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An Up-Close Perspective: The Enforcement of Federal Immigration Laws by State and Local Police

Maria Fernanda Parra-Chico[1]

INTRODUCTION

The attacks of September 11, 2001, evoked a debate over whether, and to what extent, the federal government should employ the resources and efforts of local law enforcement agencies to carry out U.S. immigration law mandates.[2] Today, state and local governments—working closely with federal authorities—are enacting laws and ordinances seeking to increase the regulation of noncitizens.[3] Such regulation exhibits a clash of authorities: the federal government enforcing immigration law as a foreign policy issue, and state and local governments enforcing immigration law via their own laws and ordinances.[4] Across the country, state and local governments are enacting laws and ordinances that criminalize harboring, transporting, or hiring undocumented immigrants; that prevent the provision of state assistance to undocumented families; that impose fines on landlords who rent to undocumented persons; and that authorize local police to question the immigration status of anyone detained or arrested.[5] The federal government is essentially subcontracting the enforcement of immigration law to state and local sectors, through the criminalization of immigrants and the delegation of criminal and civil immigration law enforcement. These changes have wrongly placed city, county, and state local law enforcement at the intersection of criminal justice and immigration law.[6]

The Supreme Court has held that Article I, Section 8 of the Constitution grants Congress and the federal government the sole authority to enforce immigration law.[7] Localities can only legally enforce immigration law

when they have signed a Memorandum of Agreement (MOA) with the federal government, deputizing local police officers to enforce immigration law.[8] Yet some localities persist in enforcing civil immigration law even without an MOA.

The state of Washington, generally known to be an immigrant-friendly state,[9] has not signed an MOA with the federal government to deputize its police to enforce immigration law.[10] However, some police are still enforcing immigration law both by partnering with Immigration and Customs Enforcement (ICE) and by acting independently as immigration agents, without any basis in federal or state law for their actions. Though MOAs provide police with lists of their responsibilities and duties with respect to immigration enforcement, the state of Washington is wise not to adopt an MOA.[11]

Local enforcement of civil immigration laws raises many daunting legal, logistical, and resource issues for state and local agencies and the diverse communities they serve. The role that local law enforcement plays within the immigrant community should be guided and assessed to promote the well-being of all. This article will clarify local law enforcement's role in the enforcement of civil immigration law and will illustrate why these officials should not act as immigration agents or adhere to policies that repress the immigrant community. This article presents proposals for reform that thwart local agendas to enforce anti-immigrant laws, enhance public safety, and raise awareness about issues affecting immigrants and their communities.

Part I of this article presents a historical and legal analysis of the development of laws in the federal, state, and local sectors. Part II discusses the negative consequences of immigration enforcement at the state and local level and examines how this enforcement undermines the relationship between local law enforcement and the communities it serves. Part III presents the state of Washington as a case study to further delineate how the encroachment of local law enforcement into the immigration

arena—when not guided by an affirmative, immigrant-friendly approach—can criminalize immigrants and lead to exhorbitant costs on a fiscal and social level. Part IV proposes several changes at both the national and local levels, including a ban on the enforcement of immigration law by police officers and tactics that will rebuild trust in and dispel fear of the police. Ultimately, the section proposes a remedial course of action to ensure that citizens and community members can benefit from the positive influence that police should play in their communities.

I. THE HISTORY, LEGALITY, AND PROCEDURAL ISSUES OF LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAW

A. Legal Uncertainty as to the Role of Local Police Enforcement

Before 9/11, local police officers rarely enforced immigration law.[12] It was accepted law and practice that police could enforce only criminal immigration violations and not civil immigration violations.[13] Criminal violations include reentry after deportation, failure to depart after an order of removal, and most crimes involving moral turpitude or categorized as aggravated felonies.[14] Civil violations include illegal presence and failure to depart after the expiration of a temporary visa.[15] The division between civil and criminal immigration law enforcement was established by the court in *Gonzalez v. City of Peoria*, the MOA provisions of the Immigration and Nationality Act (INA) of 1952,[16] and the Department of Justice (DOJ). All three indicate that local police authorities could not enforce civil immigration laws.[17]

However, in the wake of the 9/11 attacks, issues of national security and immigration raised the question of whether local police could assist with immigration enforcement.[18] The DOJ Office of Legal Counsel, under Attorney General John Ashcroft, issued a memorandum that stated that local officers have "inherent authority" to enforce both criminal and civil provisions of federal immigration law.[19] The memorandum, made public

after a controversial struggle to obtain it, revealed a significant shift in DOJ immigration policy.[20] It concluded that states, as sovereign entities, have the authority to enforce all federal laws and that "federal statutory law poses no obstacle to the authority of state police to arrest aliens on the basis of civil deportability."[21]

Despite information in the DOJ memorandum suggesting otherwise, state action regarding immigration enforcement must be consistent with federal authority.[22] Federal law states that the federal government and Congress have the sole authority to enforce civil immigration law.[23] Local police do not have the authority to enforce civil immigration law unless mandated by federal law, pursuant to an MOA.

B. Federal and State Overlap of Immigration Law Enforcement: Due Process and Developments

Today we see a blurring of lines of authority between federal and local law enforcement of both criminal and civil immigration laws.[24] Proposed federal legislation would declare local law enforcement officers to have inherent power to enforce immigration laws.[25] This would in essence merge the immigration-enforcement sector with the criminal justice sector. This section identifies the due process issues involved when police venture into immigration regulation, and it identifies problems with the melding of authority between traditional police officer duties and immigration agents' duties.

1. Due Process Issues

While there are many parallels between criminal procedure and immigration law, the two areas invoke vastly different constitutional protections.[26] The rights of criminal suspects are embodied in the Fourth, Fifth, and Sixth Amendments; immigration law is governed by the Due Process Clause.[27] In criminal law, police can consensually communicate with an individual without reasonable suspicion of criminal activity,

forcibly stop and briefly detain a person when there is reasonable suspicion, and arrest an individual when issued a warrant or with probable cause (when the facts and circumstances indicate an individual has or is committing a criminal offense).[28] Immigration law, on the other hand, grants authorized officers the authority to interrogate individuals and to make warrantless arrests of anyone they believe is unlawfully in the United States.[29] Thus civil immigration investigations do not necessarily afford the same level of protection as criminal investigations. Individuals may be questioned by police because of their race, skin color, name, or the language they speak, and subsequently be arrested for a civil immigration violation. If local police arrest individuals based on a civil deportation order or a listing in the National Crime Information Center (NCIC) database, such arrests are likely to be based on evidence that falls short of the requisite probable cause standard.[30] If immigration status is to become a question of importance in criminal enforcement, then care must be taken to ensure that the evidence supports a criminal enforcement. Violations of individual constitutional rights, which are more likely to occur when local police enforce immigration law, should be disconcerting to all Americans.

2. Developments: Devices Used to Blur Federal and State Authority

Disregarding the constitutional implications, the DOJ continues to put pressure on state and local governments via particular mechanisms and strategies. These developments reflect a "sea of change in the traditional understanding that federal immigration laws are enforced exclusively by federal agents."[31]

a) Memoranda of Agreement

Nonfederal law enforcement agencies may enter into MOAs with the federal government, allowing the agencies' deputized officers to enforce criminal and civil immigration law.[32] In effect, section 287(g) of the INA provides that state and local authorities may take on roles traditionally

reserved for the federal government.[33] The U.S. Attorney General, at the request of the state or local entity, enters into an MOA with the entity and directly supervises the law enforcement group.[34] Currently, there are sixty-three active MOAs across the United States, and the waitlist is long.[35] ICE credits the MOA program with identifying more than seventy thousand individuals, most already incarcerated, who are suspected of being in the country "illegally."[36]

The basic training standards required by the MOA for local law enforcement officers are controversial.[37] The ICE training course for MOA officers typically takes four weeks, whereas federal immigration officers are trained for five months.[38] Generally, ICE officers must attend a seventeen-week Immigration Agent Basic Training, and agents in the field complete additional on-the-job training.[39] Thus, there is an increased likelihood of racial profiling and civil rights violations when local law enforcement officers are minimally trained, in comparison to federal immigration agents, to enforce immigration laws. [40]

MOAs grant local law enforcement the authority to independently do the following: interrogate individuals in order to determine probable cause for an immigration arrest; prepare immigration detainers and affidavits; take sworn statements; transport aliens under arrest; notify ICE within twenty-four hours of any arrests made under this authority; prepare a Notice to Appear (NTA) for immigration purposes; and assist in pre- and post-arrest case processing of individuals taken into custody by ICE.[41] The power to issue a detainer is one of the most troubling delegations of authority by the MOAs. A detainer, in essence, means that any individual, suspected of violating an immigration law cannot be released on bond from jail until federal immigration agents determine the individual's immigration status.[42] Thus, law enforcement officers can arrest an individual, and under MOA authority, place an "immigration detainer" on him with the belief that the person is an undocumented alien.[43] Racial profiling is likely in such a context.

MOAs result from negotiation between the federal government and states or localities for delegation of civil immigration law enforcement authority.[44] Since the local law enforcement agency's powers, duties, and duration of authority are subject to negotiation, it is quite possible that an MOA can be agreed upon that partly protects individual civil rights.[45] Provisions for proper training of officers and procedures for complaints and redress when the laws are improperly applied would go a long way toward protections of individual civil rights. But even these possible additions to the negotiated terms of the MOA do not rectify the danger MOAs pose.[46]

Unfortunately, MOAs are indicia of an anti-immigrant trend to detain and deport anyone suspected of violating immigration law. The flawed logic of MOAs is that allowing local police to detain a large number of people for a broad range of minor offenses, including civil immigration offenses, makes it easier to catch the small percentage of undocumented persons who are violent criminals.[47] Correct logic recognizes that "criminals"—those who threaten public safety—are no more likely to be present in the immigrant population than in the general population. At the same time, many criminal violations, such as theft, assault, and fraud, trigger immigration violations.[48] When MOAs make immigration enforcement a police officer's duty, safeguards must be in place to assure that individuals merely unlawfully present in the United States are not unfairly equated with individuals guilty of a deportable criminal offense for which they are deemed a threat to public safety.

b). The Expansion of the NCIC Database

Currently, police may access the FBI's criminal database, the NCIC, for everyday stops and encounters. Since 2001, the INS has begun to enter civil immigration information into the NCIC.[49] With access to the NCIC database, local law enforcement can query the immigration status of detained indivdiuals. This results in noncitizens being arrested for suspected civil immigration violations.[50]

The NCIC database, a computerized tool used to assist law enforcement officers in identifying criminal suspects, contains "subfiles" of information on an expansive range of criminal activity listings.[51] Prior to August 2003, the listings pertinent to immigration enforcement were limited to criminal immigration violations such as re-entry after deportation, which is an immigration felony.[52] Starting in August 2003, Attorney General Ashcroft announced the addition of new categories to the NCIC database, including categories for people who have committed civil immigration violations.[53]

Filling the NCIC database with information about millions of people with minor civil immigration violations results in poor data management and enforcement problems.[54] While the Department of Homeland Security (DHS) reports that an immigration status query takes fifteen minutes, some local law enforcement officials have reported that it takes several hours to get the results of a single query.[55] This delay results in part because immigration records have high levels of inaccuracy.[56] As stated by the National Immigration Forum, a "factor compounding the inaccuracy problem was the decision of the Attorney General in 2003 to exempt [the] NCIC database from the accuracy requirements of the Privacy Act, in effect relieving the government of responsibility for ensuring that records are accurate, timely, and reliable."[57] Based on these concerns, the Committee of the Major Cities Chiefs Association (MCCA) recommended that civil detainers be removed from the NCIC database.[58]

Moreover, local law enforcement lack clarity regarding the appropriate use of the database and training regarding the expansion of the database. The federal government has not provided guidance to non-MOA states and localities on the proper use of the NCIC database.[59] Consequently, these non-MOA police officers overstep their authority by arresting individuals without probable cause or detaining them without reasonable suspicion. For example, if the police run a name through the NCIC database and find that an individual is listed in either the absconder subfile—meaning a removal order was issued for an individual—or National Security Entry-Exit

Registration System (NSEERS) subfile, the police are not automatically entitled to a criminal warrant because neither removal orders nor violations of the NSEERS program are crimes.[60] However, according to an Appleseed report, "it often appears that police are making arrests in cases where there is a match in the NCIC database, without the actual criminal warrant. Accordingly many police officers may be stepping outside the scope of their authority."[61] Similarly, the Immigration Committee of the Major Cities Chiefs Association stated that "[t]he inclusion of civil detainers on the system has created confusion for local police agencies and subjected them to possible liability for exceeding their authority by arresting a person upon the basis of a mere civil detainer."[62]

The Migration Policy Institute (MPI) conducted an analysis of the use of the NCIC database by state and local police forces. It found that of the 20,876 immigration hits from state and local agencies from 2002 to 2004, the error rate—that is, the percent of hits where ICE could not confirm the information—was 42 percent.[63] The MPI also found that 85 percent of all immigration violators identified in a statistically significant sample of the NCIC hits were from Latin America and 71 percent were from Mexico.[64] This information indicates that the NCIC files are not being used to further prevent criminal activity or a targeted antiterrorism agenda, as the DOJ policy proffers.[65] In addition, immigration attorneys are ever more hesitant to send fingerprint checks to the police when seeking a background check because ICE may apprehend the individual if the NCIC check results in a positive "hit."[66] Thus, the NCIC database facilitates unfettered local police authority to enforce immigration law and disrupts the designation of authority between federal agents and local police.

