure that its own trained agents are following INS policies, delegating immigration law enforcement to untrained or less-trained local police will inevitably result in increased civil rights violations.

C. INS-LOCAL COLLABORATION IMPACT

The relationship between the Immigration and Naturalization Service (INS) and Latinos in the United States has long been one characterized by tension and fear. Latinos face the reality of being stopped by immigration enforcement agents because of their ethnicity, language, or appearance. Many encounters with immigration agents have been without probable cause, and in some instances have involved unnecessary use of force. Latinos also experience similar encounters with police officers assuming the role of – or working jointly with – INS agents. As a result, many immigrants and U.S.-born Latinos have little trust in the INS or in the police to ensure public safety in their neighborhoods.

Furthermore, the relationship between police and the communities they patrol is extremely fragile. In some areas, criminals have exploited the fear that immigrant communities have of all

law enforcement officials. In Durham, North Carolina, thieves told their victims – in a community of migrant workers and new immigrants – that if they called the police they would be deported. Local police officers have found that people are being robbed multiple times and are not reporting the crimes because of such fear instilled by robbers.³⁶ These immigrants are left vulnerable to experience crimes of all sorts, not just robbery. In 1998, Elena Gonzalez, an immigrant in New Jersey, was found murdered in the basement of her apartment. Friends of the woman say that the suspected murderer, her former boyfriend, threatened to report her to the INS if she did not do what she was told.³⁷

The following are incidents in which police have cooperated with INS, violated the civil rights of people lawfully in the U.S., and have damaged their ties to Latino communities severely:

- ▶ **Roswell, Georgia – April 1999**
Signs posted in Spanish read, “It is illegal to pick up or hire workers on private property without the property owner’s permission. Violators will be arrested and reported to the Immigration and Naturalization Service and the IRS for possible federal prosecution.”³⁸ Leaders of local community organizations and even the Mexican government have come forward to denounce the Roswell law as discriminatory against Hispanics. The controversy was sparked when an overzealous police lieutenant issued an order to arrest and issue citations in the center of Roswell’s growing Hispanic community. Acting on the apparently mistaken belief that his chief wanted a

crackdown on loitering in the area, the lieutenant intentionally targeted Latinos as the focus of his broad sweep. Although the lieutenant was disciplined and the issue dismissed as an isolated incident, the Hispanic community remains distrustful of the law and the police officers who enforce it.

- ▶ **Passaic, New Jersey – April 1998**
Federal immigration agents, state police, and Passaic County Sheriff’s officers conducted a nighttime raid at a recreational park in the city of Passaic, New Jersey. The raid was conducted purportedly to round up gang members wanted on arrest warrants, but police accosted other innocent individuals. Children were commanded to put their hands behind their heads during questioning by police officers. Police officers acted out of their jurisdiction and threatened to hurt a 14-year-old boy if he didn’t give the officer his Social Security Number. When the boy’s father arrived and began to complain about the treatment of his son, another police officer demanded that the father show him his “green card” and driver’s license. The city’s Mexican American community continues to be fearful and angry about the conduct of the police officers.³⁹
- ▶ **Chandler, Arizona – July 1997**
The most noted incident occurred in Chandler, Arizona where local police and INS agents worked very closely in planning a community-wide roundup of suspected undocumented immigrants. Certain areas received multiple searches in the operation,

and a number of individuals were stopped in their cars and on the street several times by police and INS. Chandler police acted outside of their jurisdiction and attempted to enforce immigration law. The Arizona Attorney General later found that residents were stopped repeatedly “for no other apparent reason than their skin color or Mexican appearance or use of the Spanish language.”⁴⁰ Despite purported INS policies to stay off of school campuses and outside of business establishments, individuals were stopped or questioned just outside of businesses and schools. Police patrolling on bicycles harassed and detained Hispanic-appearing individuals in their cars, walking on the street, and sitting in their homes. The Attorney General’s report further stated that these numerous stops “violated the Constitutional rights of American citizens and legal residents to equal protection and to be free from unlawful searches and seizures.”⁴¹

