



THE COST OF FAILURE:
THE BURDEN OF IMMIGRATION ENFORCEMENT
IN AMERICA'S CITIES

BY AFTON BRANCHE

THE COST OF FAILURE: THE BURDEN OF IMMIGRATION ENFORCEMENT IN AMERICA'S CITIES

BY AFTON BRANCHE

TABLE OF CONTENTS

Executive Summary	1
Introduction	3
Background: Overview of Local Immigration Enforcement Programs	5
I. Local Immigration Enforcement Is Costly for City Budgets and Local Economies	7
II. Local Immigration Enforcement Is Counterproductive to Public Safety	10
III. The Growth of Secure Communities Threatens Successful Criminal Justice Strategies	13
IV. Local Immigration Enforcement Fails to Target Criminal Activity	17
V. Cities Are Misguided In Their Support of Local Immigration Enforcement As Crime Control	22
Conclusion	25

EXECUTIVE SUMMARY

Faced with gaping budget shortfalls, communities across America are struggling to preserve core public services. Yet amidst cutbacks to education, street repairs, and even fire protection, one growing burden on our cities has gone largely unexamined: **the local costs of enforcing the nation’s federal immigration laws.**

This paper explores the fiscal, administrative, public safety and civic costs that cities incur as they assume increased responsibility for immigration enforcement. We find that while the vast majority of Americans believe that the nation’s immigration system needs to be reformed, the current laws are being enforced more rigorously than ever – and our fiscally strapped cities are bearing too much of the cost.

Drawing on the latest research in cities around the country, we examine three federal-local partnership programs that leverage urban communities and their resources in service of federal immigration enforcement goals—287(g), Secure Communities and the Criminal Alien Program. We find that these programs impose high costs on city budgets and local economies, prove counterproductive to protecting public safety, and draw support from a misguided understanding of the relationship between immigration and crime.

KEY FINDINGS

Local immigration enforcement is costly for city budgets and local economies.

- One joint federal-local enforcement program, 287(g), costs many local governments more than a million dollars in unreimbursed costs a year. Mecklenburg County, NC, spent an estimated \$5.3 million to set up and operate the 287(g) program in its first year.
- According to the Government Accountability Office, 62 percent of local law enforcement agencies that participate in 287(g) receive no federal reimbursement for any costs associated with the program.
- The federal government reimburses cities for less than a quarter of city and county costs for jailing immigrants who have committed crimes, an expense incurred under all the federal-local enforcement programs.
- Immigrants produce 20 percent of the economic output in the nation’s largest metropolitan areas, according to the Fiscal Policy Institute. When immigration enforcement programs succeed in pushing local immigrant populations underground, local economies suffer: businesses close, jobs and tax revenue are lost.

Local immigration enforcement is counterproductive to public safety.

- Enforcing civil immigration law diverts police time and resources away from criminal matters. In one extreme case, when Maricopa County, AZ began immigration enforcement, local deputies arrived late two-thirds of the time to the most serious emergency 911 calls. County detectives’ arrest rates for criminal investigations plummeted.
- Local immigration enforcement undermines police-community relationships in immigrant communities, deterring crime reporting. In Salt Lake City, UT, experts found that one in three city residents are unwilling to report drug-related crimes when local law enforcement has the power to detain based on immigration status.

- The growth of Secure Communities, a mandatory program for local governments, undermines successful community policing strategies including policies in which local authorities agree not to inquire about the immigration status of crime victims and suspects.

Local immigration enforcement is misguided as a crime control strategy.

- Immigration and Customs Enforcement (ICE) reportedly aims to target non-citizens who have committed serious crimes. Yet 57 percent of immigrants identified by the Criminal Alien Program and 65 percent of those identified by 287(g) in FY 2009 were never convicted of a crime. Since October 2008, Secure Communities has transferred over 52,000 non-criminal immigrants to ICE custody.
- Among the immigrants detained by local law enforcement who *were* convicted of crimes, many were charged with minor offenses. In Davidson County, TN, 75 percent of immigrants marked for deportation were picked up for traffic offenses. In Irving, TX, 98 percent of individuals held under immigration detainers were charged with misdemeanors.
- Proponents of local immigration enforcement make false connections between immigration and crime. According to decades of research, immigrants—including undocumented immigrants—don't commit crimes at higher rates than U.S.-born residents.
- The majority of communities have low or declining crime rates when they sign local immigration enforcement agreements. The proliferation of local 287(g) agreements is more closely linked to the rapid growth of a region's immigrant population (including legal residents as well as unauthorized immigrants) and to its ideological bent than it is to rates of violent or property crime.

The consequences of immigration policy decisions made—or avoided—at the federal level manifest on the ground in cities, where millions of immigrants and their families have settled.

Effective immigration enforcement in cities will ultimately require a comprehensive reform of our immigration policy, including a more flexible visa program to encourage legal entry and a path to legal residence and citizenship status for currently undocumented immigrants. Federal policies that provide for the legalization and integration of immigrants and their families will help address the challenges faced by new destination cities confronting rapid demographic change.

Without these and other immigration reforms, our expanding local enforcement system will continue to burden our cities and sweep up hundreds of thousands of non-criminal immigrants who are supporting urban economies by living, working and raising families.

INTRODUCTION

As the nation continues to struggle with the lingering impact of the economic downturn, America's local governments face especially grim prospects. Declining tax revenues, intense fiscal pressures, and drastic reductions in state aid contributed to massive budget shortfalls for cities of all sizes. In response, municipalities have cut public services, raised taxes, instituted hiring freezes, delayed infrastructure projects and fired municipal workers. Job losses in local government are projected to reach 500,000 by the end of this fiscal year.¹ And the National League of Cities projects that municipalities' fiscal crises are still getting worse.² Yet even as local governments struggle to preserve core municipal goods and services, they are also shouldering an expensive new burden: stepped up responsibility for enforcing broken federal immigration laws. The extraordinary local cost of immigration enforcement is America's seldom considered in the context of municipal budget crises.

It is widely recognized that America's immigration system suffers from profound flaws. According to a Pew Research poll, 87 percent of Americans believe that it is important for Congress to pass legislation addressing immigration policy.³ But while Congress has failed to reform the nation's immigration laws, executive agencies have doubled down on enforcement of the existing system, increasingly relying on American cities to identify, detain and even arrest unauthorized immigrants. In October 2010, Department of Homeland Security Secretary Janet Napolitano announced that two local immigration law enforcement programs, 287(g) and Secure Communities, contributed to a record number of deportations and removals, adding up to over 392,000 immigrants in fiscal year 2010 alone.⁴

This paper finds that enforcing our broken immigration laws invites waste and lost revenue for cities in already tough fiscal situations. We examine three federal-local partnership programs that leverage urban communities and their resources in service of federal immigration enforcement goals—287(g), Secure Communities and the Criminal Alien Program. We find that these programs impose high costs on local budgets, ineffectively target dangerous criminals and prove counter-productive to protecting public safety.

In enlisting local police to add federal enforcement duties to their everyday work, federal-local partnerships strain limited police resources needed for crime fighting, while also compromising police relations in immigrant communities that are critical for upholding public safety. In practice, these programs can promote racial and ethnic profiling, contribute to civil rights violations against U.S. citizens and ensnare immigrants who are not criminals or who have committed only minor offenses. Therefore, many immigrant destinations have opted out of this work, and instead rely on local policies designed to build community-police trust and encourage immigrant integration. Unfortunately, the growing Secure Communities program—which compels local government involvement in immigration enforcement—threatens to undermine these strategies.

Some cities, however, support the decentralization of immigration enforcement, and actively seek greater immigration powers for local police and sheriff's departments. This paper finds that local support for enforcement programs is more closely linked with rapid demographic change than with actual crime rates, and appears to have its political roots in a set of deep misconceptions about the relationship between immigration and crime. Cutting through the misleading rhetoric linking undocumented immigrants to violent crime would enable communities to re-direct limited police resources where they are truly needed.

By driving immigrants further underground, local immigration enforcement efforts also threaten cities' economic growth and undermine the metropolitan tax base. In "Principles for an Immigration Policy to Strengthen &

Expand the American Middle Class,” the Drum Major Institute for Public Policy explored the range of immigrants’ economic contributions; we argued that immigrants, legal and undocumented, stimulate the economy in their capacity as workers, consumers, taxpayers and business owners.⁵ Such contributions are closely felt in the major cities and metropolitan counties where millions of immigrants live and work. In 2008, immigrants accounted for \$215 billion in economic activity to New York City, the nation’s largest immigrant destination.⁶ Moreover, a recent Fiscal Policy Institute study found that immigrants produce 20 percent of the economic output in the nation’s 25 largest metropolitan areas.⁷

The deployment of the Criminal Alien Program, 287(g) and Secure Communities to immigrant destinations, new and old, ensures that cities and metros are more than ever centers for federal immigration enforcement. In the eyes of police, these advances can turn the same taxpaying immigrants who support the local economy into “potentially removable aliens.”

Now is the time to assess how well our enforcement policies and programs are achieving stated goals, and how this impacts immigrants and the cities where they live. The consequences of immigration policy decisions made—or avoided—at the federal level manifest on the ground in cities, where millions of immigrants and their families have settled. This paper weighs the burdens the Criminal Alien Program, 287(g) and Secure Communities place on America’s cities and metros, where millions of immigrants live and work. We begin with a brief overview of the nation’s major local immigration enforcement programs. We then explore their significant costs and consequences, uncover how they have affected local communities and institutions and argue against their unchecked growth.

BACKGROUND: OVERVIEW OF LOCAL IMMIGRATION ENFORCEMENT PROGRAMS

In the past several years, ICE has increased the scope of its collaboration with local law enforcement agencies through ICE Agreements of Cooperation in Communities to Enhance Safety and Security, or ICE ACCESS, an initiative which houses fourteen federal-local partnership programs.⁸ Of these, the Criminal Alien Program (CAP), 287(g) and Secure Communities are central to federal enforcement strategy and inflict particularly high social and economic costs to cities.

Each screens the immigration status of non-citizens and places those who are removable into deportation proceedings. Only recently has ICE sharpened these programs to better focus resources on immigrants with criminal convictions, or “criminal aliens,” chiefly those who pose a threat to public safety. Yet non-citizens guilty of minor immigration status violations are also considered criminal aliens, and remain targets of ICE ACCESS programs. Both CAP and Secure Communities occur in jails and prisons, where ICE agents—either remotely or on site—perform immigration enforcement duties. In contrast, the 287(g) program directly trains local police officers to complete these tasks, either on the street or in a correctional facility. The partnerships can also work together; one county jail could be enrolled in Secure Communities and the Criminal Alien Program, while its officers could be trained by 287(g) to enforce immigration laws on the street.⁹

It is important to note here that undocumented immigrants are not the only targets of local immigration enforcement. Any non-citizen is eligible for removal if convicted of a deportable offense.¹⁰ The 1996 Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) radically expanded the definition of an “aggravated felony,” making legal permanent residents and other immigrants removable for minor crimes, including shoplifting or minor drug possession. This harsh provision is also retroactive: an immigrant who committed and served time for a decades-old offense can still be identified by an ICE ACCESS program and entered into removal proceedings today, even if the crime wasn’t a deportable offense when it was committed.¹¹

The Criminal Alien Program: The goal of ICE’s Criminal Alien Program is for ICE to obtain final removal orders for immigrants before they are released from federal, state or local jails or prisons. In FY 2009, CAP sent nearly 179,000 individuals into federal immigration custody, more than any other ICE ACCESS program.¹² CAP participant jails provide a list of arrestees to ICE agents, who conduct interviews, either in-person or through telephone or video-conferencing, to determine inmates’ immigration status. When an ICE agent identifies a deportable immigrant, he or she issues an immigration hold, called a detainer, on the individual. A detainer is a request that the local law enforcement agency notify ICE before releasing the individual, which gives ICE an opportunity to gain custody within a mandated 48-hour period.¹³

Currently active in an estimated 10 percent of the nation’s 3,100 local jails and all state and federal prisons, CAP has a wide reach.¹⁴ For a program of its size, CAP has not received the same amount of scrutiny as other ICE ACCESS partnerships, even from enrolled localities. An Immigration Policy Center report notes: “ICE claims that a majority of Texas counties participate in CAP. However, in a survey of all 254 Texas counties, only 16 percent of 94 responding counties claimed to participate in the program... This lack of information may mean that counties are silently acquiescing to a program they know little about and may be ignorant of the program’s consequences.”¹⁵

Secure Communities: Launched in Houston in 2008, Secure Communities is ICE’s lead federal-local enforcement program, and builds on the efforts of CAP to identify immigrants in the correctional setting. By design, the program casts a wide net in searching for deportable immigrants; it automatically sends the fingerprints of every arrested person to federal immigration databases.

When an individual is booked at a Secure Communities jail, the jail transmits his fingerprints to the State Identification Bureau, which sends the fingerprints to the FBI’s Integrated Automated Fingerprint Identification System (IAFIS), as well as DHS’s United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Automated Biometric Identification System (IDENT). IAFIS holds biometrics-based criminal records, while IDENT holds immigration records. An IDENT match indicates that the person has had prior contact with immigration authorities, and prompts ICE to determine their immigration status and criminal history. ICE then decides whether to place a detainer on the individual.¹⁶ The agency explains that there are “touchpoints” in the criminal justice process where deportable immigrants are released from the system (when, for example, charges are dropped or dismissed) before they are screened by the Criminal Alien Program.¹⁷ Secure Communities flags deportable immigrants before this happens, at the point of arrest, so ICE can gain custody before their release.

In two years, the program has grown at a staggering rate: in just a few months between April and August 2010, Secure Communities grew from 168 jurisdictions in 20 states to 553 jurisdictions in 29 states.¹⁸ As of February 15, 2011, Secure Communities has been activated in 1,049 jurisdictions in 39 states.¹⁹ Endowed with a \$150 million FY 2011 budget, ICE plans to enroll every jurisdiction in the country by 2013.²⁰

The 287(g) Program: The 287(g) Program is the only ICE initiative that trains local police officers to enforce federal immigration laws. In 1996, the Immigration and Nationality Act was amended to include a provision, titled Section 287(g), which allows DHS to grant certain civil immigration enforcement powers to law enforcement agencies at the city, county or state level. This had previously been a strictly federal domain. Each participating agency signs ICE’s Memorandum of Agreement (MOA), a document that outlines operating procedures. Observers charge that ICE oversight has allowed cities and counties to adapt the program to local goals, leading to wide variety in how 287(g) is implemented at the local level.²¹ 287(g) follows three models: Jail Enforcement, Task Force, and hybrid Jail Enforcement/Task Force. The Task Force model enables trained officers to perform immigration duties on the street, while the Jail Enforcement model is limited to local jails. Research indicates that the nationwide deployment of Secure Communities may make jail-based 287(g) agreements unnecessary.²²

Initially, the program included a handful of metropolitan counties including Los Angeles County and Charlotte/Mecklenburg County, North Carolina. It took off in 2007, when 26 law enforcement agencies throughout the country signed agreements. Though it only covers a fraction of the nation’s law enforcement agencies—71 to date—287(g) has had a major impact on immigration enforcement. From FY 2006 to 2010, 287(g) identified more than 186,000 immigrants for removal.²³

As the 287(g) program has grown, so has criticism of its management and operations. In January 2009, an audit by the Government Accountability Office analyzed MOAs from 29 participating localities and raised several concerns.²⁴ One of the report’s key findings was that the MOAs do not include clear program objectives or consistently communicate how 287(g) authority is to be used, leaving the program open to misuse. In July 2009, ICE implemented a host of reforms to 287(g), primarily so that it advanced the agency’s renewed focus on targeting criminal aliens. Every participating agency was required to sign the same MOA, binding each partner to a standard program objective and definitions of delegated authority. For the first time, localities were directed to enforce immigration laws in pursuit of a single federal enforcement priority; thus, participating agencies were no longer free to use the program to pursue local ends.²⁵ But according to a recent Migration Policy Institute report, these changes haven’t meaningfully affected implementation.²⁶

I. LOCAL IMMIGRATION ENFORCEMENT IS COSTLY FOR CITY BUDGETS AND LOCAL ECONOMIES

For many cities, start up costs, staff overtime payments and jailing fees add up to make implementing immigration law a costly endeavor. Though the federal government depends on the assistance of local authorities to carry out interior immigration enforcement, current federal funding mechanisms fail to adequately reimburse local governments for their work. Beyond its impact on city budgets, immigration enforcement can also depress immigrants' economic and social contributions.

