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IMMIGRATION LAW AND ENFORCEMENT:
THE ROLE OF STATE AND LOCAL AUTHORITIES

by

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A thesis submitted in partial fulfillment of the requirements
for the Honors in the Major Program in Legal Studies
in the College of Health and Public Affairs
and in The Burnett Honors College
at the University of Central Florida
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Thesis Chair: Dr. Kathy Cook

ABSTRACT

Immigration law and its enforcement are controversial and highly debated topics. States are increasing their role in the enforcement of immigration law by enacting laws that allow local law enforcement to function as immigration officers with the intent of decreasing the illegal alien population within their jurisdiction. The primary focus of this thesis is to determine whether state and local police have the legal power to enforce immigration laws that have been the jurisdiction of the Federal Government for decades. There are two sides that are discussed in this thesis, the proponents who are in favor of increased participation and those who oppose it. The proponents argue that federal law has not preempted states from enforcing immigration law and that states have inherent authority to do this. The critics argue that this is unconstitutional because the constitution and other legal authorities grant exclusive power to the Federal Government in the area of immigration law.

Through the analysis of constitutional provisions, case law and statutes, quantitative statistics, anecdotal evidence, federal and state programs, and governmental resources this thesis evaluates the current role of state and local authorities and proposes a different role for local jurisdictions in the enforcement of immigration law. Evidence shows that states are allowed to enforce some immigration laws but doing this has negative consequences for the people, the states, and the nation. Research shows that increased participation from local law enforcement leads to racial profiling, civil rights violations, and damages the relationship between the police and the community; therefore, the line between state and federal enforcement should be monitored carefully.

DEDICATION

To my husband and confidant, Brian Godoy, my support and inspiration,

For my mentor, Kathy Cook, thank you for pushing me to achieve more than I ever imagined,

And especially, for my best friend, Laura S. Hernandez, your struggle with immigration authorities served as inspiration for this thesis.

ACKNOWLEDGEMENTS

I would like to express my deepest gratitude to all those who made my thesis possible. To Laura Hernandez, thank you so much for proofreading my thesis and supporting me on this journey. Your first-hand experience helped give focus to my overall work. To my husband, Brian, thank you for your patience and understanding through this whole process. Your encouragement meant the world to me. To my committee members, Dr. Abby Milon and Dr. Ross Wolf, thank you for your assistance and advice throughout the process. To my dear professor, mentor, and thesis chair, Dr. Kathy Cook, your advice and words of wisdom not only made my thesis possible but also helped me achieve great success at the university. To my parents, thank you for your encouragement and moral support. To all of my friends, teachers, and family, thank you for everything you have done for me while at the University of Central Florida.

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INTRODUCTION

Immigration law and its enforcement have been the topic of controversial debates in recent years. Immigration, particularly illegal immigration, affects many people in the United States and abroad. The primary focus of this thesis is to analyze whether state and local police have the legal power to enforce immigration laws that have been the jurisdiction of the Federal Government for decades. Recently proposed legislation at the federal and state levels, such as the Clear Law Enforcement for Criminal Alien Removal Act of 2011 (CLEAR Act of 2011), Arizona's Senate Bill 1070, and Memorandum of Agreements (also referred to as 287(g) Agreements), will be thoroughly analyzed in this thesis. The proposed changes to the laws seek to allow state police to enforce laws that have previously been under the jurisdiction of the Federal Government. The reason behind this proposed shift is that local authorities have a better opportunity to apprehend illegal immigrants. The opponents of these laws argue that there are numerous negative consequences from this proposed shift including the potential violation of the rights afforded to legal residents by the Constitution of the United States.

The thesis will analyze the ramifications of allowing state police to engage in activities which historically have been limited to the federal law enforcement. There are several opposing views on this issue because of the many aspects that are involved in the enforcement of complex immigration laws. First, the question of who ultimately has the power to enforce immigration law will be addressed. Secondly, an overview of recently enacted legislation at the state level will be explained. Lastly, the humanitarian aspects surrounding this issue will be addressed. These issues include racial profiling, detention facilities, and local law enforcement's lack of proper training. Because of the impact immigration laws have on our society and ultimately

international relations, this issue of enforcement is critical. After analyzing the current and proposed laws regarding immigration, the thesis will make recommendations regarding changes to the laws or their implementation.

BACKGROUND

The following section consists of background information relating to immigration law, including a brief history of its evolution and the agencies in charge of immigration law enforcement. It covers the purpose, mission, and organizational structure of the Department of Homeland Security and other related agencies. This section will also establish abbreviations for common terms used throughout this thesis and sets the stage for the analysis that follows.

History of Immigration Law

In order to control immigration into the United States, Congress has made drastic changes since 1790, when it passed the first naturalization law. This law restricted naturalization only to “free white persons.” Immigration policies have evolved with time to become more inclusive or more restrictive as the era required. In 1819, the Federal Government began maintaining records of who entered the country. The United States expanded into the Pacific, in 1848, through the Treaty of Hidalgo (Chomsky, 2007). Through this treaty the Mexican government surrendered present-day Arizona, and New Mexico and parts of Utah, Nevada, and Colorado to the U.S. (Gray, n.d.). The Treaty also allowed Mexican residents the option of U.S. or Mexican citizenship (Bikales, 1994). This fact is particularly ironic, as currently, the biggest misconceptions and skewed perceptions of illegal immigrants focus on Mexican immigrants (Cano Galaviz, 2007). An example of the distinction made between Mexican immigrants and immigrants of other ethnicities is the concern with keeping the U.S.-Mexico border secured; this same urgency is not evident with the U.S.-Canada border (Bohn, 2007).