With or without an MOA, "[w]hen state and local law enforcement officials are not adequately trained and informed to ascertain the difference between a bonafide asylum seeker and an individual who may be fraudulently trying to circumvent the [immigration] system," the lack of training and guidance for local law enforcement in immigration matters

disrupts the nation's public safety agenda and burdens the immigration enforcement system.[67]

III. PROBLEMS ASSOCIATED WITH LOCAL LAW ENFORCEMENT OF IMMIGRATION LAWS

The inappropriate use of NCIS and MOAs indicates that local law enforcement officers are diverting their time from the promotion of a public safety agenda to the enforcement of civil immigration law veiled under a national security agenda. This section will outline the problems when local police enforce immigration laws outside of an MOA.

A. Inadequate Funding for Additional Obligations Imposed on Local Law Enforcement.

Local police involvement in an immigration agenda is not funded by the federal government. Consequently, scarce resources are diverted from more critical law enforcement needs, which undermines community policing programs.[68] According to the MCCA, "[s]ince the creation of DHS, federal funding for major city police departments has been greatly reduced. Local agencies have had to take on more responsibilities in areas that have traditionally been handled by the FBI, whose resources are now focused on counter-terrorism efforts."[69] Further, given current resource levels, the cost of personnel, facilities, and equipment for local agencies to address the twelve million illegal immigrants currently residing in the United States would be crushing.[70] A costly investment in immigration enforcement creates a budget-revenue shortfall for cities that are also dealing with financial issues related to transportation, waste management, parks, schools, and libraries.[71] Thus, costly state- and local-level immigration agendas often allow for a misguided appropriation of money and resources.[72]

B. The Problem of Costly Litigation

Another problem associated with police enforcement of immigration laws is the danger of costly litigation. With immigrant plaintiffs proving successful in courtrooms nationwide, states and cities are left burdened with litigation expenses.[73] Local agencies lack clear authority to enforce immigration laws, are limited in their ability to arrest without a warrant, are barred from racial profiling, and lack the training to enforce complex federal immigration laws. Therefore, local police agencies that choose to enforce federal immigration law face an increased risk of being held civilly liable.[74]

The "Chandler Roundup" and the expense of its ensuing litigation is an example of local police acting pursuant to the DOJ's finding of inherent authority—supposedly giving local law enforcement the ability to enforce immigration law—and losing in court.[75] Police officers from the town of Chandler, Arizona, joined federal agents in a five-day operation resulting in the deportation of 432 Hispanic immigrants. The City of Chandler paid four hundred thousand dollars in a legal settlement after the plaintiffs alleged that the undocumented immigrants were stopped and questioned exclusively because of their apparent Mexican descent.[76] Later, Arizona Attorney General Grant Wood stated that individuals in fact were stopped "for no other apparent reason than their skin color or Mexican appearance or use of the Spanish language."[77] Furthermore, the Chandler Roundup led to the filing of a thirty-five million dollar civil rights lawsuit brought by U.S. citizens and legal permanent residents against the City of Chandler.[78]

By enacting legislation that directly prohibits local police from enforcing immigration laws not mandated by law (e.g., "Don't Ask" ordinances) and excluding the presence of ICE in local police business involving civil immigration violations,[79] state and local governments can avoid the high litigation costs, which directly burden the community and taxpayers.[80]

C. De-emphasis on Criminal Investigations

Ultimately, the implementation of practices that allow state and local police officers to enforce immigration laws via their own in-house, nonfederally mandated programs may "de-emphasize certain types of criminal investigations in an effort to focus on enforcing immigration law, which would divert law enforcement authorities from their primary duties."[81] Judith Golub, of the American Immigration Lawyers Association, stated that "[i]n many communities, response times to 911 calls are dangerously slow and police are no longer able to even investigate certain crime. Law enforcement officials in these communities need to spend more time enforcing laws that only they can enforce, and need more resources to protect the neighborhoods in which they live and work."[82]

The types of offenses that trigger immigration consequences include crimes involving moral turpitude (e.g., certain forms of assault, theft, fraud, abuse) and relating to controlled substances and firearms, aggravated felonies (e.g., murder, rape, drug trafficking, robbery, burglary, deceit, failure to appear, illegal reentry), domestic violence, stalking, child abuse, fraudulent document use, and other specific offenses.[83] These types of crimes will result in the arrest and ultimate deportion of an individual. When police focus on their job—the enforcement of criminal violations and enhancement of public safety—it makes sense that some individuals who are undocumented will be arrested. However, arresting someone merely because of a civil immigration violation does not mean that crime will be prevented. For example, suppose that when an individual called to report a crime of domestic violence, police were required to check whether the witness and his family had compulsory liability insurance on their vehicle or whether their taxes had been filed.[84] Quite possibly, individuals would adhere more fervently to these regulatory requirements, but cooperation by the populace to control crime would rapidly decline.[85]

D. The Problem of Racial Profiling

Not surprisingly, racial profiling exists in cases involving ICE officers and border patrol agents.[86] Immigration officers familiar with the case law are experienced enough to create prefabricated profiles that will convince courts that the officers' stops were not based solely upon race or ethnic appearance.[87] After stopping an individual, it is easy for an immigration officer to strengthen his case for reasonable suspicion through interrogation and then communicate the necessary articulable facts after the fact.[88] Without proper boundaries and designation of authority, state and local police officers may also abuse their authority by using the same tactics that immigration officers use in enforcing criminal and civil immigration laws. Naturally, the issue of racial profiling in local police enforcement of immigration law is complicated because there is no ironclad formula for formulating reasonable suspicion when detaining someone for a civil immigration violation.[89] Nevertheless, local law enforcement should invest energy in arresting criminals, not individuals "suspected" of violating civil immigration laws based on their appearance, employment, or association with others who are undocumented or arrested for criminal matters.

E. Immigration Detainers

Another area where joint collaboration beteen ICE and police requires close scrutiny and observation is in local jails. Under current practice, if a police officer brings an undocumented noncitizen to jail following an arrest, a stay at the jail—regardless of the length of the stay and even if no charges are ulimtately filed—will most likely lead to the deportation of the noncitizen once an immigration detainer is issued.

Today, many immigrants come into ICE custody due to a violation of a state or local law. Under many state laws, the jailer who processes the arrestee in jail is obligated to report to ICE if they have reason to believe an individual is a noncitizen.[90] Police and jailers flag individuals by picking out those with foreign sounding names or spotting those who list themselves

as being foreign born on intake forms upon arrival at the jail.[91] It is believed by many ICE officers, police, and jailers that a jailer possesses discretion to make a report to ICE in any case involving an undocumented noncitizen. Currently, there are no federal or state laws providing guidance in this area of discretionary reporting; there are no definitive court cases either.[92]

After ICE receives a report of an individual in custody, who may or may not be a noncitizen, ICE almost always issues an immigration detainer by transmitting an I-247—the immigration detainer—to the jailer.[93] The I-247 form is the immigration detainer, or "immigration hold."[94] An immigration detainer is a notice to the jail that they must tell ICE when they are releasing the individual. It permits the jail to hold a person for up to forty-eight hours after release for ICE to come and act on the arrest.[95] The immigration detainer prevents the immigrant from being released on bond, and it ensures that the immigrant will be taken into immigration custody upon release.[96] ICE cannot extend the forty-eight-hour period, and ICE must appear in person within forty-eight hours to assume physical custody of the immigrant. If not, the jail must release the individual.[97]

Prosecutors must charge any individual once in custody with a crime within forty-eight hours (not counting weekends and holidays).[98] If a police officer or a prosecutor does file criminal charges, then the individual must be released if (1) the charges are dropped, (2) the individual is granted bail, (3) the case is won, or (4) the sentence is complete.[99] However, in many localities with large immigrant populations, ICE officials have a constant and vigilant presence at the jails, interviewing immigrants daily.[100] Because ICE and police work together, ICE will inquire about his or her immigration status and transfer him or her into immigration custody[101] when police flag the individuals who they suspect are noncitizens, regardless of whether the noncitizen is charged, the charges are dropped, or jail terms are completed. Thus, many immigration detainers are being placed on individuals before they are even charged with a crime.

IMMIGRATION

Several complications arise from the immigration detainer process. The most frequent is the violation of the forty-eight-hour time period between the issuance of an immigration detainer and ICE assuming physical custody of the individual. Reports are surfacing nationwide of extraordinarily long lapses before the noncitizen is transferred from a local jail to an immigration detention facility.[102] In one case, a young Mexican woman waited three months in jail to be transferred to a detention facility after being arrested for driving without a license.[103] The possibility for habeas corpus petitions are ripe[104]—violations of the terms of the immigration detainer can result in civil liability for the jailer under 42 USC § 1983, as well.[105] However, immigrants in custody are often unaware of relief mechanisms in place.

In the past, ICE would place holds on people for violations of criminal immigration laws such as theft or domestic violence. Today, the flagging of immigrants for civil immigration violations reveals another new and worrisome trend that highlights an agenda to arrest, detain, and deport *anyone* suspected of violating *any* immigration law. In the most frequently reported cases, individuals are arrested for driving without a license and subsequently taken into custody where ICE then places holds on them.[106] Not only does arrest for minor offenses followed by a flag for ICE to impose a hold create evidence that may fall short of the requisite probable cause standard for the arrest, but it also calls into question police tactics if immigrants are being stopped based on their appearance. Police are able to consensually communicate with an individual without reasonable suspicion, and at times, they may inquire into the person's immigration status. If the individual responds or seems agitated, arguably, police may have enough evidence to determine that there is probable that an individual is unlawfully present in the United States. And though police, unless mandated by an MOA, should not be arresting individuals for civil immigration violations, police are doing so in localities where there is a lack of clarity in immigration enforcement.[107]

ICE, police, and jailers should work together to arrest, flag, place immigration detainers on, and subsequently deport individuals who are guilty of a criminal immigration violation. When individuals are picked up by police for a mere civil immigration violation and subsequently taken to jail to procure their deportation, an anti-immigrant agenda is highlighted that is not only frightening to immigrants but that also threatens our constitutional guarantees.