Local immigration enforcement weighs heavily on city and county budgets.

For participating cities and counties, local immigration enforcement programs impose considerable costs. As city police departments from Baltimore to Los Angeles grapple with budget cuts, placing an extra burden on these cash-strapped agencies is particularly misguided. In 2010, more than one in five cities surveyed by the National League of Cities reported cutting public safety spending, which is an increase from one in seven just six months before.²⁷ In Oakland, for example, a \$31 million budget deficit forced to the city to lay off 80 police officers.²⁸

According to the Major Cities Chiefs Association, a group that represents the nation's 56 largest police departments, most law enforcement agencies have elected not to participate in 287(g) in part because "enforcing federal law is an unfunded mandate that most agencies just cannot afford to do."²⁹ The 287(g) program comes at the highest cost to cities and counties because it directly drains the resources of law enforcement agencies. While ICE provides funding for some equipment and training, it does not cover all expenses for 287(g). In a Government Accountability Office survey of 29 participating agencies, 62 percent reported that they did not receive federal reimbursement from any source for costs associated with the program, including the costs of detaining and transporting deportable immigrants.³⁰

In particular, staff salaries and start-up costs add up to large sums for cities and counties. The East Valley Tribune reported that after enrolling in 287(g), overtime spending in Maricopa County, Arizona shot up by the hundreds of thousands of dollars. During one pay period, deputized officers worked over 9,000 hours, which cost at least \$370,000.³¹ In El Paso County, Colorado, 287(g) staff used over 2,200 hours of staff time processing criminal immigrants, yet received zero reimbursement from the federal government.³² Similarly, the Las Vegas Metropolitan Police Department spends upward of \$1.3 million per year on personnel costs for its 287(g) staff.³³

In North Carolina's Mecklenburg County, start-up and operation expenditures for just the first year of 287(g) totaled over \$5.3 million.³⁴ In Raleigh, Wake County's program cost the local government over \$495,700 over the first six months.³⁵ The preliminary costs of 287(g) to the Davidson County Sheriff's Office in Nashville topped out at an estimated \$1 million.³⁶ For Harris County, Texas, policing Houston and its surrounding suburbs amounted to more than \$928,000 for the first year.³⁷ After a study estimated that the program was to cost as much as \$2 million for Houston city jails, Mayor Annise Parker opted instead to join the Secure Communities program.³⁸

287(g), Secure Communities and CAP use detainers, which appreciably lengthen the amount of time immigrants are incarcerated in local jails during the criminal justice process, leaving cities and metros to foot much of the bill. There are two ways that this can occur.

First, a detainer gives ICE a maximum of 48 hours (not including weekends or holidays) to gain custody of individuals after local criminal charges have been resolved. In practice, ICE frequently fails to do this, leading local jails to keep immigrants incarcerated beyond the deadline.³⁹ Such violations can lead to significant hardships for immigrants and their families left without heads of household, as well as costly litigation for local jurisdictions. In *Harvey v. New York*, a legal permanent resident reached a \$145,000 settlement with New York City because he was unlawfully detained by the Rikers Island Correctional Facility on two separate occasions,

adding up to more than 140 days.⁴⁰ Similarly, the ACLU of Colorado sued Jefferson County, Colorado on the grounds that the County unlawfully jailed an immigrant for 47 days after his traffic charges were resolved, with “no charges pending, no opportunity to see a judge and no opportunity to post bail.”⁴¹

Second, when individuals are arrested, many can post bail and return to their communities while waiting to go on trial. But research shows that courts often use the existence of a detainer as a mandate that the jailed immigrant should not be released pre-trial, and deny bond in a criminal case of any severity.⁴² In other cases, courts may treat the detainer as an adverse factor when setting an appropriate bail amount.⁴³

A study of the Criminal Alien Program in Austin, Texas found that between 2004 and 2007, average jail time for the population held under detainer was three times longer than the general population. The detainer population was held on average between 65 to 76 days, while the general population was only jailed between 22 to 26 days on average. The author concluded that this was not only “because they are held for up to 48 hours after local charges have been disposed of, but because ICE-detainer inmates are unlikely to receive bail while awaiting trial... while similarly situated U.S. citizens would be released on bond.”⁴⁴ This keeps immigrants from working to support their families and communities while they wait for any criminal charges to be resolved.

The Department of Justice’s State Criminal Alien Assistance Program (SCAAP) disburses grants to law enforcement agencies for costs of jailing “criminal aliens,” but only reimburses city, county and state jails for certain types of inmates. SCAAP pays for inmates who are jailed for four or more consecutive days and have been convicted of a felony or second misdemeanor. Localities are responsible for the costs of jailing any other immigrants. In FY 2008, Travis County, TX used more than \$2.5 million housing immigrants under detainer, yet only received \$1.2 million from SCAAP.⁴⁵ A GAO report on SCAAP underscores how insufficient these payments are for big cities. In FY 2003, SCAAP payments to the Los Angeles Sheriff’s Department, Maricopa County Sheriff’s Department, Orange County Sheriff’s Department and the New York City Department of Corrections amounted to 25 percent or less of the cost of jailing “criminal aliens.”⁴⁶ Some city and county jails also receive funding from DHS through Intergovernmental Service Agreements, under which local jails rent out beds to house federal immigration detainees. However, these payments only cover immigrants in federal custody—not immigrants held for local charges that have been prolonged by a federal detainer.⁴⁷

Though the federal government continues to increase ICE’s funding, it has not approved commensurate increases for ICE’s municipal and state enforcement partners. Citing the unfocused nature of the grant program, the Obama administration’s FY 2010 budget proposed to eliminate SCAAP altogether, though Congress ultimately preserved it.⁴⁸ But SCAAP’s \$330 million budget for FY 2011 won’t do enough to compensate localities for their role in enforcing federal immigration law.⁴⁹ As Secure Communities and other ICE ACCESS programs continue to grow, so too will the use of detainees and the associated costs to cities.

Under the threat of deportation, immigrant consumers stay home, depressing local business.

Immigration enforcement undercuts the vital contributions immigrants make to urban economies. In “Principles for an Immigration Policy to Strengthen and Expand the Middle Class,” the Drum Major Institute finds that immigrants produce goods and services, pay taxes and support small businesses, and as such are an integral part of the American economy.⁵⁰ In the Chicago metropolitan area alone, undocumented immigrants spend nearly \$2.9 billion each year on goods and services, creating an additional 31,908 jobs in the local economy.⁵¹ When immigration enforcement goes local, undocumented immigrants may fear that everyday activities could result in contact with police, and by extension, immigration authorities. As a result, many avoid public places, to the detriment of neighborhood businesses.

In Irving, Texas, a large Dallas suburb, initial enforcement of the Criminal Alien Program drove many Latino immigrants underground. After controversial arrests of undocumented immigrants at a local barbeque, the Dallas Consul General of Mexico went so far as to warn Mexican immigrants to stay away from the suburb completely.⁵²

Soon after, newspapers reported that small businesses dependent on immigrant customers took a noticeable hit. An article from the Houston Chronicle sheds light on the fallout:

The bottom dropped out of Mike Granger’s snack business almost immediately after the Mexican consul general in Dallas warned people to avoid this sprawling suburb. ‘I’m picking up stales...My customers have disappeared.’ ... Joe Reyes, a worker at Nico’s Discount Tires on Story Road, said: ‘The cops are stopping everybody around here,’ Reyes said, motioning to a stretch of inexpensive restaurants, auto repair shops and beauty shops. ‘People who used to come here now go to Grand Prairie, anyplace else,’ he said. His boss, manager Rafael Romero, said Nico’s business is down 50 percent.⁵³

The same effect was observed on businesses in metropolitan Atlanta after 287(g) was implemented. From bridal shops to apartment complexes, business in Cobb and Gwinnett counties that catered to Latino immigrant customers registered serious and sometimes “staggering losses.” One Atlanta-based grocery distributor reported that lagging business post-287(g) forced him to cut the number of Latino grocery stores supplied from 30 to 5.⁵⁴ A similar effect was observed in Frederick County and Prince William County, two 287(g) participants in the Washington, D.C metropolitan area.⁵⁵

In Maricopa County, Arizona, one local politician actually touted depressed business activity as proof of 287(g)’s success. According to former Maricopa County attorney Andrew Thomas:

We have a lot of anecdotal evidence of areas in the Valley that have a large number of presumed illegal immigrants leaving (and) businesses that cater to illegal immigrants suffering or going out of business entirely...So you have all of this evidence that supports the conclusion that illegal immigration is being curbed significantly, and I believe the main reason for that is the crackdown efforts of law enforcement and particularly the sheriff’s office and our office.⁵⁶

This result was no doubt a negative for Maricopa business owners who relied on the economic support of undocumented immigrants and their families. Cities and metropolitan areas grappling with fiscal crises can scarcely afford to pursue immigration enforcement policies that risk reducing immigrants’ economic activities.

Following enforcement agreements, immigrants withdraw from public life.

Beyond its impact on business activity, immigration enforcement also damages immigrants’ engagement with their communities. For undocumented immigrants living in metropolitan Atlanta, a minor offense such as driving without a license can result in deportation under 287(g). As a result, some immigrants avoid driving altogether. Poor transit access means immigrant families can no longer participate fully in civic life. The withdrawal may have long-term impacts on children growing up in immigrant households, especially if these young people experience reduced educational or economic opportunities as a result of their families’ increased isolation.

Reporting from the Atlanta-Journal Constitution draws attention to this issue: “Pastor Antonio Mansogo, president of the Atlanta Association of Hispanic Pastors, said attendance is down at many area churches where Hispanics worship. His own church has been sending a bus into the community so that would-be worshippers can get to church without risking being arrested for driving without a license.”⁵⁷ In addition, one study found that in Cobb County, Georgia, fewer immigrants accessed critical social and psychological services, including domestic violence counseling.⁵⁸ Cobb County community leaders also reported that attendance at parent-teacher meetings and college fairs dropped significantly, forcing several event cancellations. In the same district, the number of English as a Second language classes dropped from ten to three.⁵⁹

There is also troubling evidence that ICE ACCESS programs impact immigrant participation in educational institutions. After months of increased deportations under the Criminal Alien Program, Irving schools lost nearly 800 students—a decrease nearly two times greater than the previous year.⁶⁰ Of the losses, the Superintendent of

Irving Schools said that “deportations were causing parents to go ‘on the run’ and withdraw children from the schools.”⁶¹ In addition, MPI analysis showed that following 287(g) implementation in Cobb, Frederick and Prince William counties, growth in Hispanic school enrollment dropped significantly.⁶² When immigrant parents fearing deportation keep their children from attending schools or participating in educational activities, it affects entire communities. The vast majority of children of immigrants are U.S. citizens that will remain here for their adult lives; as such, there is a distinct and shared interest in their educational success.⁶³

For proponents of stricter local immigration enforcement, these are intended effects. In Prince William County, Board of Supervisors Chairman Corey Stewart cited increased fear as a benefit of 287(g). “If you are an illegal immigrant, you should be anxious and concerned about driving... To the extent that we have caused anxiety among the illegal community, I think that’s a good thing, because we don’t want them here in the first place.”⁶⁴

It’s clear that the costs of local immigration enforcement go beyond those incurred by city and county governments. From school and church attendance to small business patronage, 287(g) and other enforcement programs damage the social and economic contributions immigrants make to metropolitan areas. In the next section, we’ll explore the toll immigration enforcement takes on local policing and public safety.

II. LOCAL IMMIGRATION ENFORCEMENT IS COUNTERPRODUCTIVE TO PUBLIC SAFETY

For metropolitan police departments, the added responsibility of enforcing immigration laws places demands on police resources needed for routine law enforcement. Evidence suggests that enlisting police officers in federal immigration enforcement is counter-productive to everyday crime-fighting in a way that compromises public safety.

Performing immigration duties drains police time and resources.

Law enforcement executives as well as rank-and-file police officers caution against civil immigration enforcement given its impact on local policing and public safety. The Major Cities Chiefs Association, for example, holds that “immigration laws are very complex and the training required to understand them would significantly detract from the core mission of the local police to create safe communities.”⁶⁵ Salt Lake City Police Chief Chris Burbank explains: “Requiring law enforcement agencies to engage in civil immigration activities diverts resources away from our central responsibilities during a time of budget cuts and staffing shortages.”⁶⁶ Simply put, when officers must use their time and resources identifying and detaining immigrants, they risk spending less time investigating and solving criminal cases.

287(g) agreements are particularly damaging to local police work, as trained officers must enforce immigration laws in addition to their primary duties. A Pulitzer Prize-winning investigation of Maricopa County’s immigration enforcement efforts impacted public safety. Shortly after Maricopa County began enforcing immigration laws, local deputies arrived late two-thirds of the time to the most serious emergency 911 calls, exceeding their standard response time on more than 6,000 emergencies in 2006 and 2007.⁶⁷ In addition, county detectives’ arrest rates for criminal investigations plummeted from 10 percent in 2005 to 3.5 percent in 2007.⁶⁸ Not surprisingly, as measures indicating the quality of police work in Maricopa declined, crime rates increased. The conservative Goldwater Institute concluded that while the Maricopa Sheriff’s Office budget ballooned, reported violent crimes increased by over 69 percent.⁶⁹

ICE reforms to the 287(g) program in July 2009 may have further increased the time and resource demands placed on local police departments. In October 2009, the Los Angeles Sheriff’s Department (LASD) general counsel said the new, standard MOA agreement would sharply increase city officials’ paperwork and processing

responsibilities. He continued: “This requirement will place an inordinate strain on LASD’s already overburdened staff... The degree to which the proposed MOA turns LASD into a primary enforcer of federal immigration law is indeed breathtaking.”⁷⁰ As a result, the department declined to sign the new agreement, opting instead to keep enforcing its pre-2009 MOA.⁷¹ Two local jurisdictions in Massachusetts and New Jersey also declined to renew their 287(g) partnership in July 2009. One Massachusetts police chief explained that federal officials asked him to vastly increase deputies’ responsibilities in detaining and transferring deportees.⁷² In New Jersey, a Middlesex County official gave this reason for terminating the agreement with ICE: “They want us to do their job at the county’s expense.”⁷³

ICE documents portray Secure Communities as a program that requires little extra effort from participating localities, yet the agency’s own Standard Operating Procedures indicate otherwise. In the document, ICE outlines an eight-point plan detailing local activities that are necessary to make the program run effectively, from gathering paperwork to making phone calls.⁷⁴ Correspondence between Florida law enforcement officials points to the true burden Secure Communities can place on small, under-resourced police departments:

Time is also a factor for our staff. Sending I.A.Q’s [Immigration Alien Queries], waiting for responses, making phone calls to different immigration officials for clarification on detainees status, gathering additional information for immigration such as photos, booking sheets, fingerprints, and palm prints takes away from the deputies regular duties.⁷⁵

To date, the agency hasn’t assessed how these duties could impact local law enforcement. In a Salon interview, ICE’s deputy press secretary Richard Rocha said they don’t “know specifically if there was a study done to determine what sort of effects this would have on local LEA.”⁷⁶

As Secure Communities continues to grow, these effects will be felt by an increasing number of city and county law enforcement agencies. While enforcing federal immigration laws uses valuable police time best spent upholding criminal laws, it also compromises police-community relationships that are integral to this work.