In 1864, immigration policy and the economy started a complex relationship when Contract Labor law allowed the recruitment of foreign workers. The legislature established in 1875 that convicts and prostitutes could not enter the country (Chomsky, 2007). This same year marked the beginning of exclusions based on the moral character and criminal history of the immigrant. Further restrictions were passed by the 1882 Immigration Act, which levied a tax of fifty cents per immigrant and restricted the entry of “idiots, lunatics, convicts, and persons likely to become a public charge” (Smith, n.d.), and created a need for federal agency in charge of the enforcement of immigration law.

The Bureau of Immigration was created under the Treasury Department of the United States in 1891 to oversee immigration. This was the first time a government agency was recognized as being responsible for overseeing and enforcing immigration laws. Under this law, “the Federal Government assumed the task of inspecting, admitting, rejecting, and processing all immigrants seeking admission to the United States” (Smith, n.d.). The following year, Ellis Island opened its doors as the largest port of entry for European immigrants. The new agency operated out of New York and supported itself by the taxes collected from each immigrant until Congress began funding the agency. In 1903, the Bureau of Immigration moved to the Department of Commerce and Labor (Chomsky, 2007).

Immigration laws were further tailored to meet the needs of a growing country when English became a requirement for all persons applying for naturalization in 1906 and shortly thereafter the head tax per immigrant was raised. The changes only made it more difficult for foreigners to enter the country. People with tuberculosis and physical or mental defects were

excluded from entry; Asian immigrants were barred from entering, and a literacy requirement was established for European entrants. While all these changes were taking place to make entry into the country more selective, Mexican guest-workers were exempt from the literacy requirement and the head tax. With the Chinese Exclusion Act of 1882, the need for Mexican contract workers increased and thus seasonal migrations increased (Chomsky, 2007).

This time period in immigration and labor history, is informally referred to as the first *bracero* program. The word *bracero* is a misconstrued adaptation of the word “arm” in Spanish, which is “brazo”. The term’s literal meaning is “one who works with his arms” (Briggs, 2004). The program was abolished because labor organizations argued that the program had undermined the economic welfare of citizen workers. The popular sentiment was that foreign workers negatively affected the available jobs of citizen workers. Out of the 76,862 Mexican workers that entered the United States during this period, only 34,922 returned to their home country. Critics raged that this program was the beginning of illegal immigration (Briggs, 2004).

Despite the negative sentiment towards the *bracero* program, in 1942, with the impending war and need for laborers, the United States welcomed Mexican workers again. However, because of the depression in the 1930s, when mass-deportation of Mexican workers occurred, the laborers were hesitant to come to the United States. In spite of the fears of discrimination, the U.S. and Mexico reached an agreement and established the Mexican Labor Program, formally known as the *Bracero* Program or the second *Bracero* program. The program was officially terminated in December of 1964 because of the outcry that the *braceros* were again driving down wages and taking jobs away from citizen workers in the American

Southwest. While this program was started because of a need for manpower when the country was on the brink of war, there have been other programs during times of peace that have encouraged selective immigration (Briggs, 2004).

In 1952, the Immigration and Nationality Act (INA), also known as the McCarran Walter Act, eliminated race as bar to immigration or citizenship. The enactment of the INA marks the beginning of modern immigration law (Chomsky, 2007). The Federal Government codified all immigration laws in the Immigration and Nationality Act. The Immigration and Nationality Act of 1952 created a comprehensive set of rules for legal immigration, naturalization, work authorization, and the entry and removal of aliens.

There have been numerous changes in immigration law since 1952, mostly in response to societal changes. Later sections discuss some of these immigration policy changes. For a full list of immigration policy changes from 1790 to 2002 please see Appendix A.

Governmental Agencies involved with Immigration Today

The Homeland Security Act of 2002 combined the former Immigration and Naturalization Services (INS) and the former U.S. Customs Services into one department, the U.S. Department of Homeland Security (DHS). It is important to understand the different agencies that interact with non-citizens to comprehend how the U.S. immigration system and process functions. There are many agencies within the DHS that perform immigration services. These agencies are U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS) (Who Became Part

of the Department?, 2003). Figure 1 depicts the hierarchy of immigration law and enforcement agencies.