F. Distrust of Police: The Downfall of Crime Prevention and Public Safety

When no ironclad formula exists for determining reasonable suspicion in police enforcement of immigration law and when local police enforce immigration law without clear federal authority designated by law, a heavy burden is placed on the community. Crime prevention and public safety suffer, and distrust of local police becomes a constant repercussion of local police action. Undocumented individuals are extremely wary of reporting criminal activity or assisting police in criminal investigations when police damage the relationship with the communities they serve.[108] The fear of deportation for noncitizens often deters them and their family members from reporting abuses, making it more difficult for police to effectively do their jobs.[109]

According to the National Immigration Forum, "[i]t is the need to effectively protect the whole community that has led scores of police departments to reject policies that would expand their role in federal immigration law enforcement."[110] For example, Attorney General Wood of Arizona stated that "[i]t is mutual trust and respect that will in turn enhance the ability of local police to obtain from willing citizens the information and support necessary to carry out their mission to protect and serve."[111] To promote trust, police should refrain from enforcing immigration laws. As examples, two states and several localities have adopted procedures that discourage local involvement in enforcement of immigration laws.[112] Sometimes localities address these issues through resolutions, city

ordinances, special orders from the police chief, or departmental policies.[113] Many of these measures stipulate that the localities' funds cannot directly or indirectly be used for the purpose of enforcing immigration laws.[114] Such measures create trust.

G. Immigrants as Victims

1. Afraid to Step Forward

If immigrants are reluctant to report crime because of collaboration between ICE and local police, criminals will be encouraged to further victimize immigrant communities.[115] Police should maintain a relationship of trust with the local population, regardless of citizenship, so that victims of crime can step forward without the fear of revealing their status.[116] At the forefront of this concern are victims of domestic violence. In passing the Violence Against Women's Act (VAWA), Congress recognized the need to address the concerns of battered immigrant women by allowing them to obtain legal immigration status without having to be dependent on their abusers[117] These women will only be safe if courts issue protective orders against the abusers. In order to facilitate this, police must effectively assist these women; therefore, part of the job of the police is to gain the trust and faith of battered immigrant women.[118]

If police are equated with ICE agents, entire households of battered women and children will be reluctant to take initial steps to become independent of their abuser out of fear of the police—the individuals assigned to "serve and protect." Many women are worried that reporting their abusers may conclude with deportation of themselves and their abusers. Even more troubling is when abusers continue to batter, relying on the threat of deportation. For example, in 1998, an immigrant woman in New Jersey, Elena Gonzalez, was found murdered in the basement of her apartment.[119] Elena's friends reported that the murderer, her former boyfriend, consistently threatened to report her to ICE if she did not do

what she was told.[120] When an immigrant woman has to choose between her safety and the likelihood of deportation, crime prevention is difficult to achieve and the immigrant community is less safe.

2. Hate Crimes

Hate crimes toward immigrants are on the rise. A heightened anti-immigrant sentiment has also blocked immigration reform, spurred anti-immigrant propaganda, and sought to turn local police into immigration law enforcers.[121] Undocumented individuals are extremely vulnerable targets for hate crimes because they may not speak English, they are undocumented workers, they may keep cash on their persons and in their homes, and they are likely to be reluctant to report crimes to law enforcement.[122] The FBI reports that anti-Hispanic hate crimes rose by almost 35 percent between 2003 and 2006. According to President and General Counsel of MALDEF, John Trasviña, "[t]he FBI report should serve as a wake up call to our nation's leaders to take action on comprehensive immigration reform, reduce tensions, and safeguard the basic civil rights and liberties of all Americans."[123]

The Southern Poverty Law Center produced a report outlining the dramatic increase of hate crimes, particularly those directed at Hispanic individuals.[124] For example, Victor Hernandez, a Honduran immigrant dishwasher, was walking home from work when he was kicked into unconsciousness by teenagers who robbed him of $160.[125] The two teens arrested told police they were "amigo shopping"—seeking vulnerable Hispanic workers to rob.[126] Another example of the intentional victimization of undocumented individuals occurred in Tifton, Georgia, where six Mexican immigrants—men, women, and children—were murdered and at least five others badly injured.[127] A group of robbers had rampaged through four trailer parks known for housing immigrant workers and murdered these men, women, and children. The trailer parks are well known for home invasions, and months prior to the murders, over 20 homes

there had been invaded.[128] A founding member of the Minutemen stated that the point of these kinds of hate crimes is to "make every illegal alien feel the heat of being a person without status."[129]

The lack of trust between immigrants and police sets the stage for the persistent recurrence of hate crimes. Local police involvement in immigration enforcement serves as a deterrent for undocumented individuals who are seeking to report crimes, and the upswing in hate crimes directed at immigrants results in an entire community indirectly affected by violence.[130]

3. Trafficking

Police must be thoroughly trained so that they possess the expertise required to handle extremely complicated cases, such as trafficking, that typically involve a high number of undocumented individuals. Proper training of police officers is necessary to avoid responses that revictimize victims and decrease their willingness to serve as witnesses against the traffickers.[131] For example, in July 1997, fifty-eight deaf and mute Mexican workers were discovered living as slaves in New York. According to the National Council of La Raza, the workers "were tricked into coming to the United States and were absolutely exploited by their smugglers. . . . [T]hey were beaten, raped, traded, and shocked into submission with stun guns. . . . [T]he immigrants feared going to the police because they were undocumented and their smugglers threatened to report them to INS."[132] None of them had contacted the police because they feared being reported to the immigration authorities, making it apparent that police departments needed to actively engage with and reach out to immigrant communities in order to properly establish trust.[133]

Without police assistance and cooperation, communities cannot work together to prevent such atrocities and punish perpetrators. A predictable chilling effect on law enforcement, as it is being carried out nationally, will result if a noncitizen, lawfully or unlawfully present in the United States,

believes that calling the police to report a crime is likely to lead to police questioning regarding immigration status.[134]

For the reasons discussed in this section, local police enforcement of immigration law should be avoided. Enforcement of immigration law is costly and will likely result in litigation. Further, if the local police's role is to serve and protect the community, it does not bode well if members of the community are distrustful of the police and afraid to report crime. Because undocumented citizens are often the most vulnerable to becoming victims of crime, as shown through the examples above, they are not being protected when they are afraid to contact their local police.

IV. WASHINGTON: A NON-MOA STATE

Washington is not an MOA state, meaning that state and local police are not deputized to enforce immigration law.[135] Further, the Ninth Circuit has held that state and local officers are not authorized to make arrests for civil violations.[136] Finally, Washington State Patrol Regulation 1.00.040 states that officers shall not stop, detain, interrogate, or place an immigration hold on any person solely for the purpose of ascertaining immigration status. If police arrest someone for a criminal violation, officers have discretion to notify ICE if there is reasonable suspicion based on articulable facts that the person is undocumented, other than a person's nationality, name, or ability to communicate in English.[137]

Because an individual's name, nationality, and ability to communicate in English are not factors that should be used to reach the requisite standard under the regulation, the reason for which a police officer would have reasonable suspicion to notify ICE is a slippery slope. Under Regulation 1.00.040, it seems that the only way a police officer could suspect that a person is undocumented would be if the individual stated to the police officer that he or she is undocumented; if the police officer called ICE or verfied the individual's immigration status on the NCIC database; or if the

individual did not have a valid driver's license or identification available during an interrogation stop, detention, or arrest.

Sadly, in most instances, noncitizens do not know that they have the right to remain silent on if an officer inquires into immigration status, and their admittance allows police and jailers to flag them in jail. Because police are not supposed to enforce civil immigration violations, but inevitably are doing so, attempts should be made to ensure that they are not singling out noncitizens in enforcing immigration violations and notifying ICE without reasonable suspicion based on proper articulable facts.

Across the various jurisdictions in Puget Sound, local law enforcement agencies are dealing with immigrants in different ways. In Seattle, for example, deputies act under an official policy that prohibits them from inquiring about an individual's legal status.[138] Conversely, in other cities and counties, unwritten policies and individual discretion guide law enforcement officers dealing with immigrants. Many Washington cities and counties are working directly with ICE to target undocumented immigrants, and their justification for involving ICE ranges broadly.[139] For example, in Lynnwood, ICE officers go on ride-alongs and share desk space with the Lynnwood Police Department.[140] These statewide informal ties with ICE were initiated because of a demand for public safety, yet public safety is not ultimately improved by the police having an informal relationship with ICE and enforcing immigration law.[141]

A. Pretexts Throughout Washington: The Impact and Foreseeable Consequences of Police Overstepping

1. ICE as Interpreters

However, reports of police not only enforcing immigration laws, but improperly using ICE interpreters are becoming more frequent in Washington. In Mason County, the sheriff's office detained, arrested, and subsequently deported twenty-four Guatemalans for alleged brush theft.[142]

Upon detaining the individuals, police officers called ICE for interpretation assistance because they could not find anyone who spoke Mam, despite the fact that local Mam interpreters were reportedly available.[143] When local police enforce immigration law, opportunities arise for even more egregious behavior. Under Regulation 1.00.040, every effort should be made to obtain interpreter assistance from sources other than ICE; ICE translators should only be used when all other sources are reasonably unavailable.[144]

2. Informal Relationships: ICE and Local Law Enforcement

Similar to the Mason County incident, the city of Lynnwood also justifies police collaboration with ICE. Lynnwood gives courtesy desk space to ICE agents at the local police station station. This informal relationship between Lynnwood and ICE also consists of ICE agents going on ride-alongs with Lynnwood officers in cases that involve suspected "illegal aliens"—particularly if the investigation pertains to gang activity.[145] The city of Bothell, Washington, also works with ICE directly; Shannon Sessions, ICE spokeswoman, stated about the relationship, "It's a convenient arrangement and has been helpful for educating our officers."[146]

This close and informal relationship with ICE creates many problems and runs the risk of violating individual civil rights. For example, if police officers and ICE agents are going on ride-alongs together and they encounter an individual who could be undocumented, police cannot make an arrest unless they have probable cause to assume that a crime has taken place. However, ICE agents are able to interrogate and subsequently arrest "any alien or person believed to be an alien as to his right to be or to remain in the United States" without a warrant.[147] Thus, not only could police be facilitating the enforcement of immigration laws without authority, but they could be making investigatory stops on ICE's cue and arresting individuals unlawfully with standards that fall short of the requisite reasonable suspicion or probable cause, but are in accordance with ICE authority.

In localities where ICE and city police officers team together and share resources, such as in Lynnwood, crime prevention is seemingly oriented towards the enforcement of immigration laws.[148] For example, in ride-alongs, Lynnwood police officers have arrested individuals for having a missing taillight, and the ICE agent accompanying the police officer has subsequently inquired into the individuals' immigration statuses.[149] Another example is the arrest and ensuing deportation of a Lynnwood resident by an immigration officer when the resident attempted to pay a traffic fine.[150] In Lynnwood, the chair of the Community of Color Coalition, Kinuko Nobirikawa, stated that "[i]nformation provided . . . by citizens and community groups indicates that the Lynnwood Police Department is actively working with ICE in setting up check points, stopping and detaining persons suspected by ICE."[151] Lynnwood called ICE to help them deal with gangs but instead used ICE to help stop people based on their race and inquire about immigration papers when they had been involved in something as minor as a traffic incident. A nexus indeed exists between ICE and local police; however, this partnership is not authorized by federal law, designated in an MOA, or worthwhile to the community.