- ▶ **Crescent City, Florida – January 1997** Putnam County Sheriff’s officers, Crescent City Police, and INS agents conducted a nighttime joint operation purportedly in search of illegal drug activity. Officers set up a highway checkpoint in addition to invading homes, without warrants and without probable cause, in a predominantly Latino neighborhood. Despite the pretextual reasoning that there was suspected illegal drug activity, the police and INS made no drug-related arrests, but managed to frighten an entire neighborhood with dogs and bright lights.⁴²

- ▶ **Katy, Texas – May 1994**

The Police Department and the INS in Katy, Texas conducted a joint operation during which egregious violations of constitutional rights occurred. Vehicles driven by individuals of “Hispanic appearance” were stopped and detained by Katy Police Department officers and INS agents. The joint operation included searches in homes, trailers, and apartment complexes that were predominantly Latino. “Street sweeps” in which Latinos were the only individuals stopped and questioned regarding their immigration status also were conducted. Katy City Police officers acted outside of their jurisdiction and wrongfully questioned, detained, and arrested individuals based on their immigration status.⁴³

Based on these and numerous other incidents, it is clear that increasing state and local police enforcement of immigration laws will inevitably result in widespread civil rights violations of U.S. citizens and lawful residents.

D. REGAINING COMMUNITY TRUST

It is ironic that this possible DOJ announcement comes at the same time as the U.S. is becoming much safer for Latinos. According to the DOJ, violent crime against Latinos dropped by 56% during the 1990s.⁴⁴ Law enforcement officials attribute this drop in crime in part to increased trust and growing relationships between local police officers and Latino communities.⁴⁵ It would be extremely unfortunate if the decision to allow local police to enforce immigration law were to undermine

this positive and important trend by destroying a trust that has taken so long to build.

Perhaps the most alarming example of the need for police departments to reach out to the communities they protect is the case of the 58 deaf and mute Mexican workers who were found living in virtual slavery in New York in July 1997. Most of these immigrants were tricked into coming to the United States and were subsequently exploited by their smugglers. Forced to live in crowded apartments, the individuals were beaten, raped, traded, and shocked into submission with stun guns. The immigrants feared going to the police because they were undocumented and their smugglers threatened to report them to the INS.⁴⁶ The workers were found only after two of them managed to give a written statement about their working and living conditions to the police.⁴⁷ Although neighbors of the deaf Mexicans witnessed some of the abuse that occurred in the building, they also feared calling the police.⁴⁸ The neighbors of the workers seemed unaware that New York City has an ordinance prohibiting police from providing information to the INS about an immigrant who is the victim of a crime. One of these neighbors who did not feel that the police would respond to calls said, "We speak with an accent, we can hardly make ourselves understood. They are not going to come here just because we call and complain about something that is happening to one of us."⁴⁹

Earning the trust of communities is essential in creating effective policing efforts. Community-based policing programs that actually reach out to immigrants fare better than those that do not. In fact, it may not be enough for a local police officer merely to abide by an ordinance against cooperation with the INS. The most

successful efforts actually involve explicit indication to the community that the police will not report immigrants to the INS. Evidence of this can be seen in the following programs:

- ▶ **Los Angeles, California.** An historically crime-ridden neighborhood of Los Angeles has a program called *Los Amigos* which has decreased the crime rate by 30% from 1996 to 1997.⁵⁰ *Los Amigos* has been effective in the immigrant community because it has provided Spanish-speaking dispatchers to answer calls providing tips or complaints to the police, and the patrolling officers have assured residents that they are not *la migra* (the INS).
- ▶ **Durham, North Carolina.** In another exemplary effort, immigrants in Durham have been successfully urged to join neighborhood watch groups to patrol their own neighborhoods. Bilingual meetings between police officers and community members, along with the police department publicly emphasizing that the department does not have time to patrol for illegal immigrants, have created positive relationships between community members and police.
- ▶ **Fort Worth, Texas.** A similar effort by a community-watch group, *Vecinos Unidos*, is also reducing crime rates. The group was created to act as a bilingual neighborhood patrol. Attempts to create such a group in the past had failed because of minority sentiments toward police officers.⁵¹ The successful creation of this group seems to be a sign of the Latino community's greater esteem for the police. Police officers in the

area recognize the need for such a program and have welcomed the group.