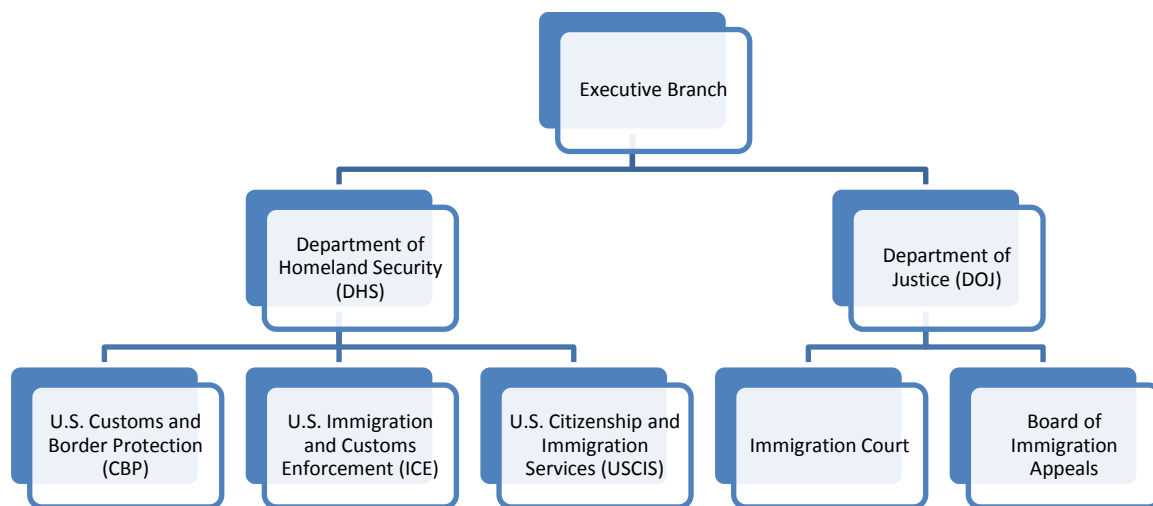


Figure 1: Organizational chart depicting immigration law enforcement agencies that provide services to non-citizens.

Department of Homeland Security

The Department of Homeland Security (DHS) was created in 2002 following the terrorist attacks on September 11, 2001. DHS “oversaw and coordinated a comprehensive national strategy to safeguard the country against terrorism and respond to any future attacks” (Creation of the Department of Homeland Security, 2011). Since its inception, this initiative grew exponentially into a department with over 240,000 employees. DHS’s mission is “to ensure a homeland that is safe, secure, and resilient against terrorism and other hazards” (What We Do, n.d.). The current Secretary, Jane Napolitano is the third Secretary of the Department of Homeland (Organization Chart, 2010).

U.S. Customs and Border Protection (CBP)

The U.S. Customs and Border Protection agency is responsible for the protection of the nation's borders. The agency's coverage extends through the 7,000-mile U.S. borders with Mexico and Canada, the coasts of Florida, and over 95,000 miles of maritime borders (Protecting Our Borders - This is CBP, 2010). CBP officers are granted authority to search individuals trying to enter the country in order to conduct their assigned protective responsibilities. The Code of Federal Regulations states that, "[a]ll persons, baggage, and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection by a Customs officer" (19 C.F.R. 162.6 (2012)). This statute pertains to all persons entering the U.S., including U.S. citizens.

The U.S. Border Patrol is an agency under the supervision of U.S. Customs and Border Protection. Since the agency's beginning in 1924, its mission has been to detect and prevent the entry of illegal aliens into the U.S. The Border Patrol is responsible for patrolling 6,000 miles of the Mexico and Canada borders. The agency's workforce is comprised of highly diverse and well-trained agents. The more than 20,000 federal agents currently on the force have to complete a 19 week training program in Border Patrol Academy, located in Artesia, New Mexico (Border Patrol Overview, 2011).

The Border Patrol officers employ a variety of methods to prevent illegal entry and smuggling of aliens through the borders. The use of traffic checkpoints on major highways allows officers to detect and apprehend illegal aliens that evaded detection at the border and also to detect illegal drugs. In Fiscal Year 2009, the agency apprehended over 556,000 people who were entering the country illegally (Border Patrol Overview, 2011). While the U.S. Customs and

Border Protection enforce immigration laws near the borders, Immigration and Customs Enforcement (ICE) agency enforces these laws in the remaining areas of the country.

Immigration and Customs Enforcement (ICE)

The Immigration and Customs Enforcement agency, a division of the Department of Homeland Security, was established in 2003 through a merger of the investigative and interior enforcement elements of the U.S. Customs Service and the Immigration and Naturalization Service. ICE now has more than 20,000 employees across 50 states and 47 countries. According to the agency's mission statement, their goal is "to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration" (About ICE: Overview, n.d.).

The agency has two principal operating components, Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO). The agency has an annual budget of more than \$5.7 billion dollars. Currently, the agency's Director is John Morton. The U.S. Senate confirmed his nomination by President Barack Obama on May 12, 2009. In June 2010, the agency's strategic plan for Fiscal Years 2010-2014 was announced. The website states that "[t]his comprehensive plan lays out how ICE will most effectively meet its responsibilities for criminal investigation and civil immigration enforcement over the next five years" (About ICE: Overview, n.d.). The agency has plans to "streamline and improve its management structure to give the agency a clearer sense of identity and focus" (About ICE: Overview, n.d.). Among the plan's key priorities is to "protect the borders through smart and tough interior immigration enforcement" (About ICE: Overview, n.d.).

ICE's Enforcement and Removal Operations (ERO) is one of the operating components of ICE and it "is responsible for the agency's efforts to enforce the nation's immigration laws in a fair and effective manner" (A Day in the Life of ICE Enforcement and Removal Operations, n.d.). According to the ICE website, ERO employees "uphold the agency's mission by ensuring the removal of aliens who pose a threat to national security or public safety through fair and effective immigration law enforcement" (A Day in the Life of ICE Enforcement and Removal Operations, n.d.). ERO's mission requires a substantial workforce that is diverse enough to accommodate its broad spectrum; this workforce is comprised of law enforcement officers, medical professionals, administrative specialists, and many others to ensure the success of that mission. According to statistics on their website, ERO housed an average of 33,384 illegal aliens between October 1, 2010 and August 13, 2011, processed 1,177 aliens into detention centers, and removed 1,057 aliens from the United States to countries around the globe. Of those removed, only 533 were criminal aliens (A Day in the Life of ICE Enforcement and Removal Operations, n.d.). A relatively small number of aliens are actually processed each year, and even fewer of them have committed a criminal offense in the United States.