3. Case Study from Pacific, Washington

a) Increased Deportation Proceedings

Encounters with law enforcement in Pacific, Washington, often leave undocumented individuals in deportation proceedings.[152] According to the City of Pacific police records, the largest amount of police activity between August 12, 2007, and August 30, 2007, consisted of transporting people to immigration detention centers.[153] Pacific Lt. Edwin Massey tells his officers that they should pursue immigration issues, even though the department has no specific immigration enforcement policy.[154] Under the guise of a traffic stop, Pacific police are using racial profiling to scan

people's driver's licenses and question their immigration statuses.[155] Lt. Massey teaches officers that a police officer's first clue that a motorist's immigration status is in question may come when the officer runs a driver's license and gets all zeros in place of a Social Security number.[156]

Since January 2008, people have been pulled over by Pacific police for incredibly minor traffic violations, such as not having enough air in their tires.[157] In September 2007, local police harassed and arrested a Pacific man, in the United States on a visitor visa, after his car was hit by another driver.[158] The man was detained after showing his Mexican driver's license. In Washington, it is legal to drive with a foreign driver's license for up to one year; a community activist pointed out, "Canadians do it all the time and never deal with these problems."[159] Yet in this case, a man was arrested despite showing his visa and was detained at the jail until the next morning. While he was held in jail, he was unnecessarily fingerprinted—because he had a visa—and charged a fee for the process.[160]

Given such incidents, Pacific Mayor Richard Hildreth gave a public order to the Pacific Police Department to stop inquiring about immigration status; however, six additional people were detained for "immigration violations" subsequently.[161] Commenting on the large numbers of immigrants detained after encounters with local police, Police Chief Calkins of Pacific stated, "I'm proud of my officers and the job they're doing. I told them if there's a violation, whether federal, state, whatever, they're not to just turn their backs on it."[162]

Across Washington, deportation may ensue after a mere encounter with police or hosted ICE agents. Tactics like those of the Pacific Police Department inevitably lead to the detention and deportation of individuals who often have no criminal record and are merely in the United States without legal authority. After being detained by police officers and brought into custody, these individuals must remain in jail and await their transfer to an immigration detention facility, such as the one in Tacoma, WA.[163] In

cities in Washington, this wait is long and becoming longer as space in Tacoma becomes less available.[164]

b) The "How To" of Immigration Enforcement

In response to a public record request, Sgt. Picket of the Pacific Police Department released his 2007 memo outlining "how to do immigration violations."[165] In the memo, Sgt. Picket explains, "I ask them directly if they are illegal. Most of the time they say yes. Sometimes they tell me I don't have the right to ask about that. At that point, I detain them for investigation of the immigration violation and put them in the back seat." He then concludes "The violation comes here from the US Code Title 8. In spite of what people in the immigrant community are being told, you have every right to investigate all violations of the law, including this one. I may not be politically correct, but we are law enforcement officers and our job is to enforce the law."[166] Thus, Sgt. Picket misleads his officers to the detriment of the immigrant community and the public safety of all communities.

c) Fear and Distrust: Community Members React

As Sgt. Picket misleads Pacific police officers to believe that their role is to enforce immigration laws, he and his officers create a sense of apprehension and fear in the immigrant community to the detriment of public safety. Though Chief Calkins of Pacific charges that the fear is being generated by "white activists and outside Hispanic people," it undoubtedly has other sources.[167] Other city council members in Pacific have accused community organizers of being agitators and of creating fears about nonexistent practices, and they say that if the Hispanic community in Pacific is really concerned, its members should be at city council meetings.[168] However, at city council meetings, individuals have been asked outright if they are illegal, thus clearly indicating that anywhere that police officers are present is not a safe place to be in Pacific.[169]

Community organizers were left worried and waiting. In September 2007, feeling that more needed to be done than attending council meetings, the Hispanic community in Pacific planned a march.[170] The organizers contacted the city of Pacific to ask what kinds of permits were necessary for the march and were told that there was no process. However, four days before the event, Mayor Hildreth stated that the march was in violation of a pedestrian code and that all participants in the march would be arrested.[171] In addition, a public records request was made for a document covering the entire year with details similar to the one provided earlier about police behavior; the response to the request was that "there is no requirement to create public records based upon a request for records."[172] In all attempts to understand the situation in Pacific and speak out about the city police's misguided understanding of the law, community organizers have been met with resistance.

A letter from the Commission on Hispanic Affairs to Pacific Mayor Hildreth raised an important point: "because the majority of immigrants have come from developing countries where the government is traditionally corrupt and abusive . . . many cannot even see a uniformed officer without triggering traumatic memories."[173] To the immigrant community, the blossoming police state in Washington is not about creating public safety; it is about enforcing immigration. This culture of abuse of power and distrust of local law enforcement is becoming more common place in Washington, a state considered to be immigrant friendly.[174] According to the PEW Hispanic Center, between two hundred thousand and two hundred fifty thousand Washington State residents are undocumented.[175] With such a large number of undocumented residents, local police must be wary of the potential impact of their enforcement authority.

V. PROPOSALS FOR CHANGE

This article has outlined many of the consequences that ensue when state and local police enforce immigration law. Furthermore, it has argued that allowing state and local officers to enforce immigration law is a mistake. The following sections list both long-term and short-term proposals to limit police enforcement of immigration laws and promote the public safety of those in the community. These proposals also will be beneficial to our communities, empower individuals to come forth and report violent criminals, and uphold our constitutional rights.

A. Proposals for Change on the National Front

1. Reform of Federal Law

Fixing the immigration system requires reforming federal laws; it does not require influencing local police to take on this work independently or mandating they enforce immigration laws via an MOA.[176] Some states and localities endorse using restrictive and punitive measures aimed at making their communities less hospitable to immigrants. However, a nonsegregating and comprehensive reform policy will ensure that a reality-based approach to immigration enforcement incorporates immigrants into the community recognizing them as a key ingredient of shared prosperity.[177] How local agencies respond to the call to enforce immigration laws will fundamentally affect the way they police and serve their communities.

2. Removal of Civil Immigration Detainers from the NCIC System

Removing the civil immigration detainers from the NCIC would decrease the complexity of the NCIC system and contribute to the enforcement of criminal matters. The integrity of the NCIC system as a notice system for criminal warrants and criminal matters must be maintained. The inclusion of civil detainers in the system has created confusion for local police

agencies and has subjected them to possible liability for exceeding their authority by arresting individuals on the basis of a mere civil immigration violation.[178] Therefore, in situations where an individual is arrested for a civil violation in the NCIC system, local agencies must require that police officers request a federal criminal warrant before making any immigration related arrest.[179]

B. Proposals for Change on the Local Front

Police need to understand their duties and the consequences of their behavior. Clear division between immigration enforcement and criminal justice enforcement must be drawn. Similarly, the role of police and their authority to enforce immigration law must be properly outlined. If law enforcement makes it clear that the reporting of a crime—such as burglary, rape, or murder—will not trigger an investigation into the immigration status of the witness, the entire community will be safer because deportation would not be a looming possibility. In order for this to happen, a very strong division must exist between state and local law enforcement and those police and FBI agents—such as those dealing with trafficking issues and human smuggling—who assist the federal government in the enforcement of civil immigration laws.[180] In order to create a strong division between authorities, this section provides the following suggestions.

1. "Don't Ask" Ordinances

In Washington, Seattle is a model city for immigration purposes. Seattle Municipal Code 4.18.015, the "Don't Ask" ordinance, states that "unless otherwise required by law or by court order, no Seattle City officer or employee shall inquire into the immigration status of any person or engage in activities designed to ascertain the immigration status of any person."[181] In 2003, Seattle sucessfully attempted to raise awareness of immigrant presence by highlighting immigrants' colorful cultural heritage and social

vivacity.[182] Moreover, Seattle acknowledged that as an equal service provider to all residents,[183] an obligation existed to respond to the attacks of 9/11 by addressing individual fears of being reported to ICE.[184] When enacted, Don't Ask ordinances promote efforts of police and public health departments to cooperate with immigrant communities in order to reduce crime and improve public safety in those communities.[185]

Most importantly, Seattle acknowledges that all of its city officers and employees should be afforded guidance with respect to inquiries into immigration status.[186] The Don't Ask ordinance enacted in Seattle has made immigrants part of the community, not second-class citizens afraid to contribute to the social welfare in their area. The ordinance has also given procedural order to past questions police had when dealing with immigration enforcement. Don't Ask ordinances list the ways in which city officials and employees can provide support to immigrants and adhere to federal law.[187] When faced with the question of a criminal suspect's identity, an officer should proceed in the same way he or she would with any suspect in that situation, asking for all forms of identification that do not require asking about immigration status. If the officer is not satisfied with the suspect's identity, then he or she can proceed with an arrest or a citation pursuant to the law or department policy.[188]

Confidentiality policies, like the Don't Ask ordinance in Seattle, treat immigration status as a confidential matter and prohibit inquiry. Though proponents of immigration restrictions in police matters argue that confidentiality policies do not protect communities from undocumented immigrants who commit crimes, immigrants who commit crimes are arrested and treated like any other potential criminal.[189] In a 2007 audit, the Department of Justice Office of the Inspector General found that such policies in the jurisdictions it surveyed did not violate federal law and did not impede police cooperation with ICE regarding criminals in police custody.[190] Once the individuals are in custody, ICE can detain them;

however, police should not enforce immigration laws or place immigration detainers on individuals—that is ICE's job.

Immigration status should not be used to feed noncitizens, through the criminal justice system, into ICE's hands. Criminals are subject to the criminal justice system. Eventually, these criminals will enter into the immigration enforcement system as well, but only once they are apprehended and channeled out of the criminal justice system. Criminal justice and immigration are not one and the same, and should not be treated the same by police officers. If immigration status is to become a question of importance in criminal enforcement and if immigration enforcement is to fall under the jurisdiction of a police officer's duty, then accountability must be assured to validate everyone's civil liberties. Given that police do not understand their duties clearly and only a few localities implement Don't Ask ordinances, Miranda warnings should be implicated when immigration is questioned, allowing every individual to understand the consequences in both the immigration and criminal justice systems.

2. Defining Officer Duty and Training Police Without MOAs

The authority of state and local police must be clearly defined. When a locality has a policy that defines a police officer's limits, community leaders and advocates are better able to explain roles and expectations to both the immigrant population and the police. A local policy that clarifies state and local police authority and dissuades police from immigration enforcement enables and encourages police departments to educate their members on issues that could impose liability, for example, in dealing with a matched name from the NCIC subfiles.[191]

a) Training to Create Trust

Police must understand the demographics of their community, and as ethnic populations grow, attitudes must reflect responsiveness and understanding. Diversity training to all city employees on an annual basis

will help to create an immigrant-friendly attitude.[192] If police make an effort to be viewed as members of the community, the fear and distrust will be dispelled. Once trust is gained, police can begin to host community forums in safe locations, such as faith-based environments, that will address the concerns of immigrants and allow them to serve as vigilant community members. As diversity grows in cities such as Lynnwood, police must be more watchful of their actions. The goal is that some day, police can even sponsor a Cinco de Mayo festival or multicultural fair, where information about police, safety, and other city services can be informally distributed without creating fear in the immigrant community given police presence.[193]

In order to create trust and promote protection in immigrant communities, police departments should make an effort to properly train and motivate their employees. For example, police and city employers should explore incentive-based pay and recruitment efforts for bilingual staff who can speak primary languages other than English.[194] Police and city staff should increase recruitment for city job, board, and commission positions to better reflect the demographics of their cities. Recruiting, hiring, and training a more diverse police force will allow members of the immigrant population to relate to officers that look like them.

The politics of immigration are very complex. Dialogue with community activists and legal advocates can be a valuable method to educate police officers with respect to immigration enforcement of civil immigration, the implications of their actions on the community, and the costly consequences of racial profiling, and police officers should be involved in decision-making respective to each of these issues.[195]

b) Training and Racial Profiling Safeguards

Trainings for police officers on racial profiling and immigration enforcement should be mandatory, and community organizations and lawyers should train police, alongside ICE, to assure that all have the same

standards. It is of utmost importance that police officers be informed of the parameters of their role and be held accountable for their actions.