A scarcity of Spanish-speaking officers in those states where the Latino population has only recently experienced rapid growth, however, is often the greatest obstacle to strong community-based policing. Many county police forces consider themselves lucky to have any Spanish-speaking officer in their ranks at all. As Sheriff John Baker of Wake County, North Carolina describes, “All law enforcement agencies are faced with this. We have 19 positions open and would love to hire an Hispanic or a Spanish-speaking officer . . . but the bottom line is, we just can’t find any.”⁵² Fortunately, the need has been recognized, and some basic language training has been funded so that the local police can better protect and serve the Latino community. Without some kind of dialogue, though, even the first step in trust-building is impossible.

The most important component of outreach to the Latino community is an assurance that the police will not harass individuals about their immigration status. Even U.S. citizens and lawfully-present immigrants will cease to cooperate with police if they sense that the police are viewing them with suspicion because of their ethnicity or the language they speak. It is not necessary for a city to have an official ordinance mandating noncooperation for community-based policing to be successful. What is essential is for residents of a neighborhood to hear explicitly from police officers and other officials that they are not the INS, and that they have no intentions of reporting them, their family members, or their neighbors to the INS.

If such a policy is not in place, the undocumented, as well as legal immigrants and

U.S. citizens, will be reluctant to talk to the police and to report crimes and suspicious activity. Because immigration law is complicated and subject to frequent changes, many legal immigrants still worry that they could be deported for reasons they may not have known about. Furthermore, many immigrants live in “mixed-status” families, meaning that U.S. citizens, legal immigrants, and undocumented immigrants live within the same household. It is understandable that, in these households, even citizen and lawful residents are afraid that extra scrutiny may have unforeseen consequences for their close family members. In other words, the effects of local law enforcement of immigration law go far beyond the undocumented immigrant community and pose serious threats to all Latino immigrants, U.S. citizens, and indeed, the entire community that must suffer the consequences of unsolved and undeterred crimes.

E. OTHER LAW ENFORCEMENT CONCERNS

In addition to the issues outlined above, granting local law enforcement agencies authority over immigration law raises other concerns:

Empowering local law enforcement to enforce immigration law is not an effective means to prevent future terrorism and may well undercut the fight against terrorism. Furthermore, law enforcement agencies will need to rely on information from people in the community in order to prevent future terrorist acts. This information is likely to be obtained from local police officers with strong relationships with the community. Terrorists and other criminals

could take advantage of the threat of INS/local law enforcement collaboration to further their activities since communities divided by fear and distrust are not likely to work together and report suspicious activity. It would be truly ironic if, at some point in the future, the U.S. experiences a terrorist act partially because community members were deterred by racial profiling tactics from reporting suspicious or criminal behavior.

In addition to undermining community trust, the imposition of the additional burden of immigration law enforcement threatens effective anti-terrorism efforts. Some have likened the process of tracking down suspected terrorists to finding the proverbial “needle in the haystack.” Even DOJ’s supporters acknowledge that upwards of 99.99% of undocumented immigrants pose absolutely no terrorist threat. However, delegating immigration law enforcement to already overburdened police departments adds millions of undocumented immigrants to the pool of potential suspects – in effect, it adds more hay to the haystack. This makes it more difficult, not easier, to find real terrorists.