ICE's Homeland Security Investigations (HSI) is the second major operating component. HSI is "responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within and out of the United States" (Homeland Security Investigations, n.d.). HSI consists of more than 10,000 employees, with 6,700 special agents. These employees are assigned to more than 200 cities throughout the U.S. and around the world covering 47 countries. Most of HSI's resources are allocated to the investigation of criminal conduct and terrorists who threaten national security. It also enforces

U.S.'s customs and immigration laws at and beyond the nation's borders. The Executive Director is in charge of overseeing HSI's six key-divisions: Domestic Operations, Intelligence, International Affairs, Investigative Affairs, Mission Support, and National Intellectual Property Rights (IPR) Coordination Center. Lastly, HSI has 26 Special Agent in Charge (SAC) field offices throughout the United States (Homeland Security Investigations, n.d.).

U.S. Citizenship and Immigration Services (USCIS)

The U.S. Citizenship and Immigration Services (USCIS) is the government agency that oversees lawful entry to the U.S. The agency's mission is to secure America's promise as a nation of immigrants by providing services that ensure the integrity of the immigration system (About Us: USCIS, 2009). USCIS complements the Department of Homeland Security's other agencies, it focuses exclusively on administering benefit applications while U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, handle immigration enforcement and border security (Our History, 2011). Despite their different roles within the immigration system, these three agencies, CBP, ICE, and USCIS, have the ability to place individuals into proceedings before immigration court.

Department of Justice (DOJ)

Within the Department of Justice (DOJ), the Executive Office for Immigration Review (EOIR) administers the country's immigration court system. The office's primary focus is deciding whether foreign-born individuals that have been charged with violating immigration law by DHS, should be removed or allowed to remain in the U.S. The administrative functions of the EOIR are carried out by the more than 235 immigration judges in the U.S. When making

a determination on whether the individual should be removed or protected from removal, the Office of the Chief Immigration Judge (OCIJ) conducts administrative court proceedings, called removal proceedings. The Department of Homeland Security formally initiates removal proceedings by serving the individual with a Notice to Appear, which also gets filed with one of EOIR's immigration courts. This notice orders the individual to appear before the immigration court at a scheduled hearing, lists the alleged immigration law violations, and advises of the right to seek an attorney at the individual's own expense (EOIR at a Glance, 2012).

IMMIGRATION AND NATIONALITY ACT

Immigration laws are codified in Title 8 of the United States Code, sections 1101 to 1537. These laws are from The Immigration and Nationality Act (INA) of 1952. There are two different ways to cite to the INA; both ways will be used interchangeably through the thesis. The INA has been amended numerous times throughout the years; therefore, references are to the INA as amended. There are three amendments to the INA that will be discussed in a section below. These amendments are the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-132), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104-208), and the Homeland Security Act of 2002 (Pub. L. 107-296).

The INA defines an *alien* as “any person not a citizen or national of the United States” (8 U.S.C. § 1101(a)(3) (2012)). The word alien will be used as defined by the INA to mean an individual that is not a citizen of the United States. The terms illegal alien, undocumented alien and illegal immigrant will be used interchangeably and define an individual that is in the United States without proper authorization.

To understand the debate regarding the enforcement of immigration law, one needs to be familiar with the INA’s provisions. One also needs to know that local and state authorities have the responsibility of defining and prosecuting crimes and have the ability to enforce some federal laws, especially criminal laws. The controversy arises primarily from the different provisions of the INA because it establishes both criminal punishments and civil penalties which are enforced differently. This chapter will discuss the *civil* and *criminal* provisions of the INA.

Civil Provisions

It is important to distinguish the *civil* and *criminal* provisions of the INA because it is crucial to determining whether state and local authorities can enforce all aspects of immigration law. INA § 1227(a)(1)(B) states that

[a]ny alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201 (i) of this title, is deportable. (8 U.S.C. § 1227(a)(1)(B) (2012))

The reason this provision of the INA is a *civil* matter is that the violation committed by the individual is not a criminal one. Under this section, an alien is rendered deportable because the visa expires and not because the alien violated a criminal law; in other words, mere illegal presence in the United States is not a criminal violation. Furthermore, this violation of the INA (continued stay in the U.S. despite lack of authorizing documentation) is subject to deportation and administrative processes which are civil proceedings.

Like the previous subsection, § 1253(c), which pertains to the penalties imposed on vessels and aircraft, is an example of a *civil* provision of the INA. Another example is § 1324d which relates to penalties for failure to depart. These sections have a common trend; the consequence for violating these laws is a *civil* penalty. There are few examples of strictly *civil* provisions, but that is not the case for the *criminal* provision of the INA. There are considerably more *criminal* violations codified in the INA.

Criminal Provisions

The *criminal* violations of the INA include felonies and misdemeanors and are punishable by fines or imprisonment. These violations are prosecuted in federal court. INA § 1324 establishes criminal penalties for people who engage in the practice of assisting the entry and harboring of illegal aliens. The criminal penalties established for any person that despite knowing that an individual is an illegal alien assists him to enter the U.S., transports, or otherwise harbor the individual, can be up to 20 years in prison. Other *criminal* provisions of the INA are § 1325(a) which pertains to the illegal entry of aliens, and section § 1326 which makes it a crime to reenter the U.S. after being previously excluded or deported. The sentencing guidelines for the latter two criminal provisions are imprisonment for no more than two years.