Police should develop a database to record the number of arrests they make where ICE is called, immigration status is questioned, or detainers are issued. It is difficult to hold police accountable for abuse when data is not made available and immigrants are afraid to make reports. Thus, lawyers and community organizations should continue documenting and monitoring how police are treating immigrants; how immigrants are responding to reports of police officials stopping, arresting, and detaining individuals for civil immigration violations; and how police are inquiring into immigration status and dealing with questionable status.[196] Collecting and monitoring data will promote transparency and allow for accountability, thus preventing future suits and costly litigation. Finally, it will provide immigrants with a voice to reflect the injustices they face.

c) Immigration Detainers at State and Local Jails

Accountability within local and county jails is also another high priority. Understanding the strategies that police and ICE use to identify individuals and acknowledging the delays and complications with transfers will help highlight potential constitutional claims and relief for immigrants in jail. Jails must hand over public records to community organizations and lawyers studying the process in order to comprehend the actual policies and practices of the jailers and ICE.[197]

Furthermore, jailers and ICE should work together in jails when dealing with individuals who have questionable immigration status *and* serious criminal charges, as those charges will likely lead to severe consequences in the immigration system. Nonetheless, the way in which jailers identify nationality and immigration status must be lawful and preceded by a Miranda warning. Flagging those who were arrested for mere civil infractions and identifying those people as “aliens” for ICE review based on their place of birth or foreign-sounding name seems more anti-immigrant

than helpful. An absolutely critical response to the immigration detainer is a call to give Miranda warnings if questioning about immigration status on intake forms at jails.[198] Miranda warnings, though not currently required in immigration enforcement issues, should be implicated when immigration is questioned because a noncitizen should be granted the right to understand the consequences that would ensue in both the immigration and criminal justice system if they listed a place of birth on an intake form,.

The implications of any and all statements made in jail and during arrest should be addressed in a Miranda warning. The jailer should also avoid making any reports to ICE regarding noncitizens, unless such information came after a Miranda warning.[199] Giving a Miranda warning to individuals before they state anything that could potentially lead to an immigration hold would assure that ICE focuses their attention on interviewing and holding people with severe criminal charges and harsh consequences in the immigration system. In that sense, burglars, domestic violence abusers, drug traffickers, and other violent arrestees who, once out of the criminal justice system would likely face aggravated felony charges in the immigration system, would fall into the hands of ICE. A Miranda warning would not only assure that rights are granted to all arrestees but would also ensure that attention is paid where attention is due. Driving without a license and being a drug trafficker are two distinguishable crimes, each implicating much more than just duration of time served. ICE is extraordinarily busy when visiting jails, and if ICE were better able to work to ensure that those who threaten public safety are processed by both the criminal justice system and the immigration system, efficiency will be enhanced and justice better served.

A clear division in authorities between police and ICE must be outlined in order to detain those who truly deserve to be detained by ICE. Immigrants are quickly learning to avoid answering questions to police and on intake forms, and sooner than later, police and ICE will have to employ a different strategy. Thus, immigration inquiries at jails should be made only

for those individuals suspected of violating *criminal* immigration laws, and Miranda warnings should be read to all individuals before they implicate themselves

3. Community Education

Education is a fundamental step in the pro-immigrant struggle. If and when the appropriate effort is made, perhaps education—the most obvious means of individual empowerment—will prevent much of the struggle ensuing from police enforcement of immigration laws. First, as discussed above, police must enter into a respectful relationship with immigrants. Subsequently, in order to provide immigrants with the necessary educational tools, the educational syllabus must provide both a basic and a complex agenda. Both police officers and immigrants must be properly educated on the pertinent enforcement issues. Trusted community leaders and lawyers can be instrumental in taking the first steps towards educating immigrants about city services and the role of the police.[200]

Moreover, immigrant communities should be aware of the law in their state and locality. Oftentimes, having a Don't Ask ordinance in a city is not enough if immigrants are not aware of the ordinance. Police officers, community groups, and other pro-immigrant programs should promote the law. Encouraging immigrants who are crime victims or who are aware of illegal activity to come forward without fear of arrest should be an inherent goal of all.

Lastly, educating and preparing the immigrant community for enforcement actions is also invaluable.[201] Such education can be done by utilizing the media outlets and developing enforcement information packets for families.[202] A communication plan should be developed to inform the community about local police enforcement issues. By knowing that the community cares about issues affecting immigrants, it is more likely that immigrants will attend education and enforcement meetings.

4. Community Organizers Response

Community organizers and activists play a key role in the advancement of immigrant rights in communities where state and local police are unavailable and unresponsive. Community organizers, working with police, can provide multilingual newsletters and support citizen education awareness efforts. They can also partner with key government officials, local agencies, ethnically owned businesses, and diverse faith-based organizations to disseminate information and highlight positive stories of police and immigrants working together.[203] Doing so will create forums for educational outreach and ultimately result in a positive perception of police. Long-term goals such as supporting partnerships that provide English as a second language classes, citizenship instructions, and other resources for communities will allow police and community members to better understand each other.

Suggestions for community responses include working with social service agencies and local police to pool resources. For example, agencies can create and prepare a database of the names and contact information for volunteer translators or develop ways to fund translators; establish a toll-free phone number for individuals to call when they or their family member faces a run-in with police and their immigration status was questioned; and create a network of counselors, social workers, and clergy who can provide counseling.[204] The community organizers' efforts, alongside police efforts to avoid immigration enforcement, will inevitably receive a positive response from immigrant community members.

Lastly, community organizers should use the media effectively and to their benefit. This can be accomplished through the development of a list of individuals who can talk to the media and who can work closely with programs such as Univision or Radio Sol to inform the immigrant community of issues affecting them. Open communication will ultimately lead to increased trust. Moreover, it is also valuable to develop relationships with national organizations that can help with media

strategy.[205] By working together, broadcasting issues affecting immigrants, and giving immigrants a forum to always turn to for assistance, the community can work together to stay aware and informed.

5. Legal Services Response

In addition, legal services should anticipate police enforcement issues when defending immigrants in criminal or immigration proceedings. Attorneys should understand how to advise victims who fear immigration-related inquiries when dealing with police. Furthermore, legal services can assist in providing advice to those agencies, including the police and other social service agencies, about the constitutional and criminal authorities in place. Attorneys can determine the level of commitment and the need for training and translators; they can give "Know Your Rights" presentations; and most importantly, immigration and defense attorneys can work closely together to assure that immigrants' rights are being upheld when threatened by collaboration between police and ICE.[206]

VI. CONCLUSION

Laws, ordinances, and informal policies encouraging police control in immigration enforcement matters must be discouraged. It is all the more important to establish local policies that preserve effective community policing and protect immigrants' rights from the overstepping of state and local police officers. Today in Washington and across the United States, strong policies that protect immigrants' access to police protection are pitted against enforcment policies that encourage police to enforce immigration laws. The political pressure to introduce anti-immigrant measures has not only created an unprecedented surge in state-level lawmaking, but also spurred rising resentment in the country.[207] As Washington Governor Christine Gregoire stated, "the lack of comprehensive reform at the federal level places an additional burden on law enforcement officials."[208] Let us not burden law enforcement with

immigration issues, but rather keep them focused on enforcing criminal justice and promoting public safety.

It is extremely important that we limit police authority in the immigration realm and implement strategies to improve communication between the immigrant community and police. Enforcement of immigration law by state and local police does not encourage public safety; rather, it deflects resources that promote and encourage individual well-being. Allowing state and local officers to enforce immigration laws only contributes to this xenophobic and anti-immigrant approach. It is for the benefit of all communities that state and local police refrain from enforcing civil immigration laws.

The line between police assisting the federal government and police enforcing immigration laws is thin. Advocating that criminal aliens be detained and arrested by state and local police officers ignores the fact that police already have the authority to arrest criminals, both in enforcing state or local laws and in assisting the federal government. Everyone in the United States is subject to American law, and likewise, everyone in the United States should feel as though the officers who serve their communities are protecting them, not threatening the community with their presence.

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[2] APPLESEED, FORCING OUR BLUES INTO GRAY AREAS: LOCAL POLICE AND FEDERAL IMMIGRATION ENFORCEMENT, A LEGAL GUIDE FOR ADVOCATES, 1, 7 (Jan. 2008), http://www.appleseednetwork.org/Portals/0/Reports/Forcing_Our_Blues_Into_Gray_Areas2008.pdf [hereinafter APPLESEED].

[3] "So far in 2008, 1267 bills have been considered in 45 state legislatures and at least 175 laws and resolutions have been enacted in 39 states. A total of 190 bills and resolutions have passed legislatures, 12 bills are pending Governor's approval and three bills were vetoed." NAT'L CONFERENCE OF STATE LEGISLATURES, STATE LAWS RELATED TO IMMIGRANTS AND IMMIGRATION, 1 (2008), *available at* http://www.ncsl.org/programs/immig/immigreportjuly2008.htm. In 2007, forty-one

states enacted immigration laws. NAT'L CONFERENCE OF STATE LEGISLATURES, 2007 ENACTED STATE LEGISLATION RELATED TO IMMIGRANTS AND IMMIGRATION (2007), *available at* http://www.ncsl.org/programs/immig/2007ImmigrationUpdate.htm; *see also* Julie Stumpf, *States of Confusion: The Rise of State and Local Power Over Immigration*, 86 N.C.L. REV. 1557 (2008).

[4] *See* Stumpf, *supra* note 3.

[5] George A. Martinez, *Immigration: Deportation and the Pseudo-Science of Unassimilable Peoples*, 61 SMU L. REV. 7 (2008) (pointing to the State of Oklahoma's recently enacted immigration laws and ordinances in Farmers Branch, Texas); Julia Preston, *No Need for a Warrant, You're an Immigrant*, N.Y TIMES, Oct. 14, 2007, § 4, at 3.

[6] The distinction between state and local police is not drawn in this article; rather, the terms *local police* or *local law enforcement* will be used to reference both state and local police.

[7] In anti-Chinese case law, *Chae Chan Ping v. United States*, 130 U.S. 581 (1889), and *Fong Yue Ting v. United States*, 149 U.S. 698, 711 (1893), the Supreme Court held that the federal government had plenary power—"profound discretion unrestrained by constitutional limitations—in the areas of national security, foreign affairs, and immigration." Stumpf, *supra* note 3, at 1572.

[8] MOA is an interchangeable term with MOU. Delegation of Immigration Authority § 287(g) - Immigration and Nationality Act (2007), http://www.ice.gov/pi/news/factsheets/070622factsheet287gprogover.htm (last visited No. 5, 2008) [hereinafter Delegation] (authorizing the Attorney General to enter into agreements with states to deputize state officers and employees to perform the functions of immigration officers); Immigration and Nationality Act § 287(g), 8 U.S.C. § 1357 (2005).

[9] In 2008, Governor Gregoire issued an executive order creating the New Americans Policy Council made up of representatives from state agencies, the Refugees' Advisory Council, business and labor, and community and nonprofit organizations. The Council makes recommendations to the governor's office regarding immigration and immigrant concerns. Washington has taken steps to address immigrant issues such as assisting legal permanent residents through naturalization, helping immigrants learn English and improve their language skills, and facilitating the transfer of skills, certifications and professional credentials people earn abroad into Washington's economy. During the 2008 legislative session, a total of $344,000 was set aside to go towards helping 135,000 eligible immigrants get the assistance they need to become citizens. Immigrant friendly measures in Washington have resulted in the state having a higher growth rate in foreign-born domiciles than the national average. Press Release, Office of Governor Christine Gregoire, Governor Gregoire Honored for Advancing the Civil Rights of Immigrants, (May 2, 2008), *available at* http://www.governor.wa.gov/news/news-view.asp?pressRelease=869&newsType=1; Daniel C. Vock, *With Feds Stuck, States Tackle Immigration*, STATELINE.ORG, Dec. 13, 2007, http://www.stateline.org/live/details/story?contentId=264483.

[10] Washington state is not an MOA state. Delegation, *supra* note 8.

[11] The negative effects of MOAs are discussed in the following sections.

[12] APPLESEED, *supra* note 2, at 13, 14.