Local immigration enforcement undermines police-community relationships and deters crime reporting.

The involvement of local police in immigration enforcement harms relationships between police and immigrant communities. Due to language barriers or negative experiences with corrupt institutions in their home countries, immigrants may already be hesitant to ask for assistance from law enforcement.⁷⁷ This leaves immigrants vulnerable to criminals who take advantage of their silence and commit crimes with impunity. Police officers and chiefs, elected officials, law enforcement associations and immigration advocates warn that this problem only gets worse when police act as immigration agents.

William Bratton, a former police commissioner in Los Angeles, New York and Boston and an outspoken critic of 287(g), explains: “Criminals are the biggest benefactors when immigrants fear the police. We can’t solve crimes that aren’t reported because the victims are afraid to come forward to the police.”⁷⁸ In Miami, Chief of Police John Timoney said that these fears impede law enforcement efforts to crack down on criminal activity in local communities.⁷⁹

Police involvement in federal immigration enforcement can produce a “chilling effect” on crime reporting, where immigrant crime victims or witnesses are hesitant to come forward for fear of local police contacting immigration authorities. In many participating cities, this chilling effect harms crime reporting and public safety. In Salt Lake City, experts found that one in three city residents are unwilling to report drug-related crimes when local law enforcement has the power to determine citizenship status.⁸⁰ Following Durham’s enrollment in the 287(g) program, one police captain described these fears among the immigrant community: “One of the biggest reasons they feel they can’t trust us is that they feel they will be deported, that we will check

their immigration status when they report a crime.”⁸¹ After implementing the Criminal Alien Program, Irving, Texas Mayor Herbert Gears lamented: “A lot of work over the years has simply been destroyed. There is a large segment of our city that is now anxious about talking to a police officer, and it is causing problems.”⁸²

After the implementation of 287(g) in Charlotte, Latinos interviewed by a University of North Carolina study said they were increasingly being robbed “because of their vulnerability and because they will no longer report crimes to the police.”⁸³ In Nashville, where a county-level 287(g) agreement has been in place since 2007, a National Council of La Raza survey of the black and Latino communities revealed that while members of both groups experienced some discomfort interacting with police, Latinos were distinctly less likely to report crimes as a result. 42 percent of Latino respondents said they knew of a crime that went unreported, compared to a mere four percent of black respondents. When asked whether they would report a future crime, more than half of Latino respondents said they would not, compared to nearly a third of black respondents.⁸⁴

In addition to undocumented immigrants, legal immigrants or U.S. citizens living in mixed-status families may also hesitate to interact with law enforcement in participating communities, fearing that it could reveal the status of an undocumented family member. The chilling effect is also not limited to jurisdictions with enforcement agreements. Because most city jails transfer arrestees to a county jail or sheriff’s office, a county-level 287(g) agreement, for example, can impact police-community relations within a city that doesn’t directly participate in immigration enforcement.

Overzealous local enforcement can also ensnare immigrants who do report crimes and further serve as a powerful deterrent against future crime reporting. One example provides a particularly powerful illustration: after a fight with her partner, a Salvadoran immigrant in Prince George’s County, Maryland called the police. Months later, she received a warrant for selling phone cards without a license and had her fingerprints shared with ICE through the county Secure Communities program. Although her criminal charges were dropped, she remains in deportation proceedings and faces separation from her young U.S. citizen daughter. In an interview with the Washington Post, she said: “You would have to be crazy to call the police. I would never call the police again.”⁸⁵

In Charlotte, a local man called police to report a sexual assault committed against his girlfriend at a traffic stop by a police officer. The officer arrested the man and his girlfriend for resisting arrest. While the man was held by the Mecklenburg County Sheriff’s Office, a 287(g) participant since 2007, investigators discovered that he was undocumented and placed him into deportation proceedings—even though his arresting charges were later dropped.⁸⁶

The chilling effect is of particular concern in domestic violence cases. Advocates caution that the involvement of police in immigration enforcement prevents victims of domestic violence from calling police to report abuse, for fear of revealing their citizenship status or the status of her abuser.⁸⁷ In addition, during domestic disturbance calls, police often chose to arrest both parties and transport them to a local police station to sort out who is at fault. For an undocumented domestic violence victim living under Secure Communities, this could result in deportation.

Local immigration enforcement also interferes with federal protections intended for immigrants who are victims of domestic violence, human trafficking or other serious crimes.⁸⁸ Although local police under 287(g) are trained to enforce immigration laws, many lack knowledge or training about programs like the T-visa, which grants immigration relief to trafficking victims who cooperate with federal investigations, or the U-visa, a parallel program that covers physical and emotional abuse. In addition, there is currently no screening or identification protocol to ensure that ICE ACCESS programs won’t ensnare undocumented immigrants who are actually victims of crime.⁸⁹ It is clearly in the public interest that perpetrators of human trafficking, domestic violence and other crimes against immigrants are punished, but the involvement of local police in immigration enforcement undermines the implementation of key federal programs intended to achieve this goal.

These cases illustrate how immigration enforcement can poison immigrants' interactions with local police to the detriment of public safety. As a result, many immigrant destination cities and metros have deliberately stayed away from ICE ACCESS programs, and instead support local policies designed to improve community-police relationships and bolster public safety.

III. THE GROWTH OF SECURE COMMUNITIES THREATENS SUCCESSFUL CRIMINAL JUSTICE STRATEGIES

Dozens of cities and counties across the country have crafted public policies to ensure that local resources aren't used for civil immigration enforcement. From the perspective of law enforcement officials, turning police into immigration agents could damage public safety—the chief goal of local policing. The International Association of Chiefs of Police describes the choice to enforce immigration laws as “an inherently local decision that must be made by a police chief, working with their elected officials, community leaders and citizens.”⁹⁰ The rapid, clandestine scale-up of Secure Communities destroys this process.

Rather than pursuing local enforcement, many cities have enacted laws to separate police from immigration affairs.

One of the most dominant law enforcement tools used over the past few decades, community policing strategy encourages police to actively engage with individuals, community-based organizations and other stakeholders to address neighborhood public safety and social disorder.⁹¹ A U.S. Conference of Mayors survey of 281 cities found that the best community policing efforts forged improved police-community relationships, boosted local quality of life and reduced crime rates.⁹² To include immigrant residents in community policing, many metropolitan police hire bilingual officers, conduct community outreach meetings or hold cultural trainings.⁹³ Local immigration enforcement presents an obstacle to this work: when police are associated with federal authorities, immigrants are less willing to come forward and get involved with community policing efforts.

Several cities in the 1970s and 1980s, including Los Angeles and Washington, D.C., enacted policies to formalize the separation between police and immigration enforcement to support community policing.⁹⁴ These laws, alternatively called sanctuary city, non-cooperation or “don't ask-don't tell” policies, generally limit police asking about immigration status; arrest or detention solely for immigration law violations; or local agencies sharing status information with federal authorities.⁹⁵ After 9/11, a growing number of cities and states began implementing such laws to re-establish trust with immigrant communities and boost crime reporting in the wake of aggressive terrorism-related immigration enforcement actions.⁹⁶

Beyond law enforcement, immigration “don't ask-don't tell” can function as immigrant integration policy, with mutual benefits for immigrant communities and the cities where they live.⁹⁷ New York's Executive Order 41 observes that the ability to govern and provide services depends on the city's ability to gather information and secure residents' trust.⁹⁸ Assuring immigrants that interaction with local government won't expose them to federal agents helps cities make schools, health clinics and other institutions more inclusive, and as such, more effective.

Comprehensive immigration reform that creates a path to citizenship for current undocumented immigrants and provides for the legal entry of future immigrants is a preferred solution, but this is politically impossible for cities to achieve on their own. Cities and metros should pursue immigration “don't ask-don't tell” laws as alternative policy options that work to include all immigrants in the local social fabric, regardless of immigration status.⁹⁹

Today over 70 cities and towns—including most of the nation's largest cities—have some variation of immigration “don't ask-don't tell” policies, which take the form of laws, police directives or executive orders.¹⁰⁰ At the state level, recent legislation introduced in Pennsylvania and New Mexico keeps state and local law enforcement from enforcing federal immigration laws; New Mexico's law also updates the state's Prohibition of

Profiling Practices Act to “underline how it is in the interest of law enforcement officers to foster trust and cooperate with many communities, including immigrants.”¹⁰¹

Passed by the City Council in 2003, Seattle’s policy is a typical example. Ordinance 121063 holds that unless required by law, “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.”¹⁰² Seattle’s legislation draws from a 2002 police department directive that states Seattle Police Department officers should not ask for documents to determine civil immigration status. The law also includes an important exception for non-citizens who have been previously deported or committed a felony criminal offense. However, one weakness of Seattle’s law and several other immigration “don’t ask-don’t tell” measures is the limited mechanism for tracking complaints or punishing violations.¹⁰³ Further, if a police officer shares an individual’s information with ICE in violation of city policy, there is no way to prevent that immigrant’s deportation.

Research shows that poor promotion limits the efficacy of many immigration “don’t ask-don’t tell” policies.¹⁰⁴ An example from Austin, Texas illustrates the public safety payoff of a successful outreach plan. After a spate of robberies in Austin, police mounted an outreach campaign encouraging immigrants to report crimes and reminding them that citizenship status was not an issue. As a result of this work, reports of armed robberies spiked by 20 percent, and over 150 repeat offenders were arrested.¹⁰⁵

In an op-ed, former Los Angeles Police Department Chief William Bratton detailed how the city’s immigration “don’t ask-don’t tell” policy affects crime fighting: “When officers can speak freely with victims and witnesses; it goes a long way toward making every American neighborhood much safer.”¹⁰⁶ He pointed to a striking example:

On March 12, Juan Garcia, a 53-year-old homeless man, was brutally murdered in an alley off 9th and Alvarado streets in the Westlake District. . . . At first, the police were stumped; there were no known witnesses and few clues. Then a 43-year-old undocumented immigrant who witnessed the crime came forward and told the homicide detectives from the Rampart station what he saw. Because of his help, a suspect was identified and arrested a few days later while hiding on skid row.

In Los Angeles and beyond, immigration “don’t ask-don’t tell” laws help build solid relationships between police and immigrant communities that bolster public safety.

Immigration don’t ask-don’t tell policies do not prevent police from fighting crime.

As we’ve seen, well-implemented immigration “don’t ask-don’t tell” laws assist police in implementing community policing strategies that get criminals off the streets and keep cities safer. Yet immigration restrictionists cite misleading data and evidence to characterize these localities as “sanctuary cities” that provide lawless, dangerous havens for undocumented criminals.¹⁰⁷

In reality, these laws keep police from using resources on *civil* immigration enforcement, but have no bearing on *criminal* law enforcement. This is a crucial and often-ignored distinction. Further, there is no evidence to demonstrate that cities with such policies have higher levels of property or violent crime than others. Infamous “sanctuary” cities like Los Angeles and New York have had historic decreases in violent and property crime consistent with national declines.¹⁰⁸

Nonetheless, immigration hawks regularly accuse major U.S. cities of providing sanctuary to immigrant criminals. Kris Kobach, Kansas Secretary of State and leading immigration restrictionist, writes:

Sanctuary policies tie the hands of local police in a very real way. For example, a police officer may see a known violent gang member who is an illegal alien. In any other city, the cop can pick up the phone and

call ICE to have the alien deported. But in a sanctuary city, no dice: The officer must let the gang member continue his activities unabated.¹⁰⁹

Kobach's example is particularly deceptive, describing a police officer who sees a known gang member in the course of ill-defined "activities." This leads the reader to believe that police officers can't arrest violent gang members for their crimes or report them to ICE. In reality, if an undocumented immigrant commits a crime in a city with an immigration "don't ask-don't tell" law, he or she is arrested and prosecuted just like any other individual, and likely reported to ICE.

The vast majority of cities with immigration "don't ask-don't tell" laws routinely share information with ICE about dangerous or recidivist foreign-born criminals. In Los Angeles, for example, LAPD officials notify ICE when a previously deported gang member is arrested.¹¹⁰ A 2007 audit from the Department of Justice Office of Inspector General tasked to investigate this issue concluded that such policies don't prevent New York or San Francisco from cooperating with ICE in identifying criminal immigrants.¹¹¹ As an ICE spokesman put it: "None of these municipal laws have yet interfered with our ability to make our streets safer."¹¹²

Immigration restrictionists contend that not enforcing civil immigration laws makes so-called sanctuary cities dangerous, even though many law enforcement officers know otherwise. Houston Police Chief Hurtt explains this losing proposition: "We cannot both keep the crime going down and use our police to investigate the citizenship status of residents who are not committing crimes. That does not make our city a sanctuary. No big cities in Texas, nor any of the largest U.S. cities, use their police for that purpose, for good reason."¹¹³

Immigration "don't ask-don't tell" policies are often attacked by federal and state policymakers who support immigrant crackdowns. In 1996, both Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act and Section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act included provisions to ensure that states and localities couldn't bar government agencies from maintaining records on immigration status, or prohibit them from sharing such information with the federal government or other agencies.¹¹⁴ Today, proponents of local immigration enforcement point to these legislative changes as evidence that current city policies violate federal law. But analysis from the Congressional Research Service holds that immigration "don't ask-don't tell" policies do not conflict with federal law. They do, however, lead to local agencies not possessing immigration status information in the first place.¹¹⁵ Since 1996, several federal and state bills have attempted withhold federal funding from these cities or enact bans on "sanctuary city" policies completely.¹¹⁶

Though opponents use alarmist law and order rhetoric to weigh in against "don't ask-don't tell" laws, the real issue is ideological. Restrictionists by definition support public policies designed to deport mass numbers of undocumented immigrants, or make life so desperate that they self-deport.¹¹⁷ Immigration "don't ask-don't tell" policies are distinctly at odds with this agenda, and instead work to include law-abiding immigrants in building safer and healthier cities.