Additionally, § 1253(a) imposes a penalty for failing to depart from the U.S. Section 1306, delineates the criminal punishment for those aliens who fail to register properly. Lastly, § 1324a(f) establishes the criminal penalties for those who provide employment to illegal aliens. The sections of the INA mentioned above are entirely subject to *criminal* punishments and are therefore referred to as the *criminal* provisions of the INA. Again, they differ from the *civil* provisions because the consequences are punishable through prosecution in federal courts and can result in imprisonment (e. g. felonies and misdemeanors); whereas, the *civil* provisions are subject to civil proceedings (e.g. deportation and administrative processes).

The general understanding according to *People v. Barajas*, 81 Cal. App. 3d 999 (Cal. Ct. App. 1978), has been that states through their police powers to arrest individuals in violation of criminal laws can cooperate in the enforcement of immigration. However, the court in *Gonzalez v. City of Peoria*, 722 F.2d 468 (9th Cir. 1983) held that the *civil* provisions of the INA have

preemption authority and are therefore out of the jurisdiction of local and state authorities. There seems to be a shift in case law regarding the extent of states and localities' authority over both the *criminal* and *civil* provisions of the INA, this topic will be discussed on a separate section. The sections below discuss the power of the Federal Government and the power of the state and local authorities to enforce immigration law.

FEDERAL GOVERNMENT’S CONTROL OVER IMMIGRATION

It is well established that the United States Constitution provides Congress with the authority to prescribe rules as to which aliens may enter the country (U.S. Const. art. I, § 8, cl. 3, 4). Through the enactment of the Immigration and Nationality Act, which codifies all immigration laws, Congress is able to utilize its full powers over legal immigration, naturalization, deportation, and enforcement. Congress also has the power to establish civil and criminal penalties for people who violate immigration laws (8 U.S.C. §§ 1101-1537 (2012)).

Supremacy Clause

The Supremacy Clause of the Constitution states that the “Constitution, and the Laws of the United States ... shall be the supreme Law of the Land.” (U.S. Const. art. VI, cl. 2). In Article I, section 8, the Constitution delineates the powers afforded to Congress; specifically, it grants Congress the power to “establish a uniform Rule of Naturalization” (U.S. Const. art I, § 8, cl. 4). Congress exercised this right when it enacted the Immigration and Nationality Act in 1952, also known as the McCarran Walter Act. The INA codified immigration law and defined terms and powers for various aspects of immigration policies and enforcement.

The Federal Government’s control over immigration is granted by the Constitution's provisions that explicitly authorizes Congress to regulate interstate commerce, to establish “a uniform Rule of Naturalization,” and to conduct foreign affairs (U.S., Const., art I, § 8, cl. 3, 4). Because noncitizens, by definition, come from other countries, the court in *Negusie v. Holder*, 555 U.S. 511 (2009) recognized that their treatment implicates foreign affairs, which is also an exclusively federal power. In *State v. Camargo*, 537 P.2d 920 (Ariz. 1975) the court held that

“federal power over aliens is exclusive and supreme in matters of their deportation and entry into the United States” (p. 922).

There is no presumption that all state laws regarding immigrants or immigration are automatically unconstitutional. To determine constitutionally, the Supreme Court first examines whether the law is aimed at a legitimate state interest or whether it intends to regulate immigration. If the state law is aimed at a legitimate state interest, then the court will determine whether the law contradicts or interferes with federal laws. If the state law is in conflict with federal law, the court will examine whether the law is preempted by federal law or unconstitutional. Some states use the theory of cooperative enforcement to establish the individual state laws as legitimate state interests. By creating a law that protects a legitimate state interest, the state law can be upheld as constitutional. The new trend is for states to enact strict laws against employers hiring illegal aliens who are not authorized to work legally in the U.S. Also, by increasing the number of laws aimed at decreasing the undocumented population, legislators seek the self-deportation of illegal aliens—that is for illegal aliens to leave the country voluntarily (Kobach, 2008).

Kris W. Kobach is a strong proponent of states taking control of the immigration enforcement within their jurisdiction. Even this ardent supporter has agreed that “state statutes must be carefully drafted to avoid federal preemption” (p. 464). Mr. Kobach argues that because smuggling and harboring aliens is already a federal crime, duplication at the state level is relatively easy. Therefore, legislators should create state laws that make it a felony for any person who knowingly or in reckless disregard of the fact that an alien is illegally present in the United States, either transports, moves, or attempts to transport an alien within the country, or

conceals, harbors, or shields the alien from detection (8 U.S.C. § 1324(a)(1)(A)(ii)-(iii) (2012)).

This provision makes it a crime to transport a known illegal alien and creates accomplice liability. It is the law that “whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal” (18 U.S.C. § 2(a) (2012)). Therefore, the purpose of states implementing laws such as these is to get around the preemption issue by making what is already a federal crime also a state crime.

Preemption

The doctrine of preemption means that federal laws supersede state laws, deriving power from the Supremacy Clause of the U.S. Constitution. The Supremacy Clause states that the Constitution, and the [l]aws of the United States . . . shall be the supreme [l]aw of the Land; and the Judges in every State shall be bound thereby, any [t]hing in the Constitution or [l]aws of any state to the [c]ontrary notwithstanding. (U.S. Const. art. VI, cl.2)

Accordingly, when there is a conflict between state and federal law, the latter overrides the former, in other words, federal law *preempts* otherwise valid state law. This was established in the case of *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992).