[13] **"**In 1963, the Supreme Court announced that state law enforcement officers are permitted to enforce federal statutes where such enforcement activities do not impair federal regulatory interests." Michael M. Hethmon, *The Chimera and the Cop: Local Enforcement of Federal Immigration Law*, 8 U.D.C.L. REV. 83 (2004) (citing Florida Avocado Growers Inc. v. Paul, 373 U.S. 132, 146 (1963); Ker v. California, 374 U.S. 23, 38 (1963)). In 1983, the Ninth Circuit in *Gonzales v. City of Peoria* stated, "We assume that the civil provisions of the Act regulating authorized entry, length of stay, residence status, and deportation, constitute such a pervasive regulatory scheme, as would be consistent with the exclusive federal power over immigration." APPLESEED, *supra* note 2, at 15 n.30 (citing Gonzales v. City of Peoria, 722 F.2d 468 (9th Cir. 1983)).

By contrast, the *Gonzales* Court concluded that the criminal provisions were "few in number and relatively simple in their terms," and that, therefore, Congress did not intend to preclude state enforcement of the criminal provisions of the INA. APPLESEED, *supra* note 2, at 15. The *Gonzales* Court considered the INA's civil and criminal provisions independently of one another and evaluated the complexity of the federal laws in each domain. Gonzales, 722 F.2d at 474–75.

[14] **"**Types of offenses triggering immigration consequences include crimes involving moral turpitude . . . relating to controlled substances, and firearms; aggravated felonies; crimes of domestic violence, stalking, child abuse . . . fraudulent document use, and other specific offenses." Lora DIANA ROSENBERG, IMMIGRATION DEFENSE FOR DEFENSE COUNSEL 16 (2003–2004), *available at* http://www.fd.org/pdf_lib/Lrosenberg_Immigration_Consequences_2004.pdf.

[15] NAT'L IMMIGRATION FORUM, STATE AND LOCAL POLICE ENFORCEMENT, BACKGROUNDER: IMMIGRATION LAW ENFORCEMENT BY STATE AND LOCAL POLICE 1 (2004), *available at* http://www.immigrationforum.org/documents/TheDebate/EnforcementLocalPolice/Backgrounder-StateLocalEnforcement.pdf.

[16] Immigration and Nationality Act § 287(g), 8 U.S.C. § 1357 (2005).

[17] Because the Immigration and Nationality Act of 1952 (INA) did not specifically address the issue of local law enforcement of immigration laws, courts initially held that law enforcement could only enforce criminal provisions of the INA. APPLESEED, *supra* note 1, at 8, 14. Specifically, in *Gonzalez*, the Ninth Circuit held that "federal law does not preclude local enforcement of the criminal provisions of the [INA] . . . and, is limited to criminal violations." *Gonzalez*, 722 F.2d 468. Additionally, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) included two provisions relating to the enforcement of civil immigration law by local police, one of which was the MOA program. Under the MOA program, localities could enter into agreements with the Department of Homeland Security (DHS) to receive immigration law-related training and subsequently to enforce immigration law. Shortly after the enactment of the IIRIRA, the Department of Justice (DOJ) issued a legal opinion stating that "state and local police lack recognized legal authority to stop and detain an alien solely on suspicion of civil deportability." APPLESEED, *supra* note 2, at 1, 8; *see Gonzalez*, 722 F.2d at 468.

[18] APPLESEED, *supra* note 2, at 13.

[19] *Id.* at 24; Attorney General John Ashcroft, Prepared Remarks on the National Security Entry-Exit Registration System (June 6, 2002), *available at* http://www.usdoj.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm.

[20] APPLESEED, *supra* note 2, at 25.
[21] *Id.* (citing to United States v. Salinas-Calderon, 728 F.2d 1298 (1984)).
[22] Christie Hobbs, *State-Federal Partnerships in Immigration Enforcement: Is the Trend Right for Texas?*, 8 TEX. TECH. ADMIN. L.J. 141 (citing LISA M. SEGHETTI ET. AL., LIBRARY OF CONG. RESEARCH SERV., ENFORCING IMMIGRATION LAW: THE ROLE OF STATE AND LOCAL ENFORCEMENT 4 (Mar. 11, 2004), *available at* http://www.ilw.com/immigdaily/news/2005, 1026-crs.pdf.
[23] *See supra* note 7.
[24] Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U.L. REV. 367, 389 (2008).
[25] H.R. 842, 108th Cong. (2007), *available at* http://www.washingtonwatch.com/bills/show/110_HR_842.html (proposing to provide for enhanced federal, state, and local assistance in the enforcement of the immigration laws, amend the Immigration and Nationality Act, and authorize appropriations to carry out the State Criminal Alien Assistance Program) (also known as the CLEAR Act). Attorney General John Ashcroft, *supra* note 19; *see also* Stumpf, *supra* note 24, at 389, n.118 (citing Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. § 103(c) (2005); Homeland Security Enhancement Act of 2003, S. 1906, 108th Cong. § 101 (2003). Based on controversial legal grounds, the Office of Legal Counsel in the U.S. Department of Justice recently reversed its earlier constitutional interpretation that only federal actors have authority to enforce immigration law. Attorney General John Ashcroft, *supra* note 19.
[26] U.S. CONST. amend. V (providing the procedural protections of grand jury hearings and the double jeopardy shield, as well as the right to protect against self-incrimination); U.S. CONST. amend VI (granting defendants the rights to speedy and neutral trials, during which the defendant may confront witnesses against him, call witnesses to support him, and be ensured the assistance of counsel); Stumpf, *supra* note 24, at 390; *see generally* CARL J. FRANKLIN, CONSTITUTIONAL LAW FOR THE CRIMINAL JUSTICE PROFESSIONAL 99–246 (Becky McEldowney ed., CPC Press 1999) (presenting a detailed analysis of the constitutional protections of the Fourth, Fifth, and Sixth Amendments of the U.S. Constitution and references therein to relevant Supreme Court interpretations of these criminal constitutional rights).
[27] Stumpf, *supra* note 24, at 390.
[28] Alabama v. White, 496 U.S. 325, 331 (1990); Whren v. United States, 517 U.S. 806, 813, 818 (1996); Anne Benson, Power Point presentation: Understanding the Criminal Justice System and Our Rights Within It (Oct. 1, 2008) (on file with author) [hereinafter Understanding the Criminal] (Mere questioning allows police to question without having to show that they have reasonable suspicion of criminal activity or probable cause for arrest, and the test is: whether under the circumstances would a reasonable person feel free to leave? If not, this equals a seizure under the Fourth Amendment. Investigatory stops allow officers to forcibly stop individuals and briefly detain them when there is reasonable suspicion, and the test is whether the stop was based on articulated facts, totality of circumstances. Arresting individuals is allowed pursuant to a warrant issued by a court or when an officer has probable cause. Searches are permitted with a warrant when there is probable cause, or in the incident of an arrest.).

[29] Standards for Enforcement Activites, 8 C.F.R. § 287.8 (2003) ((stating that an arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States. Also, if the immigration officer has a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States, the immigration officer may briefly detain the person for questioning.).

[30] APPLESEED, *supra* note 2, at 25, n.87; CRAIG E. FERRELL, JR., THE WAR ON TERROR'S "ABSCONDER INITIATIVE" 1–2, http://www.appleseednetwork.org/Portals/0/Documents/Publications/AppenStatVFed/appenjour22.doc.

[31] Stumpf. *supra* note 24, at 390.

[32] 8 U.S.C. § 1357(g) (2005).

[33] *Id.*

[34] *Id.*

[35] *Id.* Across the United States, ICE has partnered with several law enforcement branches: MOAs with the Alabama Department of Public Safety/State Police, the Arizona Department of Corrections, and the Florida Department of Law Enforcement. In addition, ICE shares a relationship with the county sheriff's departments in Maricopa County, AZ; Los Angeles, Orange, Riverside, and San Bernardino counties in California; Cobb County, GA; Alamance, Gaston, and Mecklenburg counties in North Carolina, and Davidson County, TN. Twelve additional jurisdictions throughout the United States were working on agreements with ICE, and hundreds more jurisdictions have inquired about creating programs. Examples of what ICE calls "success stories" include the following stories from North Carolina and Alabama. Upon receiving Section 287(g) authority, North Carolina county sheriff's deputies in county jail facilities check the immigration status of all non-U.S. born arrestees. In the first nine months of the program, deputies examined over 1,600 arrestees and placed 853 in deportation proceedings. Furthermore, in Alabama, state troopers, in tandem with motor vehicle licensing stations throughout the state, check the immigration status of all foreign nationals applying for driver's licenses. The strategy employed in Alabama has allowed ICE to federally charge individuals for using fraudulent documents in an attempt to obtain driver's licenses. Delegation, *supra* note 8.

[36] Immigration and Nationality Act §287(g), 8 U.S.C. § 1357 (2005).

[37] APPLESEED, *supra* note 2, at 29, 30.

[38] ICE offers two training programs, including a five-week program for field level law enforcement officers and a four-week program for correctional personnel. Immigration and Nationality Act § 287(g).

[39] Carrie Arnold, *Racial Profiling in Immigration Enforcement, State and Local Agreements to Enforce Federal Immigration Law*, 49 ARIZ. L. REV. 113 (2007).

[40] Racial profiling in association with a lack of training will be discussed in more detail in Part III.

[41] Hobbs, *supra* note 22, at 159.

[42] Anne B. Chandler, *Why is the Policeman Asking for my Visa? The Future of Federalism and Immigration Enforcement*, 15 Tulsa J. Comp. & Int'l L. 209, n.57. "An immigration detainer is an arrest without a warrant pursuant to 8 U.S.C. § 1357(a)(2)

made by a federal immigration officer who decides there is a reason to believe the person is an alien present in the United States and is likely to escape before a warrant can be obtained for his arrest." *Id.*

[43] *Id.* *See also* Ivan Moreno, *States Make Immigration Arrests Under Fed Program*,WTOP.NEWS, Sept. 21, 2008, http://www.wtopnews.com/?nid=104&sid=1482362.

[44] APPLESEED, *supra* note 2, at 18.

[45] *Id.*; Hobbs, *supra* note 22, at 148; Immigration and Nationaliy Act § 287(g), 8 U.S.C. § 1357 (2005).

[46] Complications that local police enforcement of immigration laws pose will be discussed in Part III. MOAs, although they are mandated by law, pose the same problems.

[47] NAT'L IMMIGRATION FORUM, PROPOSALS TO EXPAND THE IMMIGRATION AUTHORITY OF STATE AND LOCAL POLICE (2006), http://www.immigrationforum.org/documents/TheDebate/EnforcementLocalPolice/CLEARHSEAQuotes.pdf (quoting a comment by Nat'l Immigration Project of the Nat'l Lawyers Guild); letter from Nat'l League of Cities, U.S. Conference of Mayors to the U.S. Cong. (Sep. 19, 2006), http://www.immigrationforum.org/documents/TheDebate/EnforcementLocalPolice/CitiesLetteronAnti-SanctuaryAmendment060919.pdf.

[48] The types of offenses triggering immigration consequences include crimes involving moral turpitude (such as forms of assault, theft, fraud, abuse); crimes relating to controlled substances, and firearms; aggravated felonies (such as murder, rape, drug trafficking, robbery, arson, shoplifting, burglary, deceit, money laundering, failure to appear, illegal reentry); crimes of domestic violence, stalking, child abuse, money laundering, fraudulent document use, and other specific offenses. Rosenberg, *supra* note 14.

[49] Stumpf, *supra* note 3, at 389 (citing to Michael J. Wishnie, *State and Local Police Enforcement of Immigration Laws*, 6 U. PA. J. CONST. L. 1084, 1088-95 (2004)); APPLESEED, *supra* note 2, at 15 n.55. The NCIC database, a computerized forum for criminal justice information used to assist law enforcement officers in identifying criminal suspects, contains "subfiles" of information, expansive in its range of criminal activity listings. FERRELL, *supra* note 30, at 2.

[50] APPLESEED, *supra* note 2, at 20; Stumpf, *supra* note 3, at 389 (citing to Michael J. Wishnie, *State and Local Police Enforcement of Immigration Laws*, 6 U. PA. J. CONST. L. 1084, 1096 (2004)).