Localities push back against the Secure Communities mandate, but find it impossible to opt-out.

The rapid expansion of Secure Communities, ICE's fastest growing federal-local partnership compromises immigration "don't ask-don't tell" laws. Initially, this growth occurred in cities and border counties with little public attention. Eventually, as Secure Communities was deployed to cities with immigration "don't ask-don't tell," advocates, elected officials, law enforcement officers and others began to voice their opposition.

Local leaders in San Francisco, Washington, D.C., Arlington, Virginia and other jurisdictions warned of the program's potentially damaging impact on community policing and limited law enforcement resources. Stakeholders also argued that Secure Communities clearly undermines city "don't ask-don't tell" policies and thus takes away local police's discretion on immigration issues. Under San Francisco's City of Refuge ordinance, for

example, municipal police report more than 2,000 immigrants each year to ICE who have been charged with or previously convicted of felonies.¹¹⁸ Washington D.C.'s ordinance provides for similar action. By sending fingerprints to immigration databases for individuals booked for all offenses, before they are actually guilty of any crime, Secure Communities overrides these procedures.

Above all, city and county leaders objected to being enrolled in this problematic initiative without prior notice and without their consent. It seems this was part of ICE's strategy. In order to facilitate Secure Communities' rapid roll out, ICE began to shift away from securing Memoranda of Agreement with local police to signing state-wide agreements.¹¹⁹ When a state signs a Secure Communities MOA, every city and county is automatically added to the deployment plan.

Yet for many months, ICE documents and public statements portrayed the program as a voluntary partnership. Secure Communities, for example, only "requests the cooperation" of local law enforcement in operating the program.¹²⁰ In August 2009, an ICE spokesperson referred to an opt-out procedure, noting that Secure Communities is not a mandate but "considered a tool for law enforcement agencies to use."¹²¹ When San Francisco, Arlington and other localities tried to opt-out, local leaders received confusing statements from ICE officials on whether this was actually an option. Backed by a Board of Supervisors Resolution, San Francisco's Sheriff sent a letter to the California Attorney General in May 2010 explaining how the program overrides local non-cooperation law and requesting that that the city be removed.¹²² In a subsequent interview, he noted: "I spoke with the deputy director of Secure Communities personally, and he said, 'No, there is no opt out.'"¹²³

Citing the decades-long separation between local police and immigration affairs codified in Mayor's Memorandum 84-41, the D.C. City Council unanimously put forward a bill opposing local participation in Secure Communities. By July 2010, the District was the first jurisdiction to formally withdraw.¹²⁴ However, D.C. is a unique case: because the District negotiated an agreement directly with ICE, officials could simply terminate the partnership, while cities automatically enrolled by state-level agreements never had this option.

In July 2010, Representative Zoe Lofgren wrote a letter to ICE asking for a "clear explanation" of how local law enforcement could opt out, noting that confusion surrounded the process. "Staff...were briefed on this program by ICE and were informed that localities could opt out simply by making such a request to ICE. Subsequent conversations with ICE and FBI [Criminal Justice Information Services] have added to the confusion by suggesting that this might not be so."¹²⁵ ICE responded to Rep. Lofgren and other stakeholders' pointed questions about the process in an August 17 memo titled "Setting the Record Straight," which marked the first time it had outlined how a locality could decline to enroll in the program:

If a jurisdiction does not wish to activate on its scheduled date in the Secure Communities deployment plan, it must formally notify its state identification bureau and ICE...Upon receipt of that information, ICE will request a meeting with federal partners, the jurisdiction, and the state to discuss any issues and come to a resolution, which may include adjusting the jurisdiction's activation date in or removing the jurisdiction from the deployment plan.

Though ICE documents assure stakeholders that the agency is committed to transparency and openness about the process, repeated requests from media to clarify similarly vague statements about the opt-out process were turned down.¹²⁶ San Francisco Sheriff Michael Hennessey reported: "Obfuscation and misdirection seem to be ICE's preferred method of communication, because that is all we have been getting so far."¹²⁷ In September, both Arlington, Virginia and Santa Clara, California county boards unanimously voted to opt out but were unsuccessful.

Following months of confusion, DHS Secretary Janet Napolitano confirmed in an October 2010 press conference that Secure Communities is a mandatory program for cities and counties.¹²⁸ Subsequently, ICE officials went on record to clarify that they had never meant to imply that the program was optional, and that localities could only delay or reschedule activation, not decline entirely.¹²⁹ After Napolitano's clarification, advocates and elected

officials turned their efforts to refining state-level Secure Communities agreements to restore local control over immigration enforcement. In November, Washington was the first state to decline signing a state-wide agreement; this still allows local law enforcement agencies to contact ICE if they wish to opt-in.

In addition to misleading localities about the program's deployment, ICE documents downplay the impact of Secure Communities on local jurisdictions. ICE officials insist that it doesn't require any state or local cooperation in federal law enforcement.¹³⁰ This is true only superficially. While enrolled state and local agencies don't directly determine individuals' immigration status or issue detainers, they are obviously participating in the immigration enforcement process. ICE's own Standard Operating Procedures state: "The local LEAs cooperation is vital to completing the processes of identifying, detaining and removing aliens convicted of serious criminal offenses."¹³¹ The fact that ICE doesn't fully acknowledge the role of local jurisdictions in Secure Communities sheds light on its decision to deploy the program without local consent.

What emerges from the Secure Communities debate is that the goals of ICE and many major cities are fundamentally opposed when it comes to immigration enforcement. Immigration law experts have pointed out the tension between a federal government that actively encourages the participation of local police in reducing the undocumented population and localities that formally decline to use their resources for these purposes.¹³²

Going forward, stakeholders in San Francisco, New York, Chicago and many other localities will continue to oppose local immigration enforcement, and advocate for working relationships with federal officials that better advance public safety. It remains to be seen is whether the federal government will respect these choices. We urge ICE to create a process for cities and counties in enrolled states to opt-out of Secure Communities. Alternatively, to ensure a more careful and considered roll-out of the program, the agency should resume signing agreements at the county level.

IV. LOCAL IMMIGRATION ENFORCEMENT FAILS TO TARGET CRIMINAL ACTIVITY

ICE's immigration enforcement strategy and its central partnership programs are advertised to focus on non-citizens with criminal histories and those who pose a threat to public safety—known as "dangerous criminal aliens."¹³³ Yet statistics reveal that these programs regularly identify immigrants in cities who are not criminals, or have been convicted of relatively minor crimes. Overwhelming evidence shows that federal-local partnerships are being used to remove large numbers of immigrants for status violations. ICE ACCESS programs also sweep up U.S. citizens in the process, and are vulnerable to racial and ethnic profiling.

ICE frequently releases Success Stories fact sheets describing violent crimes committed by non-citizens and the ACCESS program responsible for their subsequent deportation.¹³⁴ In spite of ICE's attempts to sell its federal partnership programs as crucial public safety tools, these "Success Stories" aren't representative of how they ordinarily operate in cities. As such, cities should reconsider using their limited resources to support this work.

The wide net of local immigration enforcement ensnares many immigrants who are not criminals.

A 2009 DHS report reveals that the majority of individuals identified by 287(g) and the Criminal Alien Program were "non-criminal aliens," that is, immigrants who were not convicted of crimes. In FY 2009, 57 percent (101,105) of immigrants identified by CAP and 65 percent of those identified by 287(g) were not criminals, a poor track record for programs that together accounted for 60 percent of the immigrants that ICE detained in 2009.¹³⁵ In fact, analysts find that the sharp growth in detention and removals between FY 2005 and FY 2009 was fueled by increased numbers of immigrants who hadn't committed crimes.¹³⁶ Since its inception in 2008, Secure Communities has resulted in the arrest of over 52,000 non-criminal immigrants, and the removal of over 27,000 from the country.¹³⁷

On a single night in January 2009, the Associated Press reported that 18,690 of 32,000 individuals held in immigration detention did not have criminal convictions. Further, more than 400 of these detainees without criminal records had been languishing in immigration custody for more than one year, putting their lives and livelihoods on hold fighting to stay in the country.¹³⁸

How does this happen? ICE documents state that enforcement efforts identify immigrants “*charged with or convicted of the most serious offenses.*”¹³⁹ Immigrants who are merely arrested on the suspicion of having committed a crime can be identified and deported, regardless of their guilt or innocence. Both the Secure Communities and 287(g) programs determine an individual’s immigration status upon booking, while CAP gives ICE access to immigrants in city jails from the moment they are arraigned, before any criminal charges have been resolved. In effect, the deportation process often occurs in tandem with the criminal process; this results in the removal of immigrants before their convictions, even if one never occurs.

Law enforcement officers participating in ICE ACCESS programs can also intentionally arrest immigrants as a pretext to check citizenship status, and later drop any criminal charges. In Nashville, a local man was approached by police while standing outside of his workplace, asked for identification and arrested for possessing a fake Social Security card and screened in the Davidson County Jail under the 287(g) program. Although the charges were dismissed in court, the man was undocumented, and thus processed for deportation.¹⁴⁰ This corresponds with a larger trend: in just two years, 60 percent of Nashville immigrants processed for removal under 287(g) had no criminal records.¹⁴¹

Officials from the Los Angeles Sheriff’s Department objected to ICE’s 2009 reforms to 287(g) on these grounds. Under the new MOA, city employees would have added responsibilities in processing undocumented immigrants for deportation. The added processing burden combined with tighter deadlines would mean that city officials would have to begin the deportation process before convictions were handed down.¹⁴² This conflicted with the Sheriff’s Department’s long-standing policy of using its 287(g) authority solely to conduct post-conviction citizenship interviews. The Department was eventually able to negotiate a new agreement that kept old procedures in place, and L.A. County supervisors requested reports to ensure that inmates wouldn’t be into deportation proceedings pre-conviction.¹⁴³

According to ICE documents, flagging deportable immigrants early in the criminal justice process ensures that field agents have “the necessary time to determine appropriate enforcement action against aliens... before they are released from local custody.”¹⁴⁴ ICE also explains that Secure Communities identifies and removes many immigrants charged with crimes because the program reveals prior convictions; the agency hasn’t released data documenting how frequently this happens.

In a recent Wall Street Journal op-ed, former Manhattan District Attorney Robert Morgenthau cautioned against the Criminal Alien Program as currently conceived, arguing that the “early involvement of federal officials” in the criminal justice process was “unwarranted.”¹⁴⁵ He also pointed out that charges were dismissed in one out of three cases arraigned in New York City’s criminal courts.¹⁴⁶ Indeed, ICE officials can interview inmates as soon as they are booked, even though many of their arresting charges are later dropped.

ICE has been less than straightforward about this aspect of local immigration enforcement. In a recent interview, an ICE spokesperson said all immigrants were deported under Secure Communities only after having been convicted of a crime. In the same interview, San Francisco Sheriff Michael Hennessey called attention to the case of an undocumented immigrant booked at his local jail: “[The man], who had no criminal record, was arrested for driving without a license on June 2. ICE picked him up within 24 hours.”¹⁴⁷

Reviews of 287(g) in particular attribute its lack of focus on criminal immigrants in part to programmatic flaws. A January 2009 report from the GAO found that ICE didn’t consistently tell participating agencies how they were supposed to use their immigration powers: “287(g) authority is to be used in connection with an arrest for a state offense; however, the signed agreement that lays out the 287(g) authority for participating agencies does not

address when the authority is to be used.”¹⁴⁸ A report by the DHS’s Office of Inspector General conducted during the same period confirms that 287(g) officers have detained immigrants for federal immigration violations, even when they had no prior arrests on state or local charges.¹⁴⁹

To address these issues, ICE’s 2009 reform of the 287(g) Memorandum of Agreement includes a provision that explicitly says criminal charges should prompt taking an individual into custody, and emphasizes that ICE will assume custody only after these charges have been resolved. Unfortunately, it appears actual reforms occurred only at the federal level. Several law enforcement officials in 287(g) participating agencies denied that the policy shifts actually impacted daily operations.¹⁵⁰ In Raleigh, for example, Wake County Sheriff Donnie Harrison said of the 2009 reforms, “Nothing has changed for us...ICE hasn’t said anything to us about changing anything.”¹⁵¹

Data from October to December 2009 indicate the beginning of an important shift in civil immigration enforcement, during which ICE began to more intentionally go after criminal immigrants. Throughout FY 2009, only 27 percent of immigrant detainees had criminal records, while during the first three months of FY 2010 nearly 43 percent had criminal records.¹⁵² The pattern continued through the first nine months of FY 2010: 49 percent of immigrants removed from the country were “criminal aliens.” But this still means 51 percent—more than 142,000—were not.¹⁵³ It’s also unclear how many of these criminals were detained for status violations alone.

As we’ve seen, ICE programs regularly catch immigrants who have not been convicted of crimes. Further evidence shows that when ICE ACCESS programs do identify convicted criminals, they fail to focus consistently on the most dangerous among them.

ICE ACCESS programs have not successfully targeted “dangerous criminal aliens,” but rather disproportionately identify immigrants who have committed relatively minor offenses.

National and local evidence demonstrates that ICE ACCESS programs routinely identify and deport immigrants guilty of minor offenses, rather than dangerous criminals convicted of serious crimes.

Secure Communities prioritizes immigrant offenders according to three offense levels, where Level 1 includes the most serious crimes, and Levels 2 and 3 include lesser crimes, including immigration status violations. Between October 2008 and February 2009, the Secure Communities program made 117,000 fingerprint matches, of which nearly 85% were individuals convicted of Level 2 and 3 crimes ranging from burglary to traffic offenses. During the same period, ICE only managed to identify 11,000 Level 1 non-citizens.¹⁵⁴ During the first six months of the Secure Communities program in Harris County, Texas, less than one in ten suspects authorities transferred to ICE were high-priority offenders.¹⁵⁵ Of the 477,035 immigrants identified by Secure Communities between October 2008 and February 2011, only 15 percent were charged or convicted of Level 1 crimes.¹⁵⁶

ICE explains the disproportionate number of Level 2 and 3 offenders flagged by Secure Communities thusly: “ICE is identifying more aliens charged with or convicted of Level 2 and Level 3 offenses because more individuals commit and are arrested for crimes falling under these levels.”¹⁵⁷ Yet the agency doesn’t offer any statistics to demonstrate that ICE ACCESS programs identify Level 2 and 3 immigrants at similar rates to U.S. citizens.

Statistics from cities participating in other local enforcement programs reveal a troubling focus on less serious crimes, including traffic offenses. In Mecklenburg County, North Carolina, 66.5 percent of the undocumented immigrants arrested during the first nine months of the 287(g) program were charged with a traffic violation.¹⁵⁸ Between 2007 and 2009, the Davidson County, Tennessee partnership marked 5,300 people for deportation, an estimated 75 percent of which were picked up on traffic offenses ranging from driving without a license to DUI.¹⁵⁹ In the months after CAP took effect in Irving, Texas, 98 percent of ICE detainees were issued for individuals charged with misdemeanor offenses, while only 2 percent were charged with felonies.¹⁶⁰ In Travis County, Texas, 34 percent of the detainees issued as a result of the Criminal Alien Program in 2006 were for misdemeanors; by 2008, this figure grew to 58 percent.¹⁶¹

Local news accounts illustrate how easily ICE resources are being used to deport non-citizens for very minor crimes. In Raleigh, North Carolina, one man ended up in immigration custody after being arrested for fishing without a license—his only previous criminal history consisted of two speeding tickets.¹⁶² In Irving, Texas, local police arrested more than a dozen men at a local barbeque on public intoxication charges. Immigration status checks by the Criminal Alien Program revealed their undocumented status, and they were subsequently turned over to ICE.¹⁶³ Local leaders rightly questioned how removing these immigrants from the country made city streets safer or served national security prerogatives.