There are three forms of preemption: express congressional preemption, field preemption, and conflict preemption. Field preemption applies when federal authority implicitly occupies an entire area. There is also express congressional preemption by statute; and lastly, conflict preemption, which occur when state and federal laws impose conflicting duties, especially when those conflicts are irreconcilable as explained in the case of *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88 (1992).

From a historical perspective, there are two cases from 1875 that established the foundation for preemption in immigration law regulations. The cases of *Henderson v. New York*, 92 U.S. 259 (1875) and *Chy Lung v. Freeman*, 92 U.S. 275 (1875) will be discussed below. These cases are significant because they invalidated state immigration laws in California, Louisiana, and New York. To understand the significance of these cases, one must understand the different types of preemption.

Express Preemption

Chief Justice Nancy Saitta from the State of Nevada Supreme Court in her opinion in the case of *Nanopierce Technologies, Inc. v. Depository Trust and Clearing Corp.*, 123 Nev. 362 (2007), citing to *Cipollone v. Liggett Group, Inc.* (1992), discussed the doctrine of preemption in detail. *Express* preemption applies when Congress expressly displaces state law when it explicitly states that intent in a statute's language. In other words, to determine if Congress has expressly preempted state law, the court must look at the statutory language. The other two types of preemption, field and conflict, are types of *implied* preemption. When Congress does not include statutory language expressly preempting state law, Congress' intent to preempt state law nonetheless may be implied in two circumstances known as field preemption and conflict preemption.

Field Preemption

This type of implied preemption applies when Congress through legislation and statutes occupies a field so thoroughly that there is no space for states to regulate the conduct in that field as explained in the case of *Cipollone v. Liggett Group, Inc.* (1992). If careful examination of the

statutory provisions determines that Congress intended to occupy a field and therefore preempt states from imposing any requirements on that field, it is implied that congress occupies that legislative field. Thus, state requirements are preempted whether there is a conflict with the law or not.

Conflict Preemption

To claim that conflict preemption applies, there has to be an actual conflict between the federal law and the state. In *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000), the court explains that if it is impossible to abide by both the federal and state law without violating one or the state law impedes the successful execution of Congress' objectives, the law falls under the umbrella of conflict preemption. As a result of the Supremacy Clause, federal law will displace state law.

Case Law Analysis

In the case of *Henderson v. New York*, 92 U.S. 259 (1875), the statutes at issue required masters of vessels to pay fees for landing passengers. The tax funds collected were used "to protect ... cities and towns from the expense of supporting persons who are paupers or diseased, or helpless women and children, coming from foreign countries" (p. 268). The court in *Henderson* ruled the state-imposed tax unconstitutional. They explained that the laws were invalid not only because immigration regulation was preempted by federal law, but because of a more essential issue. This fundamental issue, the court explained, is that there might be "a kind of neutral ground, especially in that covered by the regulation of commerce, which may be occupied by the State, and its legislation be valid so long as it interferes with no act of Congress,

or treaty of the United States" (p. 272). However, there are matters "of such a nature as to require exclusive legislation by Congress" (p. 273). Furthermore, the *Henderson* court explained that immigration "belongs to that class of laws which concern the exterior relation of this whole nation with other nations and governments," (p. 273) and consequently "must of necessity be national in its character" (p. 273).

Henderson discusses an issue that is often raised by proponents of increased state enforcement of immigration law. The Court rejected the claim that the statutes at issue in this case were within the states' police powers. While it is not disputed that states have police powers, the court stated that those powers cannot be exercised in a field that has been confided exclusively to the discretion of Congress by the Constitution.

In *Chy Lung v. Freeman*, 92 U.S. 275 (1875), a California statute intended to restrict Chinese immigration. At the time this case emerged, domestic and international political issues were taken very seriously. The court pointed out that if American citizens were treated by any foreign nation as the representatives of the Emperor of China were treated in California, the demand for redress would be justifiable. The Court explained that if California ever got into a difficult time that resulted in a war, the whole *Union* would suffer, not just the state. The *Chy Lung* court explained that Congress "has the power to regulate commerce with foreign nations: the responsibility for the character of those regulations, and for the manner of their execution, belongs solely to the national government" (p. 280). Without this protection, if a state began conflicts with a foreign nation, the whole country would go to war.

Both the *Henderson* and *Chy Lung* cases are still good law. Despite being over 130 years old and decided before the Federal Government passed the first general immigration law, these

cases have not been overruled. The importance of these cases is that they established a jurisprudential framework. In *Henderson*, it was established that is not mere preemption that prevents states from passing immigration law, but that states lack authority. Also, they establish the states' police powers do not authorize them to regulate immigration and lastly, the enactment and enforcement of immigration law is the sole responsibility of the national government.

In *De Canas v. Bicas*, 424 U.S. 351 (1976), the court analyzed the California Labor Code Ann. § 2805(a) which an employer shall not employ an unauthorized alien if doing so would negatively affect a worker who is a lawful resident. The issue in this case was whether the California statute was unconstitutional either because it attempted to regulate immigration and naturalization or because it was preempted under the Supremacy Clause of the Constitution.

In the analysis of the issue, the court had to determine whether states were regulating immigration, which is a determination of who should or should not be admitted into the country and the conditions for remaining in the country or whether § 2805(a) had been preempted by the INA. The *De Canas* court ruled that just because aliens are the subject of a state statute this does not equate to regulation of immigration.