Deputizing local police to enforce federal immigration law diverts limited resources that are better spent elsewhere. Local police departments need to spend their limited resources on solving crimes and preventing terrorism, and the INS needs to focus its efforts to enforce immigration law and create smart enforcement policies that are effective. Local police will be distracted from their primary mission when they are asked to perform new duties for which they have no training, compromising public safety and undermining effective immigration enforcement. Additional mandates are

confusing and conflicting and restrict local police forces’ ability to serve and protect their communities.

Without specific training, or with only cursory courses, local police officers have no hope of aiding effective immigration enforcement and will undermine any efforts that do exist. If extensive training is provided, requiring that local police attend training will drain time and resources that could be better spent on solving crimes and preventing terrorism. Most local communities cannot spare the time or the money to send their local police officers to a 17-week Immigration Agent Basic Training course.

Involving local police in immigration law enforcement activities is likely to lead to racial profiling, discrimination, and costly litigation. When local law enforcement gets involved in immigration enforcement, particularly without proper training and enforcement, people are often targeted for immigration enforcement on the basis of their accent or appearance. This can lead to serious violations of the civil rights of legal permanent residents and even U.S. citizens. Puerto Ricans, naturalized citizens, and others have frequently been the victims of such abuses. These civil rights violations, in turn, may result in costly litigation. The Chandler, AZ case described previously illustrates that INS-local law enforcement collaboration can be expensive. The joint INS-local police sweep cost the city \$400,000 in the settlement of one of two lawsuits brought by victims of the operation, while another is pending. Law enforcement agencies, many of whom face potentially serious budget constraints, can ill-afford the costs of such litigation.

CONCLUSIONS

History has shown that collaboration between the INS and local law enforcement contravenes decades of established legal tradition, and has resulted in an erosion of community trust, civil rights violations, and litigation. In particular:

- ▶ **Delegation of authority contradicts decades of federal case law and policy, and is of dubious constitutionality.**
- ▶ **INS/local law enforcement collaboration will inevitably result in more cases of racial profiling, police misconduct, and violations of civil rights.**
- ▶ **INS/local law enforcement collaboration will undermine trust and community policing efforts.**
- ▶ **INS/local law enforcement collaboration will further undercut effective law enforcement and anti-terrorism efforts by diverting resources and leading to additional litigation.**

NCLR and other civil rights advocates are not alone in its opposition to increased INS collaboration with local law enforcement. Many local leaders, among them prominent mayors such as former Mayor Rudy Giuliani and current Mayor Michael Bloomberg of New York, former Mayor Richard Riordan of Los Angeles, and Mayor Richard Daley of Chicago, have expressly condemned turning local police officers into INS agents. Additionally, local police departments and police associations have voiced their opposition to local law enforcement of immigration laws.^{liii} These individuals clearly understand the special dynamics between the people in their communities and the police. By moving forward with this plan, DOJ will undermine the relationships that these leaders have worked hard to create, and will likely alienate the communities for whose trust these local and national figures have so long worked.

The DOJ should immediately rescind its dubious new legal interpretation and renounce any plans to expand delegation of immigration law enforcement to state and local police. Absent such a policy shift, Congress should act to prevent or, at a minimum, circumscribe and carefully monitor its implementation.