Research on 287(g) in particular shows that the ICE has allowed local law enforcement agencies to take the program off course. A March 2009 audit by the Government Accountability Office of 287(g) found that vague language in several MOA documents enabled participant localities to misuse their enforcement authority:

Some participating agencies are using their 287(g) authority to process for removal aliens who have committed minor offenses, such as speeding, carrying an open container of alcohol, and urinating in public. None of these crimes fall into the category of serious criminal activity that ICE officials described to us as the type of crime the 287(g) program is expected to pursue.¹⁶⁴

Another federal inspection of the program yielded similar results. From February through July 2009, the Office of the Inspector General conducted a review of 287(g) program sites around the country. A sample of individuals identified revealed that only 9 percent were Level 1 offenders. OIG’s examination said that it was unclear whether “the 287(g) program is meeting its intended purpose, or that resources are being appropriately targeted toward aliens who pose the greatest risk to public safety and the community.”¹⁶⁵

Further analysis of 287(g) at the local level finds wide variation in whether localities actually use their resources to prioritize dangerous criminals. According to a Migration Policy Institute study, some localities operate a more “targeted” 287(g) model that places detainees most often on dangerous and/or recidivist criminals, while others follow a “universal” enforcement model that issues detainers to any potentially deportable immigrant. In Las Vegas, more than half of detainees between October 2009 and September 2010 were placed on Level 1 offenders.¹⁶⁶ By contrast, in the state of Colorado, Prince William, Frederick and Cobb counties, ten percent or less of immigrants with detainers were Level 1 criminals. In these locations, Level 3 and traffic offenders represent a large share of immigrants under detainer. In other words, ICE allows its local partners to operate programs that clearly do not adhere to agency priorities.

Most importantly, MPI finds that ICE’s much-publicized 2009 reforms of the program, aimed to standardize local focus on dangerous criminal aliens, led to little change in participating cities. In revamping 287(g), ICE directed participating localities to sign the same Memorandum of Agreement, with an aim to standardize a focus on high-level criminal aliens. But the standard MOA does not specify just how local resources are to be used to focus on high-priority offenders, nor does it prohibit officers from using their authority to catch non-citizens who are arrested for minor offenses.¹⁶⁷

In publicizing its reforms, ICE implicitly acknowledged that its enforcement programs weren’t being administered or implemented in a manner consistent with agency priorities. On June 30, 2010, ICE Assistant Secretary John Morton issued a memo detailing how the agency should use ICE ACCESS programs and other tools to more successfully identify and remove dangerous criminal aliens.¹⁶⁸ Given the agency’s limited resources, the memo explains, ICE will prioritize enforcement efforts on “aliens who pose a danger to national security or a risk to public safety,” classified in three categories according to the severity of the offense committed. The memo also redefined each offense level: Level 1 offenders are immigrants convicted of “aggravated felonies” or two or more felonies, while Level 2 offenders are convicted of any felony or multiple misdemeanors; ICE efforts going forward will focus on these two levels.¹⁶⁹

It’s encouraging that the document directs ICE agents to distinguish between serious aggravated felonies and less serious, non-violent offenses, as well as between misdemeanors of varying severity. Morton also instructs ICE personnel to use discretion when dealing with legal permanent residents, juveniles and immediate family

members of U.S. citizens. The memo further acknowledges that as local immigration enforcement expands, ICE will come into contact with larger numbers of potentially deportable “criminal aliens,” compelling federal agents to use discretion in their detention, prosecution and removal.

Crucially, Morton’s memo still emphasizes that ICE has the authority to take action against any immigrant who is subject to removal. In other words, although current federal immigration enforcement strategy prioritizes dangerous criminal aliens, the agency has the power to remove any deportable non-citizen, including non-criminals, and will deport as many as resources allow.

Flawed local enforcement programs risk drawing U.S. citizens into the immigration system.

Data and evidence from local immigration enforcement programs shows that ICE ACCESS hasn’t been consistent in deporting non-citizens who represent threats to public safety. There is also evidence that ICE local enforcement programs have mistakenly detained and even deported U.S. citizens, a clear violation of federal law.¹⁷⁰

Many of these U.S. citizens spend months in detention fighting deportation, made even more difficult for low-income individuals who cannot afford legal representation and lack the due process protections given to criminal offenders. For citizens who are actually removed, this may mean deportation to an unfamiliar country and language. In addition, there is currently no mechanism for an arrested person to challenge a wrongly issued detainer.¹⁷¹

Experts warn that the US-VISIT and IDENT databases used to operate Secure Communities are “riddled with errors and inaccuracies,” leading to false matches.¹⁷² False matches occur most frequently in “the context of derivative citizens, foreign-born individuals who become U.S. citizens by operation of law when one of their parents naturalizes. Because derivative citizens gain citizenship automatically, without the intervention of any government agency, they are likely to appear as potentially removable non-citizens in a DHS database.”¹⁷³ ICE figures state that over an 18-month period, the Secure Communities program identified about 24,000 U.S. citizens.¹⁷⁴

In North Carolina, one mentally disabled U.S. citizen served time for a misdemeanor and spent two months at an ICE detention center before being deported to Mexico, despite the fact that the man spoke no Spanish and had no Mexican ancestry.¹⁷⁵ In Chicago, a Puerto Rican man was suspected of having stolen a car and arrested; after 48 hours in police custody, he was interviewed by an ICE agent, placed under detainer, and transferred to the Cook County Correctional Center.¹⁷⁶ What happened next reveals a major flaw in jail-based immigration interviews:

He repeatedly told officers that he was born in Puerto Rico and therefore an American citizen. His mother also presented his birth certificate, but despite that and his state-issued ID, officials told him he was facing deportation. He says officers asked him specific questions about the Caribbean island that he could not answer, mostly because he moved to the mainland when he was 8 months old and has only been back to Puerto Rico once since birth.¹⁷⁷

ICE subsequently acknowledged the error, though not until after the citizen spent a week in jail. As Secure Communities and other immigration partnerships grow in number, serious errors perpetuated by flawed federal databases will only increase.

Immigration enforcement partnerships are vulnerable to racial and ethnic profiling.

From advocates to academics, critics contend that involving police in enforcement partnerships can lead to racial and ethnic profiling that disproportionately impacts Latino communities. Research shows that some agencies use their immigration enforcement authority in violation of civil rights protections.¹⁷⁸

Under 287(g), individuals who look or sound foreign are more likely to be stopped and arrested rather than cited and released, so that local police can perform an immigration status check.¹⁷⁹ According to North Carolina researchers, in 287(g) counties “some Hispanic-appearing individuals are stopped, at times while on foot or in

public places, and are otherwise mistreated, notwithstanding a lack of any individualized suspicion or any evidence of criminal activity, including traffic violations.”¹⁸⁰ In Maricopa County, Arizona, allegations of racial profiling led to a lawsuit, *Ortega Melendres v. Arpaio*, in which the plaintiffs argue that trained officers have been “profiling, targeting and ultimately stopping and detaining persons based on their race in violation of the Fourth and Fourteenth Amendments.”¹⁸¹ Following ICE’s 2009 287(g) reforms, the Maricopa County Sheriff’s Office was forced to end its use of the 287(g) Task Force Model allowing officers to enforce immigration laws on the street.

Though racial profiling is very difficult to prove, cities can do more to ensure that 287(g) doesn’t improperly target one group. One of the best ways to monitor profiling is to mandate broader data collection. A 2009 Office of the Inspector General review of 287(g) noted that ICE doesn’t gather data that could determine whether profiling has occurred, including the circumstances surrounding stops, searches and arrests by Task Force participants, as well as information on the race and ethnicity of individuals stopped and arrested. When OIG suggested that ICE should better monitor the civil liberties records of its partners by tracking this data, the agency declined, citing “logistical issues” that would complicate data collection.¹⁸²

The Criminal Alien Program and Secure Communities may be vulnerable to the same rights abuses as 287(g). A landmark study from the Warren Institute at the University of California, Berkeley examined arrest data from Irving, Texas only to uncover “strong evidence to support claims that Irving police engage in racial profiling of Hispanics in order to filter them through the CAP screening system.” In the months after ICE gained 24-7 access to the jail, Irving police arrested Hispanics for petty Class-C offenses in much higher numbers than white or black residents. Under Texas law, these crimes were only punishable by a maximum fine of \$500, hardly the sentence given to a dangerous criminal.¹⁸³

ICE has said that the Secure Communities reduces the opportunity for racial or ethnic profiling. According to the agency, Secure Communities is a “color-blind system” because all individuals arrested and booked are checked against records, regardless of race. ICE reports that there have been no complaints of racial profiling with Secure Communities.¹⁸⁴ But this program still allows for pre-textual arrests in a way that invites racial profiling. In a Secure Communities city, officers with no training in immigration enforcement procedures can choose to arrest a “foreign-looking” individual for a minor offense—instead of issuing a warning—so the individual is fingerprinted and status checked.

A growing body of evidence shows us that local immigration enforcement partnerships target many groups in attempting to catch immigrants who pose serious threats to public safety. Nonetheless, supporters of these programs cite misleading public safety concerns to justify the role of city police in federal enforcement.

V. CITIES ARE MISGUIDED IN THEIR SUPPORT OF LOCAL IMMIGRATION ENFORCEMENT AS CRIME CONTROL

Only the 287(g) program allows city and state law enforcement to directly enforce federal immigration laws. Yet out of 18,000 enforcement agencies, only 207 have expressed interest in the program and 72 have active agreements with ICE.¹⁸⁵ What characterizes the cities, counties and states that choose 287(g)?

Demographic patterns and political pressure influence the program’s growth. And although 287(g) is sold as a tool to improve public safety and uphold the rule of law, it is not associated with high levels of crime at the local level. At the same time, right-wing immigration foes draw on the myth of immigrant criminality to champion expanded local immigration enforcement.

Support for 287(g) agreements is linked to rapid demographic change and political pressure, not crime.

According to demographer Randy Capps, the proliferation of 287(g) agreements is connected to the rapid growth of a region's immigrant population.¹⁸⁶ Though 287(g) largely targets undocumented immigrants, the program follows growth in immigrant population regardless of legal status. The majority of states with 287(g) agreements have had above-average foreign-born population growth over the past decade; more than three quarters of these states are located in the South and Southwest.

A parallel trend occurs at the city level. National studies conclude localities with fast growing immigrant populations are more likely than others to take up restrictionist laws and ordinances aiming to govern housing, employer verification or other issues.¹⁸⁷ The majority of cities that participate in 287(g) are new and rapidly growing immigrant destinations, located in the South and Southwest. This includes Las Vegas, Phoenix, Nashville, Tulsa, Charlotte, Jacksonville and Raleigh. Similarly, a report from Justice Strategies reveals that 80 percent of the participating localities in 2008 had higher than average Latino growth.¹⁸⁸

Yet demographic change alone does not entirely explain the program's growth pattern. Experts highlight the importance of political factors in determining which localities will pursue immigration enforcement. Considerable pressure mounts on politicians in cities and states experiencing recent demographic change to "do something" about quality-of-life, public safety or other perceived problems associated with immigration.¹⁸⁹ In Republican-leaning areas, this often leads to immigrant crackdowns.

Partisan political environments more than demographic shifts lead to restrictionist policies, according to a Berkeley Law study of local immigration ordinances. The authors concluded that cities in Republican regions are about twice as likely as those in Democratic regions to introduce and pass restrictionist measures.¹⁹⁰ In Arizona, all cities and counties but one that participate in the program voted for Republican candidates in the 2008 election. In the Atlanta metropolitan area, backing for 287(g) also followed sharply political lines:

Counties that voted for Republican John McCain in the last presidential election have either applied for the program or are already using it, including Cherokee, Cobb, Forsyth and Gwinnett. Counties that went for Democrat Barack Obama in that election have not sought to join 287(g), including Fulton and DeKalb. Atlanta also has not applied.¹⁹¹

By lobbying or signing up for a 287(g) program, elected officials win political points with constituents who demand crackdowns against undocumented immigrants. Indeed, Justice Strategies notes that the bulk of 287(g) agreements (60 percent) have been signed by sheriffs, who are elected officials in most jurisdictions.¹⁹²

In addition to influencing its adoption, political pressure also affects how 287(g) operates on the ground. In such localities, 287(g) is not about crime or public safety, but about immigration control. The Migration Policy Institute finds that in several Southeastern jurisdictions where immigrant growth has sparked calls for reducing the undocumented population, 287(g) is used to go after deportable immigrants more generally, rather than targeting the most dangerous.¹⁹³ Limited city and county resources used to detain immigrants for traffic offenses or status violations means less resources devoted to identifying dangerous "criminal aliens." It's hard to argue that in such jurisdictions, 287(g) serves a meaningful public safety function.

Some 287(g) agreements follow high-profile crimes committed by undocumented immigrants, but the majority of 287(g) agreements aren't signed in response to overall crime trends. According to Justice Strategies, violent crime rates in 61 percent of participating jurisdictions were below average, while 55 percent had overall declines in violent crime. Similarly, property crime rates in 61 percent of 287(g) localities were below average, and 65 percent witnessed declines in overall property crime.¹⁹⁴

Rapid population changes and intense political pressures influence the adoption of 287(g) agreements in many cities and counties, rather than high levels of crime. Yet misleading rhetoric linking undocumented immigration and violent crime continues to influence the local immigration enforcement debate.

Proponents of local immigration enforcement make false connections between immigration and crime.

According to decades of research, immigrants—including undocumented immigrants—don't commit crimes at higher rates than U.S.-born residents.¹⁹⁵ In spite of the facts, immigration restrictionists draw on the myth of immigrant criminality to garner support for local immigration enforcement.