While the court agreed that the regulation of immigration is indisputably a federal power, it held that the California Labor Code provision prohibiting an employer from knowingly employing an alien who is not entitled to lawful residence in the United States if such employment would have adverse effect on lawful resident workers was not unconstitutional as a regulation of immigration or as being preempted under the Supremacy Clause by the Immigration and Nationality Act.

This case directly involves the issue of state authorities making arrests pursuant to violations of the INA. The issue before the court in *Gonzalez v. The City of Peoria*, 722 F.2d 468 (9th Cir. 1983) was whether police officers from the City of Peoria had state and federal authority to make arrests for violations of the INA.

This case came before the court after several plaintiffs of Mexican descent filed suit against the City of Peoria police alleging violations of their rights in the conduct of immigration law enforcement functions. The appellants alleged that the officers did not have the authority to make arrests for violation of the INA. In addition, appellants alleged that the INA did not give any authorization to states to prevent illegal entry into the U.S.

In response to these allegations the Court of Appeals held that the Peoria City Police did have state and federal authority to make arrests for criminal violations of the INA. It is interesting that in this case the court recognized the “failure to distinguish between civil and criminal violations of the Act” (p. 476) as the root of the problem.

Cooperative Enforcement Theory

In response to the claim that federal law preempts states from being involved in immigration law, states have argued that because the laws being passed at the state level mirror federal laws, the issue of preemption does not apply. The section below offers an analysis of the cooperative enforcement theory. Cooperative enforcement is the cooperation between state and local authorities and the federal authorities in the enforcement of immigration law.

State Laws Mirror Federal Law Theory

This theory is based on the idea that states can help the Federal Government to enforce immigration policy by enacting and enforcing state laws that mirror federal laws. There have been prior theories, such as the cooperative enforcement programs. While some say that the mirror image theory is similar to the cooperative enforcement program, they are not. The cooperative enforcement program works because states and the Federal Government work together or they work under express federal authority or independent state authority. The mirror image theory is quite the opposite of the cooperative enforcement program. The state legislatures do not actually cooperate with the Federal Government but blatantly reject the government's objectives and means.

The mirror image theory has gained popularity through Congress, the states, and the citizenry. Despite this popularity, the theory represents a radical legal and policy shift. Immigration law establishes that the states cannot independently enforce federal and state criminal immigration provisions that deal exclusively with immigration. Legislation like Arizona's SB 1070 and other similar laws seek to establish unprecedented autonomy and discretion; these will be discussed in a later section. An example of recent immigration related legislation dealing with the notion of inherent authority is the CLEAR Act of 2011.

The 112th Congress is currently debating the CLEAR Act of 2011. The Act declares that states have "inherent authority" to enforce immigration law but also discusses some of the financial repercussions of refusing to collaborate with the government. The passage of this Act would allow the Federal Government to withhold funds from states that refuse to cooperate with the enforcement of federal immigration laws. In its own language, the Act states

[e]ffective two years after the date of the enactment of this Act, a State . . . that has in effect a statute, policy, or practice that prohibits law enforcement officers of the State . . . from assisting or cooperating with [f]ederal immigration law enforcement in the course of carrying out the officers' routine law enforcement duties shall not receive any of the funds that would otherwise be allocated to the State. (Clear Law Enforcement for Criminal Alien Removal Act of 2011 (2011))

This legislation would force states to enforce immigration law or face losing funding. In essence, Congress would have created a loophole to urge states to broaden their functions in the enforcement of immigration laws. To which funds the language in the proposed bill is referring is not quite clear. Currently, the Federal Government provides compensation for the costs of incarcerating immigrants; this compensation comes in the form of the State Criminal Alien Assistance Program (SCAAP) (Ester, 2007).

The State Criminal Alien Assistance Program is used to compensate states for the costs of incarcerating immigrants. SCAAP funds are grants that are calculated using a formula; therefore, they are different for every state. The funds are designed to reimburse the states for correctional officers' salary costs and all other costs associated with the incarceration of undocumented criminal aliens (Ester, 2007). However, this only provides funds for persons that have been convicted of a felony, or of two or more misdemeanors. Between fiscal year 1997 and fiscal year 2005, a total of \$4.1 billion has been distributed to states in SCAAP funding. As previously stated, this only covers the "criminal aliens," not the civil detainees that may be detained and using state resources.

SOURCES OF STATE AUTHORITY

Immigration law is a good example of how society changes the law and the law changes society. Terrorism in the United States led Congress to enact a series of acts that shaped immigration law in the U.S. Through these acts, Congress has created different avenues to allow states and local law enforcement agencies to assist the Federal Government in the enforcement of immigration law. The sections below discuss several federal statutes that expressly authorize state and local governments to engage in immigration enforcement functions.

Express Authorization

Congress has the power to delegate to the state and local authorities the power to detain, hold, and transfer aliens into federal custody. The programs created by Congress that expressly grant state and local law enforcement power to over federal immigration law enforcement functions are: 287(g) Agreements, pursuant to INA § 287(g) authority, authority as a response mechanism to mass influx of aliens, pursuant to INA § 133(a) as amended by § 372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), authority to arrest previously removed criminal aliens, pursuant to § 439 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), and authority to enforce the federal alien smuggling statute, pursuant to violation of INA § 274.