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ENDNOTES

1. The events surrounding the October 2002 sniper attacks in Maryland and Virginia demonstrate how fear in immigrant communities can hamper criminal investigations. During the investigation, a Mexican national and a Guatemalan national were detained in connection with the sniper attacks. After determining that they were not involved with the attacks, the two undocumented workers were turned over to the INS for immigration violations. Press statements declared that the two were simply “in the wrong place at the wrong time,” but immigrant communities were given the message that reporting information could place them or their family members in jeopardy. Chief Charles A. Moose of the Montgomery County Police Department and INS Commissioner James Ziglar later made statements urging immigrants to report any information they had regarding the sniper attacks without fear of deportation or other penalties. The fact that these special requests for information were publicized is evidence that law enforcement officials need and depend upon information from immigrant communities for their investigations, and that law enforcement is best served when everyone in a community feels safe to report crime and suspicious behavior.
2. *Federal Register*, Vol. 67, No. 142, July 24, 2002, p. 48,354.
3. U.S. Constitution art. I, § 9, cl. 1
4. *Brignoni-Ponce*, 422 U.S. at 884(1975), *Gonzales v. City of Peoria*, 722 F.2d 468, 474 (9th Cir. 1983), *Illinois Migrant Council v. Pilliod*, 540 F.2d 1062 (7th Cir. 1976), *Murillo v. Musegades*, 809 F. Supp. 1278 (W.D. Tex. 1992), *Ramirez v. Webb*, 599 F. Supp. 1278 (W. D. Mich. 1984), *Nicacio v. United States INS*, 595 F. Supp. 19 (E.D. Wash. 1984).
5. *Local Police Involvement in the Enforcement of Immigration Law*, 1 Tex. Hisp. J.L. 9 (1994) quoting Attorney General Bell, Dept. of Justice Press Release, June 23, 1978.
6. “Assistance by State and Local Police in Apprehending Illegal Aliens,” Memorandum Opinion of the Department of Justice, February 5, 1996.
7. *Florida Avocado Growers v. Paul*, 373 U.S. 132, 142.
8. McDonald, William, “Crime and Illegal Immigration: Emerging Local, State, and Federal Partnerships,” *National Institute of Justice Journal*, June 1997.
9. The legislative history shows that the aim of this provision is to undercut city ordinances that prohibit local law enforcement officers and city employees from cooperating with the INS. The underlying reason for the emergence of such ordinances, however, was concern for public health and safety. If local government agencies are seen as a threat to a person’s ability to keep his or her family intact, or to keep his or her job, then an immigrant would likely not seek needed medical care, or call the police. This is a particularly important issue for cities with large, mixed-immigrant-status communities – both legal and undocumented immigrants would have reasons to fear government employees. Police officials in such areas are concerned that immigrants and their neighbors will not report crimes to local officers performing or assisting in the duties of INS agents.
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11. *Making Our City’s Progress Permanent*. Report of the New York City Charter Revision Commission, September 5, 2001.
12. *De Canas v. Bica*, 424 U.S. 351, 354-55 (1976).
13. 722 F. 2d 468 (9th Cir. 1983).
14. *Gonzales v. City of Peoria*, 722 F. Supp. at 475.
15. *Id.* at 476.
16. 908 F.Supp. 755 (C.D. Ca. 1995).
17. *Id.* at 769.
18. *Velasquez v. Ackerman*, No. C-84-20723-JW (D. Cal. 1992).
19. *De Haro v. City of St. Helena*, No. C-93-3487 (D. Cal. 1995).
20. *Mendoza v. City of Farmersville*, No. CV-F-93-5789 (D. Cal. 1998).
21. 728 F.2d 1298 (10th Cir. 1984).
22. 176 F.3d 1294 (10th Cir. 1999).

23. 264 F.3d 1188 (10th Cir. 2001).
24. *Miller v. U.S.*, 357 U.S. 301, 305 (1958); *U.S. v. Lipinski*, 460 F.2d 234, 237 (10th Cir. 1972).
25. *Miller, supra*.
26. "Enforcement, Not Terror," *Miami Herald* editorial, April 25, 1998. For more examples see Joge, Carmen T., *The Mainstreaming of Hate: A Report on Latinos and Harassment, Hate Violence, and Law Enforcement Abuse in the '90s*, Washington, DC: National Council of La Raza, November 1999.
27. *Brignoni-Ponce*, 422 U.S. at 884 (1975).
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42. Eyewitness accounts and Palatka Daily News, January 29, 1997. See *The Mainstreaming of Hate: A Report on Latinos and Harassment, Hate Violence, and Law Enforcement Abuse in the '90s*, op.cit.
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