Frederick County, Maryland Sheriff Charles Jenkins—a 287(g) participant since 2008—testified to Congress that “the enormous increase in crime throughout the United States can be tied directly to the unchecked flow of illegal immigrants through our southern border with Mexico.”¹⁹⁶ In reality, the national crime rate has decreased, while the nation's undocumented population continues to increase. From 1994 to 2008, the national violent crime index fell 36 percent, hitting the lowest recorded level in 20 years. During the same period, the nation's undocumented immigrant population nearly tripled.¹⁹⁷

In Reason Magazine, criminologist Jack Levin argues: “If you want to find a safe city, first determine the size of the immigrant population. If the immigrant community represents a large proportion of the population, you're likely in one of the country's safer cities. San Diego, Laredo, El Paso—these cities are teeming with immigrants, and they're some of the safest places in the country.”¹⁹⁸ Decades of social science research backs this claim. An analysis by Harvard sociologist Robert Sampson tracked violent crime in 180 Chicago neighborhoods and concluded that first-generation immigrants, including undocumented immigrants, were 45 percent less likely to commit violent acts than third-generation Americans. Sampson further revealed that living in neighborhoods of concentrated immigration was associated with lower violence.¹⁹⁹ Most recently, researchers at the University of Colorado found that immigration increases were partially responsible for the historic declines in violent and property crime in the country's largest cities from 1990 to 2000.²⁰⁰

Despite the evidence, right-wing pundits, think tanks and elected officials consistently promote the alleged connections between undocumented immigration and violent crime. In 2004, an influential City Journal article titled “The Illegal Alien Crime Wave” warned against the dangers of “illegal immigration and its attendant train of criminals and terrorists.”²⁰¹ Others cite skewed or false statistics to back the claim that undocumented immigrants commit more crimes than legal or native-born residents. In a widely quoted statement, Representative Steve King (R-IA) declared that undocumented immigrants are responsible for 12 homicides and 13 drunk driving deaths per day—a charge that was easily refuted by the Southern Poverty Law Center.²⁰² Pervasive myths about immigrants and crime are also endemic to the local immigration enforcement debate. The Center for Immigration Studies even alleges that if 287(g) had been widely implemented in 2001, the 9/11 plot “may have unraveled and been prevented.”²⁰³ Yet this contention is without evidence. Restrictionists also point to high-profile violent offenses perpetrated by undocumented immigrants as evidence of the need for larger, more aggressive local immigration enforcement.²⁰⁴ In April 2010, the Arizona legislature passed SB 1070, a restrictive immigration measure requiring state and local police to enforce federal immigration laws. To garner support for the law, Arizona Governor Jan Brewer falsely alleged that undocumented immigrants were responsible for an increase in dangerous crime, from kidnappings to beheadings. Shortly after, the Arizona Republic reported that crime rates in border cities have been flat for a decade, and violent crime throughout the state was on the decline.²⁰⁵

To supporters, ICE ACCESS programs are indispensable tools for upholding public safety and the rule of law. The Center for Immigration Studies, for example, calls on the Department of Homeland Security to “acknowledge that all illegal aliens pose a threat to society” and use the 287(g) program to keep us safer.²⁰⁶ A similarly troubling line of reasoning holds that local immigration enforcement may prevent violent crimes that immigrants will inevitably commit. Representative Lamar Smith (R-TX), well-known for his hard-line views on immigration, said of Secure Communities: “We can prevent many of these crimes by deporting illegal immigrants before they have committed them, instead of waiting until after the fact.”²⁰⁷ For many restrictionists, undocumented immigrants

are criminals by virtue of their status, even though presence in the country without legal status is a civil, not criminal offense.

The links between undocumented immigration, violent crime and terrorism would be scary—if they were actually true. Even *The American Conservative* warned immigration restrictionists to stay away from making “unsubstantiated claims about crime” to support tighter immigration enforcement.²⁰⁸ Given the data and evidence demonstrating that immigrants are not prone to crime, it’s misguided for localities to pursue costly programs targeting this population in the name of public safety.

CONCLUSION

The Criminal Alien Program, 287(g) and Secure Communities marshal local resources in service of federal immigration enforcement goals. While ICE regards the 18,000 law enforcement agencies in the country as potential “force multipliers” in fulfilling its mission to uphold federal immigration laws, cities and counties have no such mandate. Nonetheless, ICE sells its ACCESS program as a set of tools used to assist state and local law enforcement agencies, not the other way around.

In too many cities, immigration enforcement furthers the federal enforcement agenda in conflict with local goals, from upholding public safety to building relationships between residents and municipal institutions. Thus, the vast majority of localities have chosen not to engage in direct immigration law enforcement, in the interest of using limited resources for other purposes, including enacting more integrative social policies toward immigrants. Unfortunately, the rapid deployment of Secure Communities may destroy the ability of local governments to pursue these prerogatives. On the other hand, some localities, coping with unprecedented demographic change and frustrated with stalled immigration reform, are eager to take up local enforcement in the interest of addressing undocumented immigration.

Due to limited resources, ICE has revamped its policies to prioritize catching immigrants who pose risks to public safety. As currently implemented, however, these federal-local partnerships cast a much wider net, resulting in the deportation of thousands of undocumented and legal permanent residents who have committed minor offenses or none at all. In some cases, Secure Communities’ hurried deployment has undercut successful city policies that are tailored to catching the sort of criminals ICE so publicly claims to target. To its credit, the agency has recently taken important steps ensure that its efforts truly focus on dangerous criminals. It will become clear in the coming months whether this initiative yields improved results. But ICE’s primary mission is to enforce immigration laws. As such, it has the power to thousands of non-citizens who are not criminals, and will continue fulfill this mandate as funding allows.

We find that local immigration enforcement may actually harm crime fighting efforts. When police officers function as or cooperate with ICE agents, immigrant witnesses or victims of crime are less likely to come forward for fear that contacting police could lead to deportation. This chilling effect on crime reporting enables criminals to victimize immigrant communities. And as we’ve seen, immigrants are not more prone to crimes than native-born Americans, nor do federal-local partnerships programs focus enough on the criminal element among them. Using local immigration enforcement to target these residents in the name of cities’ public safety remains a misguided strategy. Still, immigration hard-liners routinely cite public safety as a reason for localities to play a greater role in interior enforcement.

Local time and resources deployed toward enforcing federal immigration laws necessarily means fewer resources for protecting and serving all city residents. Immigration detainers demonstrably prolong the amount of time immigrants spend in jail, driving up the costs of enforcement to cities and states. Detainers also damage the economic contributions immigrants make to cities, as immigrants swept up in enforcement actions can no longer patronize neighborhood businesses or otherwise boost regional economies.

ICE ACCESS programs funnel thousands of immigrants per year into a larger immigration system that desperately needs to be reformed. According to expert observers, human rights violations plague immigration detention, including inadequate medical care, mistreatment and sexual abuse by guards.²⁰⁹ In 2009, the Obama administration committed to major reforms in the interest of creating a more civil detention system. Recent evaluations find there is much work to be done, in part because the sheer size of the detention population impedes fast and effective reform.

Moreover, immigrants in detention or facing deportation often lack due process during the adjudication process. Immigrants who can't afford lawyers don't have the right to representation, which leaves 84 percent of detained immigrants facing complex proceedings without legal counsel.²¹⁰ This can have serious consequences: if an individual is wrongly flagged by Secure Communities and subsequently acquitted of a crime, he could be deported because he isn't able to prove his legal status without the counsel of a lawyer. Even immigrants who do have attorneys are detained in facilities hundreds of miles from home, which complicates access to the legal guidance and resources needed to effectively argue their cases.

Finally, increasing numbers of immigrants detained as a result of local immigration enforcement only adds to the staggering backlog in the nation's immigration court system. By the end of September 2010, there were 261,083 cases awaiting resolution before the immigration courts, an all-time high.²¹¹ A report from the American Bar Association says that given its massive workload, the immigration courts have too few judges and resources to consistently make fair, well-researched decisions. This problem is compounded by basic inequities in immigration law.²¹²

Congress must reconsider outdated and draconian laws that brand long-time legal permanent residents who have committed minor, misdemeanor crimes "aggravated felons." Harsh laws can result in the mandatory deportation and lifetime banishment of thousands of immigrants per year who are identified by local immigration enforcement programs. Further, these provisions are retroactive, meaning that immigrants face deportation based on decades-old crimes for which they have already served time.

Most importantly, effective immigration enforcement in cities requires a comprehensive reform of our immigration policies and programs. In recent remarks, DHS Secretary Janet Napolitano explained: "We will never have fully effective law enforcement or national security as long as so many millions remain in the shadows."²¹³ Comprehensive immigration reform must include a more flexible visa program to encourage legal entry and a path to legal residence and citizenship status for currently undocumented immigrants. Federal policies that provide for the legalization and integration of immigrants and their families will help address the challenges faced by new destination cities reeling from rapid demographic change that would otherwise consider costly and restrictive local immigration policies. Without these and other immigration reforms, our expanding local enforcement system will continue to sweep up hundreds of thousands of non-criminal immigrants who are supporting urban economies by living, working and raising families in cities.

ENDNOTES

- ¹ Christopher W. Hoene and Jacqueline J. Byers, "[Local Governments Cutting Jobs and Services](#)," National League of Cities, National Association of Counties, United States Conference of Mayors (2010).
- ² Christopher W. Hoene and Michael A. Pagano, "[Research Brief on America's Cities](#)," National League of Cities (2010) 7.
- ³ Pew Research Center/National Journal, "[Congressional Connection Poll](#)," July 8-11, 2010.
- ⁴ Department of Homeland Security, Office of the Press Secretary, "[Secretary Napolitano Announces Record-breaking Immigration Enforcement Statistics Achieved under the Obama Administration](#)," October 6, 2010.
- ⁵ Amy Traub, "[Principles for an Immigration Policy to Strengthen & Expand the American Middle Class](#)," Drum Major Institute for Public Policy (2009).
- ⁶ Thomas D. DiNapoli and Kenneth B. Biewas, "[The Role of Immigrants in the New York City Economy](#)," New York State Comptroller's Office (2010).
- ⁷ David Dyssegaard Kallick, "[Immigrants and the Economy: Contribution of Immigrant Workers to the County's 25 Largest Metropolitan Areas](#)," Fiscal Policy Institute (2009).
- ⁸ Although "ICE ACCESS" includes all federal-local partnerships, in this paper it will refer to 287(g), the Criminal Alien Program and Secure Communities specifically.
- ⁹ Michelle Waslin, "[Secure Communities Program: Unanswered Questions and Continuing Concerns](#)," Immigration Policy Center (2010).
- ¹⁰ 8 USC 1227 (a).
- ¹¹ Human Rights Watch, "[Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy](#)," (2007).
- ¹² Dora Schriro, "[Immigration Detention Overview and Recommendations](#)," Department of Homeland Security, Immigration and Customs Enforcement" (2009) 13.
- ¹³ 8 CFR 287.7(a) and 8 CFR 287.7(d).
- ¹⁴ Trevor Gardner II and Aarti Kohli, "The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program," The Warren Institute, University of California, Berkeley Law School, (2009) 2.
- ¹⁵ Andrea Guttin, "[The Criminal Alien Program: Immigration Enforcement in Travis County, Texas](#)," Immigration Policy Center (2010) 6.
- ¹⁶ Department of Homeland Security, Immigration and Customs Enforcement, "[Secure Communities Standard Operating Procedure](#)," September 30, 2009.
- ¹⁷ ICE, "Secure Communities Crash Course," [Secure Communities Presentations](#) (2009) 9.
- ¹⁸ ICE, "8 Florida counties join ICE Secure Communities Initiative to enhance identification and removal of criminal aliens," April 26, 2010; ICE, "5 more Texas counties to benefit from ICE strategy to enhance the identification, removal of criminal aliens," August 17, 2010.
- ¹⁹ ICE, Secure Communities, "[Activated Jurisdictions](#)," February 15, 2011.
- ²⁰ DHS, "[Fact Sheet: Secretary Napolitano Announces Fiscal Year 2011 Budget Request](#)," February 1, 2010.
- ²¹ Randy Capps, Marc R. Rosenblum, Cristina Rodriguez and Muzaffar Chishti, "[Delegation and Divergence: A Study of 287\(g\) State and Local Immigration Enforcement](#)," Migration Policy Institute (2011).
- ²² Muzaffar Chishti and Claire Bergeron, "ICE to Expand Immigration Enforcement Program in Local Jails," Migration Information Source, June 15, 2009.
- ²³ ICE Fact Sheet, "287(g) Master Stats: [Identified Aliens for Removal](#)," Accessed January 20, 2010.
- ²⁴ Government Accountability Office, "[Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws](#)," (2009).
- ²⁵ Cristina Rodriguez, Muzaffar Chishti, Randy Capps, Laura St. John, "[A Program in Flux: New Priorities and Implementation Challenges for 287\(g\)](#)," Migration Policy Institute (2010).
- ²⁶ Capps et. al.
- ²⁷ Christina McFarland, "[State of America's Cities Survey on Jobs and the Economy](#)," National League of Cities (2010); Christopher W. Hoene, "[City Budget Shortfalls and Responses: Projections for 2010-2012](#)," National League of Cities (2009).
- ²⁸ Kelly Rayburn, "Oakland council OKs police layoffs," Oakland Tribune, June 25, 2010.
- ²⁹ J. Thomas Manger, Major Cities Chiefs Association. Testimony before the House Committee on Homeland Security, "[Examining 287\(g\): The Role of State and Local Law Enforcement in Immigration Law](#)," March 4, 2009.
- ³⁰ United States Government Accountability Office, "[Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Law](#)," (2009) 21.
- ³¹ Ryan Gabrielson, "[Reasonable Doubt: Breaking the Budget](#)," East Valley Tribune, July 10, 2008.
- ³² Colorado Department of Public Safety, "[Report of the Governor's Working Group on Law Enforcement and Illegal Immigration](#)," (2008).