[51] APPLESEED, *supra* note 2, at 28; FERRELL, *supra* note 30, at 1–3.

[52] APPLESEED, *supra* note 2, at 28 (*citing* to Michael J. Wishnie, *State and Local Enforcement of Immigration Laws*, 6 U. PA. J. CONST. L. 1084 (2004)).

[53] *Id.* at 25, 28.

[54] *Id.* at 28; *see* NATIONAL IMMIGRATION FORUM, WHY *SHOULDN'T* LOCAL POLICE ENFORCE FEDERAL IMMIGRATION LAWS?: CONGRESSIONAL LEGISLATION WOULD HARM, NOT HELP, PUBLIC SAFETY (2004), http://www.nationalimmigrationproject.org/DVPage/CLEARWhyShouldntPolice.doc. For example, government "has since added thousands of names to the NCIC database in cases where the persons are believed to be either 'absconders,' meaning they have outstanding removal orders, or where they are

considered to be in violation of certain fingerprinting and registration requirements of the National Security Entry-Exit Registration System (NSEERS)." APPLESEED, *supra* note 2, at 28.

"Absconders are persons who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States." CRAIG E. FERRELL, JR., ET AL., MAJOR CITY CHIEFS IMMIGRATION COMMITTEE: RECOMMENDATIONS FOR ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES 5 (2006), http://www.majorcitieschiefs.org/pdfpublic/mcc_position_statement_revised_cef.pdf.

An immigration "hit" occurs when a name or other information entered in a search of the database produces a positive response. HANNAH GLADSTEIN ET AL., MIGRATION POLICE INSTITUTE, BLURRING THE LINES: A PROFILE OF STATE AND LOCAL POLICE ENFORCEMENT OF IMMIGRATION LAW USING THE NCIC DATABASE 3 (2005).

[55] LISA M. SEGHETTI ET AL., CONGRESSIONAL RESEARCH SERVICE, THE LIBRARY OF CONGRESS, ENFORCING IMMIGRATION LAW: THE ROLE OF STATE AND LOCAL ENFORCEMENT 4, 27 (2004), *available at* http://www.ilw.com/immigdaily/news/2005, 1026-crs.pdf.

[56] NAT'L IMMIGRATION FORUM, *supra* note 15, at 5.

[57] *Id.*

[58] FERRELL, JR. ET AL., *supra* note 54. "NCIC Violators File (IVF) includes three listings: (1) persons previously convicted of a felony and deported; (2) persons allegedly subject to a final deportation, exclusion, or removal order ('absconders') but who remain in the country; and (3) persons allegedly in violation of a requirement of the NSEERS." Gladstein et al., *supra* note 54.

[59] *Id.* at 29.

[60] *Id.* at 28.

[61] *Id.* at 28.

[62] *Id.* at 28.

[63] NAT'L IMMIGRATION FORUM, *supra note* 15, at 5. Ironically enough, the Department of Justice used antiterrorism justifications when it began to put immigration violators in the NCIC, yet MPIs analysis reveals that no NSEERS violators were identified in the 2002 to 2004 period. However, the number of "absconders" greatly increased.

[64] Gladstein *supra* note 54.

[65] *Id.* at 4. According to ICE, local law enforcement plays a critical role in protecting homeland security because they are often the first responders on the scene when there is an incident or attack against the United States. Moreover, ICE contends that local police officers, during the course of their work and because of their engagement with the community, have a greater opportunity to find and apprehend violators who pose a threat to national security. Immigration and Nationality Act (INA) of 1952 § 287(g), 8 USC § 1357(g) (2005). Delegation, *supra* note 8.

[66] **"**At least one immigrant in the California Bay Area was checked on the NCIC database after approaching the police to assist her with the enforcement of a protective order." APPLESEED, *supra* note 2, at 28, 29.

[67] SEGHETTI, *supra* note 55, at 27. The argument in fact exists that MOAs produce better trained and better guided local law enforcement officers than would be the case without the MOA and, in essence, takes some of the burden off the immigration enforcement officials. Counterarguments to this argument are provided in Part III.

[68] NAT'L IMMIGRATION LAW CENTER, INTRODUCTION AND BACKGROUND: SAMPLE BACKGROUND FOR POLICIES LIMITING THE ENFORCEMENT OF IMMIGRATION LAW BY LOCAL AUTHORITIES (2004), *available at* http://www.nilc.org/immlawpolicy/LocalLaw/sample%20policy_intro%20brief_nov%202004.pdf (arguing that local law enforcement should only expend energy to enforce criminal violations). According to the MCC, "[l]ocal police agencies must meet their existing policing and homeland security duties and can not even begin to consider taking on the added burden of immigration enforcement until federal assistance and funding are in place to support such enforcement." FERRELL, JR., ET AL., *supra* note 54, at 6.

[69] FERRELL, JR., ET AL., *supra* note 54, at 6.

[70] *Id.*

[71] NATIONAL COUNCIL OF LA RAZA, TOO COSTLY FOR MY TOWN: THE DOLLARS AND CENTS OF AN IMMIGRATION ORDINANCE (2007), *available at* http://www.nclr.org/files/49130_file_Too_Costly_for_My_Town_FINAL.pdf [hereinafter NATIONAL COUNCIL OF LA RAZA].

[72] For example, Prince William County, an area attempting to enforce ordinances against immigrant communities, was affirmatively "unwilling to move forward with the police enforcement portion of the immigration law after they found that the price tag would be a minimum of $14 million dollars for five years." *Id.* at 1. In addition, a "close look at the Prince William County FY 2008 Fiscal plan shows that all major taxes for the residents of Prince William County will increase from FY 2007 to FY 2008." *Id.* at 2. (citing to Budget Summary: FY 2008 Fiscal Plan Initiatives for Prince William County, http://www.pwcgov.org/docLibrary/PDF/006480.pdf). In fact, Martin E. Nohe (R-Coles) admitted that immigration is not the only issue facing the county. *Id.*

[73] NATIONAL COUNCIL OF LA RAZA, *supra* note 71; Arnold, *supra* note 39; IMMIGRATION LAW CENTER, INTRODUCTION AND BACKGROUND, *supra* 68.

[74] FERRELL, JR. ET AL., *supra* note 54, at 8.

[75] Chandler, *supra* note 42, at 219; Arnold, *supra* note 39.

[76] Chandler, *supra* note 42, at 219.

[77] Gail Pendleton, *Local Police Enforcement of Immigration Laws and Its Effects on Victims of Domestic Violence: Why Police and Prosecutors Should Avoid Enforcing Immigration Laws*, A.B.A. COMMISSION ON DOM. VIOLENCE 2 (2006), *available at* http://www.nationalimmigrationproject.org/DVPage/DVSA_CLEAR_Article.doc.

[78] *Id.* Arnold, *supra* note 39; Mary Romero and Marwah Serag, *Violation of Latino Civil Rights Resulting from INS and Local Police's Use of Race, Culture and Class Profiling: The Case of the Chandler Roundup in Arizona*, 52 CLEV. ST. L .REV. 75, 79 (2005); *see* NAT'L IMMIGR. FORUM, FROM COMMUNITY POLICING TO COMMUNITY PROFILING (2002), *available at* http://www.ilw.com/articles/2002,0528-NIF.shtm.

[79] ICE presence in jails, in my opinion, is important only until an individual has been charged, in a timely fashion, with an offense that could impose criminal immigration violations. In many states, including Washington, jailers are required to report to ICE the

presence of an individual who "appears to be an alien." WASH. REV. CODE § 10.70.140 (1992). By removing ICE from jails, police will not be obligated to report absolutely every individual or feel pressured to "prejudge" and perhaps engage in unlawful racial profiling. Steven Langer, Langer Law, http://www.stevenlanger.com/immigration-detainer.html (last visited Nov. 5, 2008).

[80] NATIONAL COUNCIL OF LA RAZA, *supra* note 71, at 1. In 1994 in Katy, Texas, the police department arrested a total of eighty individuals who were detained by police and later determined to be either citizens or legal immigrants with permission to be in the country. FERRELL, JR. ET. AL., *supra* note 54, at 8.

[81] SEGHETTI, *supra* note 58, at 22.

[82] Statement of Judith Golub, Am. Immigration Lawyers Ass'n, *Past and Present: Safeguarding American Civil Liberties* (May 21, 2003), *available at* http://www.aila.org/content/default.aspx?docid=8848.

[83] Rosenberg, *supra* note 14.

[84] Chandler, *supra* note 42, at 230.

[85] *Id.*

[86] Arnold, *supra* note 39.

[87] Arnold, *supra* note 39; Kevin Johnson, *The Case Against Race Profiling in Immigration Enforcement*, 78 WASH. U. L.Q. 675, 696 (2000), *available at* http://www.abanet.org/irr/hr/winter01/johnson.html; Edwin Harwood, *Arrests Without Warrant: The Legal and Organizational Enforcement of Immigration Law* Enforcement, 17 U.C. DAVIS L. REV. 505, 531 (1984); Standards for Enforcement Activities, 8 C.F.R. § 287.8 (2005) (stating that an arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States. Also, if the immigration officer has a reasonable suspicion based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States, the immigration officer may briefly detain the person for questioning).

[88] Arnold, *supra* note 39; Johnson, *supra* note 87; Harwood, *supra* note 87, at 531; Standards for Enforcement Activities, 8 C.F.R . § 287.8.

[89] United States v. Lopez-Martinez, 25 F.3d 1481, 1484 (10th Cir. 1994).

[90] Langer, *supra* note 79. WASH. REV. CODE § 10.70.140 (1992) is an example of a state law requiring jailers to report a person to ICE when "it appears that a person is an alien."

[91] Telephone Interview with Ann Benson, (Oct. 21, 2008); Barbara Hernandez, *Officials: Immigrant Detainers Increasing*, STAR-BANNER, July 22, 2007, *available at* http://www.ocala.com/article/20070722/NEWS/207220346/1001/NEWS01.

It is questionable if police or jailers flag individuals upon arrival at jails. In jurisdictions under an MOA, police are able to both flag individuals and place the detainer on individuals. However, where no MOA exists, this responsibility should not be a police officer duty. Community activists should work with their state and local jails to identify who the individuals are that flag arrestees upon arrival at the jail. For such a reason, the term jailer and police in this section will be used interchangeably.

[92] Langer, *supra* note 79.