- ³³ Capps et. al., 28.
- ³⁴ Mai Thi Nguyen and Hannah Gill, "[The 287\(g\) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities](#)," The Institute for the Study of the Americas, University of North Carolina at Chapel Hill (2010) 33.
- ³⁵ Sarah Ovaska, "Wake Sheriff Wants to Keep Deportation Program," Raleigh News & Observer, February 24, 2009.
- ³⁶ A. Elena Lacayo, "[The Impact of Section 287\(g\) of the Immigration and Nationality Act on the Latino Community](#)," National Council of La Raza (2010) 15.
- ³⁷ Susan Carroll, "[Harris County to continue controversial program](#)," Houston Chronicle, October 27, 2008.
- ³⁸ Susan Carroll and Bradley Olson, "Cost sidelines Parker promise to use ICE initiative at city jail," Houston Chronicle, February 24, 2010.
- ³⁹ National Immigration Guild, National Immigration Council et. al., "[Comments on U.S Immigration and Customs Enforcement Draft Detainer Policy](#)," (2010) 9. Accessed January 10, 2011.
- ⁴⁰ *Harvey v. New York* No. 07-0343 (E.D.N.Y. June 12, 2009). See complaint, available here: <http://www.lawso.ucsb.edu/faculty/jstevens/113/HarveyComplaint1008.pdf>; American Immigration Law Foundation, "[Litigation Clearinghouse Newsletter](#)," Vol. 4, No.11, October 2, 2009. Accessed February 1, 2011.
- ⁴¹ *Quezada v. Mink, No. 10-87*; American Civil Liberties Union, "[ACLU Sues Colorado Sheriff for Illegally Imprisoning Colorado Resident Suspected of Immigration Violations](#)," April 21, 2010.
- ⁴² National Immigration Law Center, "[More Questions than Answers about the Secure Communities Program](#)," (2009); See also Guttin and Waslin.
- ⁴³ Immigration Policy Center, "[Immigration Detainers: A Comprehensive Look](#)," (2010).
- ⁴⁴ Guttin, 12.
- ⁴⁵ Guttin, 13.
- ⁴⁶ Office of Justice Programs, Bureau of Justice Assistance, "[Fact Sheet: State Criminal Alien Assistance Program](#)." Accessed October 1, 2010.
- ⁴⁷ Guttin, 13.
- ⁴⁸ White House Office of Management and Budget, "[Terminations, Reductions and Savings: Budget of the U.S. Governments Fiscal Year 2010](#)," pp. 60-1.
- ⁴⁹ White House Office of Management and Budget, Department of Justice Budget FY 2011, "[Budget of the United States Government](#)."
- ⁵⁰ Traub.
- ⁵¹ Chirag Mehta et. al., "[Chicago's Undocumented Immigrants: An Analysis Of Wages, Working Conditions, And Economic Contributions](#)," Center for Urban Economic Development, University of Illinois at Chicago (2002).
- ⁵² Jeffrey Weiss, "Mexican consul defends Irving deportation warning," The Dallas Morning News, October 6, 2007.
- ⁵³ Thomas Korosec, "Hispanic exodus from Irving hurts businesses," Houston Chronicle, October 13, 2007.
- ⁵⁴ Andria Simmons, "Hispanics flee law, job loss," Atlanta Journal-Constitution, February 16, 2010.
- ⁵⁵ Capps et. al., 43.
- ⁵⁶ David Woodfill, "Illegal immigrant crime dropping, Thomas says," East Valley Tribune, October 14, 2009.
- ⁵⁷ Andria Simmons, "Unlicensed driving arrests down in Cobb, Gwinnett," Atlanta Journal-Constitution, June 6, 2010.
- ⁵⁸ Capps et. al.
- ⁵⁹ Capps et. al., 43.
- ⁶⁰ Brandon Formby, "Criminal Alien Program still taking illegals arrested for minor offenses," The Dallas Morning News, January 20, 2008.
- ⁶¹ Katherine Leal Unmuth, "Emptying classrooms: Two school districts share one problem – declining enrollment," The Dallas Morning News, December 9, 2007.
- ⁶² Capps et. al., 41.
- ⁶³ Research shows that 87 percent of children of immigrants are U.S. citizens. See, for example: Karina Fortuny and Ajay Chaudry, "[Children of Immigrants: Immigration Trends](#)," Urban Institute (2009).
- ⁶⁴ Kristen Mack, "Similar Impacts Found in Study of Immigration Crackdowns," Washington Post, August 28, 2008.
- ⁶⁵ Manger, 11.
- ⁶⁶ Chris Burbank, Salt Lake City Police Chief, "[Testimony on the Constitution, Civil Rights and Civil Liberties, Hearing on Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy](#)," June 17, 2010.
- ⁶⁷ Ryan Gabrielson and Paul Giblin, "[Emergency response, enforcement of other crime suffers with focus on illegal immigration](#)," East Valley Tribune, July 9, 2008.
- ⁶⁸ Ryan Gabrielson, "[Reasonable Doubt: Public pays the price. MCSO shift in focus results in longer response times, fewer arrests, investigations](#)," East Valley Tribune, July 12, 2008.

- ⁶⁹ Clint Bolick, "[Mission Unaccomplished: The Misplaced Priorities of the Maricopa County Sheriff's Office](#)," Goldwater Institute (2008).
- ⁷⁰ Special Counsel Merrick J. Bobb and Police Assessment Resource Center, "[The Los Angeles County Sheriff's Department: 28th Semiannual Report](#)," (2009) 15.
- ⁷¹ Robert Faturechi, "L.A. County extends project to identify illegal immigrants in its jails," Los Angeles Times, October 13, 2010.
- ⁷² Maria Sacchetti, "Agencies halt their immigrant scrutiny," Boston Globe, October 2, 2009.
- ⁷³ Gene Racz, "Immigration detainees at Middlesex County jail may move within 10 days," MyCentralJersey.com, October 4, 2009.
- ⁷⁴ ICE, "[Secure Communities Standard Operating Procedure](#)," 6
- ⁷⁵ "[Memo from Lieutenant Michael Barry, Martin County Sheriff's Office to Major Steve Chase, Re: Immigration Procedures](#)," February 2009. Documents obtained by the Florida Immigrant Advocacy Center.
- ⁷⁶ Daniel Denvir, "The ICE man: Obama's backdoor Arizona-style program," Salon, July 16, 2010.
- ⁷⁷ International Association of Chiefs of Police, "[Police Chiefs Guide to Immigration Issues](#)," (2007) 21.
- ⁷⁸ William Bratton, "The LAPD fights crime, not illegal immigration," Los Angeles Times, October 27, 2009.
- ⁷⁹ Albor Ruiz, "President Obama makes serious commitment to immigration reform," New York Daily News, July 5, 2009.
- ⁸⁰ Chief Chris Burbank, Philip Atiba Goff and Dr. Tracie L. Keese, "[Policing Immigration. A Job We Do Not Want](#)," Huffington Post, June 7, 2010.
- ⁸¹ Nguyen and Gill, 45.
- ⁸² Brandon Formby, "Hispanics in Irving feeling disheartened," The Dallas Morning News, October 7, 2007.
- ⁸³ Nguyen and Gill, 45.
- ⁸⁴ Lacayo, 18.
- ⁸⁵ Shankar Vedantam, "Destined for deportation?" Washington Post, November 2, 2010.
- ⁸⁶ Alex Johnson and Glenn Counts, "Crime-stopper faces deportation," MSNBC News.com, May 26, 2010.
- ⁸⁷ Irasema Garza, "[A Losing Proposition: How Immigration Enforcement Hurts Women and Communities](#)," The Huffington Post, October 6, 2009.
- ⁸⁸ Kavitha Sreeharsha, "Victims' Rights Unraveling: The Impact of Local Immigration Enforcement Policies on the Violence Against Women Act," Georgetown Journal of Gender and the Law, Vol. XI: pp. 649-680 (2010).
- ⁸⁹ Ibid.
- ⁹⁰ International Association of Chiefs of Police, 3.
- ⁹¹ Department of Justice Office of Community Oriented Policing Services, "[Community Policing Defined](#)," (2009); Anita Khashu, "[Justice and Safety in America's Immigrant Communities](#)," Princeton University (2006).
- ⁹² The United States Conference of Mayors, "[The Influence of Community Policing in City Governments: A 281 City Survey](#)," April 2001.
- ⁹³ William McDonald, "[Police and Immigrants: Community and Security in Post 9/11 America](#)," Justice and Safety in America's Immigrant Communities, Princeton University (2006).
- ⁹⁴ Los Angeles' Special Order 40 was first enacted in 1979 and renewed by the City Council in 2007. Washington D.C's Police Department General Order 201.26 was enacted in 1984 and renewed in 2003. San Francisco's City of Refuge Ordinance was codified in 1989 and renewed by the City Council in 2002.
- ⁹⁵ Huyen Pham, "The Constitutional Right Not to Cooperate? Local Sovereignty and the Federal Immigration Power," 74 University of Cincinnati Law Review 1373, pp. 1388-91 (2006); Orde Kittrie, "Federalism, Deportation and Crime: Victims Afraid to Call the Police," 91 Iowa Law Review 1449, pp. 1466-74 (2006).
- ⁹⁶ Lynn Tramonte, "[Debunking the Myth of 'Sanctuary Cities': Community Policing Policies Protect American Communities](#)," Immigration Policy Center (2009).
- ⁹⁷ Cristina Rodriguez, "[The Significance of the Local in Immigration Regulation](#)," Michigan Law Review, February 2008; NYU Law School, Public Law Research Paper No. 08-22, pp. 567-642.
- ⁹⁸ City of New York Office of the Mayor, "[Executive Order No. 41](#)," September 17, 2003.
- ⁹⁹ These policies work far better than the military's well-known don't ask-don't tell policy, which was enacted as a compromise to allow men and women to serve in the armed forces without concern for their sexual orientation, but in practice offered little protection. What the two types of don't ask-don't tell have in common is an effort to work around bad public policy that is politically difficult to change.
- ¹⁰⁰ For extensive list of immigration "don't ask-don't tell" laws, see: National Immigration Law Center, "[Laws, Resolutions and Policies Instituted Across the U.S. Limiting Enforcement of Immigration Laws by State and Local Authorities](#)," (2008).
- ¹⁰¹ Progressive States Network, "[Immigration Related Bills to Move in 2011 State Legislative Sessions](#)," (2010).
- ¹⁰² City of Seattle Legislative Information Service, Ordinance 121063. Accessed on October 21, 2010.

- ¹⁰³ Anita Sinha, "[Prohibiting Immigration Status Inquiries by Government Employees: Ordinance 121063, Seattle, Washington, 2003](#)," National Immigration Law Center and Applied Research Center. Accessed February 15, 2011.
- ¹⁰⁴ Kittrie.
- ¹⁰⁵ Tramonte, 6.
- ¹⁰⁶ William Bratton, "The LAPD fights crime, not illegal immigration," Los Angeles Times, October 27, 2009.
- ¹⁰⁷ Heather McDonald, "The Illegal Alien Crime Wave," City Journal, Winter 2004.
- ¹⁰⁸ See, for example: Robert Lopez, "Cities across Southern California report drops in violent crime in 2009," Los Angeles Times, May 25, 2010; Sam Roberts, "As Crime Rate Drops, New York's Jail Population Falls to Lowest level in 24 Years," New York Times, June 10, 2010.
- ¹⁰⁹ Kris Kobach, "Sanctuary is lawless and deadly," New York Post, July 20, 2010.
- ¹¹⁰ Ken Dilanian, "Jailed illegal immigrants pose policy dilemma," Los Angeles Times, June 7, 2010.
- ¹¹¹ U.S. Department of Justice, Office of Inspector General, "[Cooperation of SCAAP Recipients in the Removal of Criminal Aliens From the United States](#)," (2007).
- ¹¹² David G. Savage, "Immigrant 'sanctuaries' rouse opponents' wrath," Los Angeles Times, July 25, 2010.
- ¹¹³ Harold Hurtt, "It's wrong to label Houston a sanctuary city," Houston Chronicle, March 20, 2009.
- ¹¹⁴ Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193 and Illegal Immigration Reform and Immigrant Responsibility Act, P.L. 104-208.
- ¹¹⁵ Yule Kim and Michael John Garcia, "[Sanctuary Cities: Legal Issues](#)," Congressional Research Service Report for Congress, January 9, 2008.
- ¹¹⁶ See, for example: Charlie Norwood CLEAR Act of 2007 (H.R.3494) and the OVERDUE Immigration Reform Act of 2007 (H.R. 4192); Colorado Rev. Stat. 29-29-101 (2006).
- ¹¹⁷ Refers to the "attrition through enforcement" strategy, as advocated by anti-immigrant groups like Center for Immigration Studies and recently endorsed in Arizona's SB 1070. Jessica Vaughan, "Attrition through Enforcement: A Cost-Effective Strategy to Shrink the Illegal Population," Center for Immigration Studies (2006).
- ¹¹⁸ Martina Castro, "SF Sheriff Wants Out of 'Secure Communities,'" KALW News, May 18, 2010.
- ¹¹⁹ Center for Constitutional Rights, National Day Laborer Organizing Network, Cardozo School of Law, "[Briefing Guide to Secure Communities](#)," August 10, 2010.
- ¹²⁰ ICE, September 30, 2009.
- ¹²¹ Michael Matza, "Nutter disagrees with coalition view of federal program," The Philadelphia Inquirer, August 21, 2009.
- ¹²² City and County of San Francisco, Office of the Sheriff, [Letter to Attorney General Brown](#), May 18, 2010; [San Francisco Board of Supervisors Resolution](#), May 28, 2010.
- ¹²³ Denvir.
- ¹²⁴ Tim Craig, "[D.C. council: Boycott Arizona, don't share arrest data with feds](#)," Washington Post, D.C. Wire, May 4, 2010; [Letter from District of Columbia Police Chief Cathy Lanier to District of Columbia City Councilman Phil Mendelson](#), July 22, 2010.
- ¹²⁵ [Letter from Zoe Lofgren](#), Chairwoman of House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law to Janet Napolitano, Secretary of Homeland Security and Eric Holder, U.S. Attorney General, July 27, 2010.
- ¹²⁶ Alex Johnson, "Cities, counties can't stop federal immigration checks," MSNBC.com, October 15, 2010.
- ¹²⁷ Elise Foley, "Undeterred by Government Reversal, Communities Keep Up Fight to Opt Out of Immigration Program," The Washington Independent, November 8, 2010.
- ¹²⁸ Shankar Vedantam, "Deportations of illegal immigrants climb to new record," Washington Post, October 6, 2010.
- ¹²⁹ Kirk Semple, "Confusion Over Program to Stop Illegal Immigrants," The New York Times, November 9, 2010.
- ¹³⁰ Shankar Vedantam, "No opt-out for immigration enforcement," Washington Post, October 1, 2010.
- ¹³¹ ICE, September 30, 2009.
- ¹³² Daniel Booth, "Federalism on ICE: State and Local Enforcement of Federal Immigration Law," Harvard Journal of Law and Public Policy," Vol. 29, July 2006, pp. 1063-1083; Kittrie.
- ¹³³ ICE documents explain that Secure Communities focuses the agency's resources "first and foremost on the most dangerous criminal aliens currently charged with, or previously convicted of, the most serious criminal offenses." See ICE, Secure Communities Presentations; The ICE [fact sheet](#) on 287(g) says the program allows localities to target non-citizens who commit "violent crimes, human smuggling, gang/organized crime activity, sexual offenses, narcotics smuggling, and money laundering."
- ¹³⁴ See, for example: ICE, "[287\(g\) Success Stories: May 2010](#)"; ICE, "[Secure Communities Success Stories Fact Sheet](#)."
- ¹³⁵ Schriro, 12-13.

- ¹³⁶ Syracuse University, "[Current ICE Removals of Noncitizens Exceed Numbers Under Bush Administration](#)," Transactional Records Access Clearinghouse, August 2, 2010.
- ¹³⁷ ICE, "[Secure Communities: IDENT/IAFIS Interoperability: Monthly Statistics through February 28, 2011](#)," March 7, 2011.
- ¹³⁸ Michelle Roberts, "Immigrants face long detention, few rights," Associated Press, March 16, 2009.
- ¹³⁹ See, for example: ICE, "[Memorandum of Agreement Between U.S. DHS ICE and \[State Identification Bureau\]](#)," p2.
- ¹⁴⁰ Tennessee Immigrant and Refugee Rights Coalition, "[287\(g\) in Tennessee](#)," Accessed November 19, 2010.
- ¹⁴¹ Lacayo, 17.
- ¹⁴² Faturechi, Bobb.
- ¹⁴³ Faturechi.
- ¹⁴⁴ ICE, "[Get the Facts: Secure Communities media plan](#)," April 23, 2009.
- ¹⁴⁵ Robert Morgenthau, "The Police and Immigration: New York's Experience," Wall Street Journal, May 19, 2010.
- ¹⁴⁶ Ibid.
- ¹⁴⁷ Denvir.
- ¹⁴⁸ GAO, 13.
- ¹⁴⁹ DHS, Office of the Inspector General, "[Performance of 287\(g\) Agreements](#)," (2010) 37.
- ¹⁵⁰ Franco Ordonez, "Push on deportation shifting," Charlotte Observer, October 16, 2009.
- ¹⁵¹ Kristin Collins, "Minor wrongs still risk deportation," Raleigh News and Observer, November 22, 2009.
- ¹⁵² Syracuse University, "[Detention of Criminal Aliens: What Has Congress Bought?](#)" Transactional Records Access Clearinghouse, February 11, 2010.
- ¹⁵³ Syracuse University, August 2, 2010.
- ¹⁵⁴ Julia Preston, "ICE Identifies 110,000 Immigrants with Criminal Records," New York Times, November 12, 2009.
- ¹⁵⁵ Susan Carroll, "ICE program is casting a wide net," Houston Chronicle, July 13, 2009.
- ¹⁵⁶ ICE, March 7, 2011.
- ¹⁵⁷ ICE, April 23, 2009.
- ¹⁵⁸ Hannah Gill, Mai Thi Nguyen, Katherine Lewis Parker and Deborah Weissman, "Legal and Social Perspectives on Local Enforcement of Immigration under the 287(g) Program," Popular Government, University of North Carolina, Spring/Summer 2009.
- ¹⁵⁹ Mizanur Rahman, "[ICE won't detain illegal immigrant drivers in Nashville](#)," Houston Chronicle Blog, June 23, 2009.
- ¹⁶⁰ Gardner and Kohli, 7.
- ¹⁶¹ Guttin, 9.
- ¹⁶² Jesse James Deconto, "Program deports more than 500," Raleigh News & Observer, December 25, 2009.
- ¹⁶³ Thomas Korosec, "Hispanic exodus from Irving hurts businesses," Houston Chronicle, October 14, 2007.
- ¹⁶⁴ GAO, 3.
- ¹⁶⁵ Department of Homeland Security, Office of Inspector General, "[The Performance of 287\(g\) Agreements](#)," (2010) 9.
- ¹⁶⁶ Capps et. al., 19.
- ¹⁶⁷ Chishti et. al.
- ¹⁶⁸ John Morton, "[Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens](#)," Immigration and Customs Enforcement, June 30, 2010.
- ¹⁶⁹ After Level 1 and 2 offenders, the memo prioritizes Level 3 offenders, immigrants convicted of crimes punishable by less than one year. In addition, the memo identifies two "equal, but lesser priorities" in identifying "recent illegal entrants" and fugitive aliens.
- ¹⁷⁰ See, for example: Denver Post, "ICE investigates near deportation of U.S citizen," July 23, 2010; Tyche Hendricks, "U.S. citizens wrongly detained, deported by ICE," San Francisco Chronicle, July 27, 2009; Associated Press, "Some citizens being held as illegal immigrants," April 23, 2009; Jacqueline Stevens, "[Deporting American Citizens: ICE's Mexican-izing of Mark Lyttle](#)," Huffington Post, August 21, 2009.
- ¹⁷¹ Waslin.
- ¹⁷² National Day Laborer Organizing Network et. al. vs. Immigration and Customs Enforcement et. al, "[Complaint for Declaratory and Injunctive Relief](#)," (2010) 7.
- ¹⁷³ Ibid 7.
- ¹⁷⁴ Dianne Solis, "Dallas County is part of Secure Communities program that raises immigrant profiling concerns," The Dallas Morning News, July 31, 2010.
- ¹⁷⁵ Hendricks.
- ¹⁷⁶ Tom Watkins, "Chicago man accuses feds of racial profiling," CNN, May 28, 2010.
- ¹⁷⁷ Alex Perez and B.J. Lutz, "[American Citizen Faced Deportation](#)," NBC Chicago, May 26, 2010.

- ¹⁷⁸ Aarti Shahani and Judith Greene, "Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement," Justice Strategies, February 2009; Nguyen and Gill; American Civil Liberties Union of North Carolina and University of North Carolina at Chapel Hill, "[The Policies and Politics of Local Immigration Enforcement Laws](#)," (2009).
- ¹⁷⁹ Rights Working Group and the American Civil Liberties Union, "[The Persistence of Racial and Ethnic Profiling in the United States: A Follow-Up Report to the U.N. Committee on the Elimination of Racial Discrimination](#)," (2009) 25.
- ¹⁸⁰ ACLU of North Carolina and UNC at Chapel Hill (2009) 46.
- ¹⁸¹ *Ortega Melendres et. al. v. Arpaio et. al.* No. CV-07-2513, p2.
- ¹⁸² DHS Office of Inspector General (2010) 70-71.
- ¹⁸³ Gardner and Kohli, 1.
- ¹⁸⁴ ICE, April 23, 2009.
- ¹⁸⁵ Jeremy Redmon, "Ga. Communities lack funding for illegal immigrants," Atlanta Journal-Constitution, August 28, 2010.
- ¹⁸⁶ Randy Capps, "[Local Enforcement of Immigration Laws: Evolution of the 287\(g\) Program and Its Potential Impacts on Local Communities](#)," in Mary Malina, Ed. *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties*, Police Foundation (April 2009).
- ¹⁸⁷ Daniel Hopkins, "Politicized Places: Explaining Where and When Immigrants Provoke Local Opposition," American Political Science Review, Vol. 104, No. 1, pp. 40-60, February 1, 2010 .
- ¹⁸⁸ Shahani and Greene, 16.
- ¹⁸⁹ Audrey Singer, Jill Wilson and Brooke DeRenzis, "[Immigrants, Politics and Local Response in Suburban Washington](#)," Brookings Institution (2009).
- ¹⁹⁰ S. Karthick Ramakrishnan and Tom Wong, "Immigration Policies Go Local: The Varying Responses of Local Governments to Undocumented Immigration," (2010) in Monica W. Varsanyi, ed., *Taking Local Control: Immigration Policy Activism in U.S. Cities and States*, Stanford University Press; See also: Scott H. Decker, Paul G. Lewis, Doris M. Provine, Monica W. Varsanyi, "On the frontier of local law enforcement: local police and federal immigration law," (2009) in Mathieu Deflem, ed., *Immigration, Crime and Justice (Sociology of Crime Law and Deviance, Volume 13)*, Emerald Group Publishing Limited, pp. 261-276
- ¹⁹¹ Redmon.
- ¹⁹² Shahani and Greene, 18.
- ¹⁹³ Capps et. al.
- ¹⁹⁴ Shahani and Greene, 16.
- ¹⁹⁵ See, for example: Ruben Rumbaut and Walter Ewing, "[The Myth of Immigrant Criminality and the Paradox of Assimilation](#)," Immigration Policy Center (2007); Kristin F. Butcher and Anne M. Piehl, "[Crime, Corrections, and California](#)," Public Policy Institute of California, California Counts- Population Trends and Profiles 9.3 (2008).
- ¹⁹⁶ Memo from Frederick County Maryland Sheriff Charles Jenkins to House Committee on Homeland Security Chairman Hon. Bennie Thompson, [Testimony on DHS/ICE 287\(g\) Programs](#), March 2, 2009.
- ¹⁹⁷ U.S. Department of Justice, Federal Bureau of Investigations: "[Crime in the United States, 1989-2008](#)," September 2009; Jeffrey S. Passel and D'Vera Cohn, "[Unauthorized Immigrant Population: National and State Trends, 2010](#)," Pew Hispanic Center (2011) 23.
- ¹⁹⁸ Radley Balko, "[The El Paso Miracle](#)," Reason Magazine, July 2009.
- ¹⁹⁹ Robert Sampson, "[Rethinking crime and immigration](#)," Contexts, Winter 2008. Vol. 7, No. 1, pp. 28-33.
- ²⁰⁰ Tim Wadsworth, "[Is Immigration Responsible for the Crime Drop? An Assessment of the Influence of Immigration on Changes in Violent Crime Between 1990 and 2000](#)," Social Science Quarterly, June 2010. Vol. 91, No. 2, pp. 531-553.
- ²⁰¹ McDonald 2004.
- ²⁰² Heidi Beirich, "[Getting Immigration Facts Straight](#)," Southern Poverty Law Center Intelligence Report, Summer 2007, Issue 126.
- ²⁰³ Jon Feere, "[The Obama Administration's 287\(g\): An Analysis of the New MOA](#)," Center for Immigration Studies (2009) 5.
- ²⁰⁴ See, for example: Jessica Vaughan and James Edwards, Jr., "[The 287\(g\) Program: Protecting Hometowns and Homeland](#)," Center for Immigration Studies (2009).
- ²⁰⁵ Dennis Wagner, "Violence is not up on Arizona border despite Mexican drug war," Arizona Republic, May 2, 2010.
- ²⁰⁶ Feere, 5.
- ²⁰⁷ James C. McKinley, Jr., "Debate Intensifies Over Deportations," New York Times, July 25, 2009.
- ²⁰⁸ Ron Unz, "[His-Panic](#)," The American Conservative, March 2010.
- ²⁰⁹ National Immigrant Justice Center, Detention Watch Network and Midwest Coalition for Human Rights, "[Year One Report Card: Human Rights and the Obama Administration's Immigration Detention Reforms](#)," (2010); Amnesty International, "[Jailed Without Justice: Immigration Detention in the USA](#)," (2009).

²¹⁰ Arnold Porter LLP for the American Bar Association Commission on Immigration, [“Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases: Executive Summary,”](#) (2010) 39.

²¹¹ Syracuse University TRAC Immigration, [“As FY 2010 Ends, Immigration Case Backlog Still Growing,”](#) Transactional Records Access Clearinghouse, October 21, 2010.

²¹² American Bar Association, 19-21.

²¹³ DHS, [“Prepared Remarks by Secretary Napolitano on Immigration Reform at the Center for American Progress,”](#) November 13, 2009.

ALSO FROM DMI

THE BEST AND WORST CITY POLICIES OF 2010

December 2010 / The brutal economy of 2010 brought tough times to most American cities. Yet despite rising unemployment and falling tax revenue, some municipalities found progressive ways to move forward. From Austin's determination to invest in sustainable transportation to Pittsburgh's prevailing wage law, DMI honors these efforts among the best of city policy. Meanwhile, the year's worst policies serve as a cautionary tale for urban policymakers in 2011. This brief also appeared as a Huffington Post slideshow.

SOLVING THE MTA'S BUDGET CRISIS AND REINVESTING IN TRANSIT:

A FIVE-STEP PLATFORM FOR THE NEXT GOVERNOR OF NEW YORK STATE

October 2010 / The governor and state legislature are directly responsible for the Metropolitan Transit Authority's (MTA) finances: they decide how much revenue flows to the authority, and only they have the power to put the MTA on sound financial footing. This transit platform proposes five steps the gubernatorial candidates should take if they are serious about reform in Albany and improving conditions for millions of daily commuters throughout the state.

PAID SICK TIME: HEALTHY FOR PHILADELPHIA WORKERS AND BUSINESSES

October 2010 / More than 210,000 working Philadelphians do not have a single paid sick day. As a result, they are more likely to come to work sick and send their ill children to school or daycare, contributing to poor health, the spread of contagious disease, and lower workforce productivity. This study documents the scope of the problem in Philadelphia and examines a potential solution: San Francisco's successful 2007 ordinance guaranteeing all workers the right to earn paid sick time.

PAID SICK LEAVE DOES NOT HARM EMPLOYMENT / PAID SICK LEAVE DOES NOT HARM BUSINESS GROWTH OR JOB GROWTH

March 2010, September 2010 / In two powerful reports, DMI presents new data on employment in San Francisco and finds no evidence that job growth has been harmed by paid sick leave. We analyze growth in the overall number of business establishments and similarly find no evidence of any negative impact. Since San Francisco's paid sick leave law was enacted, both job growth and business growth in San Francisco have consistently been greater than in the five neighboring counties of the Bay Area, none of which have enacted paid sick leave. Business growth has been greater in San Francisco for small as well as large businesses.

AMERICAN DREAM: HOW THE DEVELOPMENT, RELIEF, AND EDUCATION FOR ALIEN MINORS ACT WOULD STRENGTHEN AND EXPAND THE AMERICAN MIDDLE CLASS

March 2010 / The DREAM Act provides a path to citizenship for unauthorized immigrant students who entered the U.S. as children. DMI finds that it would boost the middle class by allowing students to contribute more to the economic prosperity necessary to sustain a strong middle class, keeping unauthorized immigrants out of the underground economy, and facilitating the economic integration of immigrant families.

PRESIDENT OBAMA'S 2011 BUDGET SHORTCHANGES CITIES:

NEGLECT OF URBAN FISCAL COLLAPSE COULD HALT ECONOMIC RECOVERY

February 2010 / DMI finds that President Obama's 2011 budget neglects the urban fiscal collapse and fails to invest sufficiently in cities. The budget will not offset lost growth potential, higher unemployment, increased taxes and fees, and service cuts at the local level — all negative economic indications that cities will hinder national recovery from the recession in the months to come. The innovative urban programs the administration has proposed will fall short at a time when economic and fiscal conditions in cities continue to deteriorate.

WHO IS THE DRUM MAJOR INSTITUTE FOR PUBLIC POLICY?



The Drum Major Institute for Public Policy (DMI) is an urban think tank founded during the civil rights movement by associates of Reverend Dr. Martin Luther King, Jr., and named after King’s frequent invocations of the “drum major instinct,” which King defined as the desire “to be important, to surpass others, to achieve distinction, to lead the parade”—not for self-aggrandizement or material gain, but for selfless leadership.

Our mission is to advance progressive policies in cities and for cities on a range of issues, including economic development, mass transit, workplace protections, immigration reform, and defending the role of government and the public infrastructure that creates opportunities for widely shared prosperity. We believe that cities have been the places where passionate organizing, spirited advocacy, and innovative thinking generate the policy achievements that move us forward as a nation. Yet recent state and federal policy have marginalized cities.

We fight back against this trend by partnering with organizers, advocates, and elected officials around the country to advance a progressive agenda inside and outside the halls of power. We combine a deep civil rights consciousness and legacy with policy-focused research, analysis, communications, strategic relations, and media to reframe polarizing debates and reshape entrenched views. Our Marketplace of Ideas event series attracts influential attendees best positioned to advocate for progressive policy models. And as we work toward change today, we also fill the leadership pipeline with tomorrow’s change-makers through our unique and intensive DMI Scholars program for young college activists.

Please visit www.drummajorinstitute.org for more information.

BOARD OF DIRECTORS

William B. Wachtel
Chairman & Founder
Wachtel & Masyr, LLP

Martin Luther King, III
Vice Chairman
The King Center

Morris Pearl
Treasurer
BlackRock

Stuart Appelbaum
Retail, Wholesale, Department
Store Union (RWDSU)

Sandra Cuneo
Cuneo Advocates

Jennifer Cunningham
Knickerbocker SKD

Rosanna M. Durruthy
CIGNA

Matthew Goldstein
City University of New York

Robert F. Kennedy
Waterkeeper Alliance

Tom Watson
Changing Our World, Inc.

Randi Weingarten
American Federation of
Teachers

Andrew Young III
Young Solutions

STAFF

PJ Kim
Executive Director

Research
Amy M. Traub
Director of Research

John Petro
Urban Policy Analyst

Afton Branche
Immigration Policy Analyst

Strategic Relations
Tsedey Betru
Director of DMI Scholars

Operations
Lauren Su
Chief Operating Officer