[93] *Id.*

[94] 8 C.F.R. § 287.7; Cabezas v. Scott, 717 F. Supp. 696 (D. Ariz. 1989) (stating that I-247 does not place an alien in the the custody of the INS).
[95] Understanding the Criminal, *supra* note 28.
[96] Chandler, *supra* note 42, at 224.
[97] Langer, *supra* note 79; *see* Ochoa v. Bass, 2008 OK 11, 181 P.3d 727 (Okla. Crim. App. 2008) (stating that a sheriff must release an alien held on an I-247 immigration detainer after the expiration of 48 hours).
[98] Telepone interview with Benson, *supra* note 91.
[99] *Id.*
[100] *Id.*
[101] Hernandez, *supra* note 91.
[102] Telephone interview with Benson, *supra* note 91.
[103] Hernandez, *supra* note 91.
[104] A habeaus petition is a writ (court order) which directs the law enforcement officials who have custody of a prisoner to appear in court with the prisoner in order to determine the legality of the prisoner's confinement. Habeas corpus petitions are commonly used when a prisoner claims illegal confinement, such as holding a person without charges when due process obviously has been denied, bail is excessive, parole has been granted, an accused has been improperly surrendered by the bail bondsman, or probation has been unjustly denied. A petition for habeas corpus may be based on an error of fact or error of law. However, the determination to be made is whether due process rights were violated, not whether the prisoner is guilty. U.S. Legal, Habeas Corpus Law & Legal Definition, http://definitions.uslegal.com/h/habeas-corpus/ (last visited Nov. 5, 2008).
[105] Langer Law, *supra* note 79; 42 U.S.C. § 1983 (2006).
[106] Hernandez, *supra* note 91.
[107] Part IV highlights as a case study Washington State in order to point out instances where police, due to misguided beliefs and self-imposed authority, enforce immigration law in the course of their daily routines.
[108] NAT'L IMMIGRATION FORUM, *supra* note 15.
[109] Another example of the lack of trust spreading throughout the immigrant community occurred in Newark, New Jersey, when Geraldo Carlos, a freelance photographer from Brazil, spotted a woman's body in a plastic bag. Upon reporting the bag to police, Mr. Carlos was questioned about his immigration status and ultimately detained for overstaying his visa. "The Newark incident has reverberated through the tight-knit Brazilian community in Newark. . . . Carried in Portuguese-language media, the story has spread to other immigrant communities in New Jersey." Roberto Lima, editor of the Brazilian Voice Newspaper, stated that "even if they see Osama bin Laden, they will not call police . . . police are losing their eyes on the streets and that's really serious." This distrust towards the police translates into undocumented individuals no longer participating actively in the communities they live in because of a fear of local police inquiry regarding immigration status. Miguel Perez, *Instilling Fear of Reporting Crimes*, CREATORS SYNDICATE (2007), http://www.creators.com/opinion/miguel-perez/instilling-fear-of-reporting-crimes.html; *see* Brian Donohue, *Are You Legal? Bringing Fear to Immigrants*, THE STAR LEDGER, Sept. 18, 2007, at 1; NAT'L IMMIGRATION FORUM, *supra* note 15.

[110] NAT'L IMMIGRATION FORUM, *supra* note 15.
[111] S*ee* Pendleton, *supra* note 77.
[112] Chandler, *supra* note 42, at 209.
[113] *Id.* at 225.
[114] *Id.* at 22; FERRELL, JR. ET AL., *supra* note 54.
[115] Pendleton, *supra* note 77, at 1.
[116] *Id.* at 2.
[117] *Id.* at 1.
[118] *Id.*
[119] NATIONAL COUNCIL OF LA RAZA, *supra* note 71, at 12; Michele Waslin, Ph.D, N.C.L.R, Issue Brief, *Immigration Enforcement by Local Police: The Impact on the Civil Rights of Latinos* (Feb. 2003), *available at* http://www.nclr.org/content/publications/download/1390.
[120] NATIONAL COUNCIL OF LA RAZA, *supra* note 71, at 12; Waslin, *supra* note 119.
[121] Press Release, Mexican American Legal Defense and Educational Fund, FBI Report Documents Hate Crimes at Record Level: Hate Crimes Rise as Anti-Immigrant Campaigns Fill the Airwaves and Fuel Anti-Immigrant Local Ordinances (Nov. 19, 2007), *available at* http://www.maldef.org/news/press.cfm?ID=444&FromIndex=yes [hereinafter M.A.L.D.E.F.].
[122] Brentin Mock, *Immigration Backlash: Violence Engulfs Latinos*, SOUTHERN POVERTY LAW CENTER, Nov. 27, 2007, http://www.splcenter.org/intel/news/item.jsp?site_area=1&aid=292.
[123] Press release, MALDEF, FBI Report Documents Hate Crimes Against Latinos at Record Level (Nov. 19, 2007), *available at* http://www.maldef.org/news/press.cfm?ID=444&FromIndex=.
[124] *Id.* at 116.
[125] Mock, *supra* note 122.
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] *Id.* (quoting from Laine Lawless, a founding member of the Minutemen).
[130] *See* MALDEF, *supra* note 123.; Mock, *supra* note 122 ("According to the report, in 2006, Hispanics comprised 62.8% of victims of crimes motivated by a bias toward the victims' ethnicity or national origin. In 2004, the comparable figure was 51.5%. Since 2004, the number of victims of anti-Hispanic crimes increased by 25%.")
[131] INT'L ASS'N OF CHIEFS OF POLICE, POLICE CHIEFS GUIDE TO IMMIGRATION ISSUES 11 (2007).
[132] NATIONAL COUNCIL OF LA RAZA, *supra* note 71, at 14;Waslin, *supra* note 119, at 14.
[133] NATIONAL COUNCIL OF LA RAZA *supra* note 71, at 14;Waslin, *supra* note 119 at 14.
[134] Pendleton, *supra* note 77, at 2.
[135] ICE, *supra* note 65.
[136] Gonzales v. City of Preoria, 722 F.2d 468 (9th Cir. 1983).
[137] WASHINGTON STATE PATROL, WASHINGTON STATE PATROL REGULATION MANUAL, 1.00.040 (2008).
[138] SEATTLE, WASHINGTON, CODE § 4.18.015 (2003).

[139] The section below outlines specific instances of police using gang violence or the need for interpreters to involve ICE in the course of their daily routines.
[140] Cydney Gillis, *Washington Police Team Up with Immigration Officers*, REAL CHANGE (Sept. 5–11, 2007), *available at* http://www.realchangenews.org/2007/2007_09_05/lamigra.html.
[141] Police can work cooperatively with ICE in cases involving smuggling and trafficking.
[142] Letter from Henry Cruz, Commissioner, Washington State Commission on Hispanic Affairs to John Tarrant, Mayor of Shelton, and Sheriff Casey Salisbury, Mason County Sherriff (Sept. 13, 2007).
[143] *Id.*
[144] WASHINGTON STATE PATROL, *supra* note 137.
[145] Gillis, *supra* note 140.
[146] Lornet Turnbull, *Police Toughening Stand on Illegal Immigration*, SEATTLE TIMES, Aug. 3, 2007, at B1, *available at* http://seattletimes.nwsource.com/html/localnews/2003819520_illegalimmigrants03m.html.
[147] Service offices have the statutory authority to interrogate aliens and to make warrantless arrests of aliens who they believe are illegally in the U.S. 8 U.S.C. § 1226(c) (1996).
[148] Interview with Maria Villalpando, Community Organizer, Wash. Cmty. Action Network (Oct. 15, 2007) (on file with author).
[149] *Id.*
[150] *Id.*; Gillis, *supra* note 140.
[151] Oscar Halpert, *Minority Opinion: City's Diversity Commission Hears Concerns from Latinos*, ENTERPRISE (Lynnwood, Wash.), Oct. 19, 2007, *available at* http://12.104.73.24/index.cfm?Action=story&StoryID=2007101812564126&ArchYear=.
[152] Turnball, *supra* note 146.
[153] Notes from New Hope Meeting, Review of Incidents and Police Report Regarding Racial Profiling (Jan. 16 2008) (on file with author). Other incidents include the following: on March 28, 2007, police officers responded to a complaint of loud music in the home and arrested the residents and in August 2007, a man leaving an AM/PM was followed and arrested by officers. *Id.*
[154] Interview with Maria Villalpando, *supra* note 158; Gillis, *supra* note 140.
[155] THE NAT'L NETWORK FOR IMMIGRANT AND REFUGEE RIGHTS, OVER-RAIDED, UNDER SIEGE: U.S. IMMIGRATION LAWS AND ENFORCEMENT DESTROY THE RIGHTS OF IMMIGRANTS, (2008) *available at* http://www.nnirr.org/resources/docs/UnderSiege_web.pdf.
[156] Turnball, *supra* note 146; Interview Interview with Maria Villalpando, *supra* note 160; Gillis, *supra* note 140.
[157] *Id.*
[158] THE NAT'L NETWORK FOR IMMIGRANT AND REFUGEE RIGHTS, *supra* note 155.
[159] *Id.*
[160] *Id.*
[161] *Id.*
[162] Turnball, *supra* note 146.
[163] Understanding the Criminal, *supra* note 28.

[164] *Id.*
[165] Notes from New Hope Meeting, *supra* note 153.
[166] *Id.*
[167] *Id.*
[168] Notes from the Review of El Comite Pro Amnistia El Sur and The Auburn Jubilee Center Work in the Pacific, Washington (July-Nov. 2007) (on file with author) [hereinafter Notes from the Review of El Comite].
[169] Notes from Review of El Comite, *supra* note 168.
[170] *Id.*
[171] *Id.* at 164.
[172] Notes from New Hope Meeting, *supra* note 168.
[173] Letter from Henry Cruz, *supra* note 142.
[174] *See generally* Phoung Cat Lee, *'Don't Ask' Immigration Policy Urged for City Workers, Police*, SEATTLE POST-INTELLIGENCER (Dec. 11, 2002), *available at* http://seattlepi.nwsource.com/local/99388_ins11.shtml; *see also* Raymond Rico, *Immigration was Key in 2006 State Legislation and Ballot Measures*, 21 IMMIGRANTS' RIGHTS UPDATE 2, (Mar. 29, 2007), *available at* http://www.nilc.org/immspbs/sf_benefits/sfbps003.htm.
[175] JEFFREY S. PASSEL, PEW HISPANIC CENTER, UNAUTHORIZED MIGRANTS: BACKGROUND BRIEFING FOR TASK FORCE ON IMMIGRATION AND AMERICA'S FUTURE, (2005), *available at* http://pewhispanic.org/files/reports/46.pdf; Turnbull, *supra* note 146.
[176] Waslin, *supra* note 119, at 10.
[177] NAT'L IMMIGRATION LAW CENTER, PRO IMMIGRANT MEASURES AVAILABLE TO STATE OR LOCAL GOVERNMENTS: A QUICK MENU OF AFFIRMATIVE IDEAS (Sept. 2007), *available at* http://www.nilc.org/immlawpolicy/misc/affirmstatelocalmenu_2005-09-13.pdf
[178] FERRELL, JR. ET AL., *supra* note 54, at 10.
[179] This follows the immigration policy in Houston, Texas. APPLESEED, *supra* note 2, at 42.
[180] Chandler, *supra* note 42, at 230.
[181] SEATTLE MUNICIPAL CODE § 4.18.015 (2003).
[182] *Id.*
[183] *Id.*
[184] *Id.*
[185] NAT'L IMMIGRATION FORUM, *supra* note 15.
[186] SEATTLE MUNICIPAL CODE 4.18.015, ORDINANCE 121063 (2003).
[187] *Id.*
[188] Letter from Henry Cruz, *supra* note 142.
[189] NAT'L IMMIGRATION FORUM, *supra* note 15.
[190] *Id.* (referencing the audit).
[191] Appleseed, *supra* note 2.
[192] Chandler, *supra* note 42, at. 209; EMILY YIM, CITY OF LYNNWOOD, IMMIGRATION TASK FORCE REPORT AND ACTION PLAN (May 28, 2008), *available at* http://www.ci.lynnwood.wa.us/docs/Immigration%20Task%20Force%20Report%20an%20Action%20Plan%20June%2010%202008.PDF.

[193] YIM, *supra* note 192.
[194] *Id.*
[195] FERRELL, JR., ET AL., *supra* note 53, at 9.
[196] Appleseed, *supra* note 2, at 24
[197] Telephone Interview with Ann Benson, *supra* note 91.
[198] *Id.*
[199] Langer, *supra* note 79.
[200] *Id.*
[201] Karen Herling, CLINIC'S NATIONAL ENFORCEMENT RESPONSE PLAN: A PLAN TO HELP COMMUNITIES PREPARE AND PLAN FOR IMMIGRATION ENFORCEMENT ACTIONS (Catholic Legal Immigration Network, Inc. 2008), *available at* http://www.cliniclegal.org /Enforcement/CLINICENFORCMENTRESPONSEPLANFIAL.pdf.
[202] Herling, *supra* note 223.
[203] YIM, *supra* note 192.
[204] *Id.*
[205] *Id.*
[206] Understanding the Criminal, *supra* note 28; Rosenberg, *supra* note 14.
[207] Preston, *supra* note 5.
[208] Letter from Washington Governor Christine Gregoire to Sheriff Elfo, President of Washington State Sheriffs Association (Feb. 14, 2008) (on file with author).