Delegation of Immigration Enforcement Authority—287(g) Agreements

Probably one of the biggest displays of authority delegated to state and local authorities emerged with the implementation of § 133 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. This section amended INA § 287 to allow the delegation

of certain immigration enforcement activities to state and local law enforcement. INA § 287(g) authorizes the Attorney General (referring to the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002) to enter into written agreements with state authorities that allow local law enforcement to function as an immigration officer in relation to the investigation, apprehension, and detention of illegal aliens functions of ICE (8 U.S.C. § 1357(g)(1)).

These agreements referred to as 287(g) agreements because the authority is derived from INA § 287(g), authorize local and state authorities, after sufficient training, to perform functions related to the investigation, apprehension and detention of aliens for a specific duration of time and under the supervision of federal authorities (8 U.S.C. § 1357(g)(5)). The language in the section states that local officers must have adequate training and sufficient knowledge of and adhere to federal law (8 U.S.C. § 1357(g)(2)). Furthermore, the section states that local officers participating in the agreements are not considered federal employees, with the exception of tort claims and compensation issues; however, they are considered to be acting under color of federal law for the purpose of liability and immunity from law suits in civil actions under state or federal law (8 U.S.C. § 1357(g)(7-8)).

In addition to listing the requirements and conditions upon which agencies enter into these agreements, 8 U.S.C § 1357(g)(10) clarifies that states and local officials are not required to commit in writing to cooperate in the enforcement functions of immigration law. It also specifies that it is not necessary for state and local officials to have signed an agreement to communicate with the federal authorities if they want to inquire about the immigration status of a person. Section 287(g)(10), specifically states that an agreement is not necessary for a local officer to “cooperate ... in the identification, apprehension, detention, or removal of aliens not

lawfully present in the United States” (8 U.S.C. § 1357(g)(10)). The broad language of this subsection leaves room for different interpretations. By establishing that law enforcement officers at the local level do not require an agreement to cooperate in the different enforcement functions, it takes away the protections that the agreements provide, such as the training requirement and supervision. In addition, local and state law enforcement agencies can interpret the language of this section as meaning that in order to cooperate with the federal authorities in an effort to reduce the illegal alien population; they can perform functions independently from the Federal Government.

Currently, there are 68 law enforcement agencies, encompassing 24 states, which have signed 287(g) agreements. As of September 2, 2011, ICE has trained over 1,500 local law enforcement officers to enforce immigration law (Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act). Appendix B lists the jurisdictions that have signed 287(g) Agreements as of September 2, 2011.

Antiterrorism and Effective Death Penalty Act of 1996

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) was created “[t]o deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes” (Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, 1996). In essence, this act created sentencing guidelines and tightened habeas corpus procedures. In terms of immigration, Section 439 of the AEDPA, allows states and local police to arrest unlawfully present criminal aliens who allegedly violated INA §276 which deals with the reentry of aliens who have been previously removed from the country (8 U.S.C. § 1326). This section of AEDPA, states that to the extent authorized by local laws, police officers can arrest and detain an

individual if the individual is an illegal alien present in the U.S. and the individual has been previously convicted of a felony and deported (8 U.S.C. § 1252c). The language of the statute states that the local officials must obtain confirmation from federal immigration authorities and the individual should only be detained for the period of time it takes to transport the individual into federal custody.

This law is intended to overcome a perceived limitation of state's authority to arrest criminal aliens and detain them until they were transferred to federal custody. However, before Representative Doolittle offered this amendment to what was then known as H.R. 2703, there was already the notion that there was no such limitation on states. Some argue that Section 439 did not enable states to detain aliens on the basis of their unlawful reentry because this right was an inherent power. The U.S. Court of Appeals for the Tenth Circuit in *United States v. Vasquez-Alvarez*, 176 F. 3d 1294 (10th Cir. 1999) ruled that AEDPA §439 was not “intended to displace preexisting state or local authority to arrest individuals violating federal immigration laws” (p. 1300).

Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)

Another legislation that amended the INA to be more inclusive of the role states' play in immigration enforcement was the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Act amended INA §103(a) to authorize the Secretary of Homeland Security to utilize state and local police to enforce immigration law in response to an actual or imminent mass influx of aliens. Precisely, it states that if the Secretary of Homeland Security determines that an *actual* or *imminent* mass influx of aliens arriving off the coast of the U.S. presents a threat

to homeland security, the Secretary may authorize local law enforcement to exercise any power, privilege or duty bestowed upon employees of the service (8 U.S.C. § 1103(a)(10)).

While the original language of §103(a) references the Attorney General, the authority the provision describes is exercised by the Secretary of Homeland Security as a result of a shift of enforcement power to the Department of Homeland Security (DHS). For many years the authority to interpret, implement, and enforce the provisions of the INA were consigned to the Attorney General. In turn, the Attorney General delegated authority over immigration enforcement and other services to Immigration and Naturalization Service (INS), a branch within the Department of Justice (DOJ). Following the Homeland Security Act of 2002, the INS was eliminated and its enforcement role were transferred to DHS (6 U.S.C. §251). In other sections of the INA, although the Attorney General is referenced, the Secretary of Homeland Security now exercises these authorities.

Under the Illegal Immigration Reform and Immigrant Responsibility Act, the states can exercise federal powers, both *criminal* and *civil* if three conditions are met. First, the state and local law enforcement officers are expressly authorized by the Secretary of Homeland Security. Second, the head of the local agencies must consent to the performance of federal immigration roles by its officers. Lastly, the Secretary has determined that an imminent and ongoing mass influx of aliens requires an immediate response.

The Department of Justice enacted INA §103(a)(10) in 2002 and the following year it revised this section to include more flexibility to address unanticipated situations that might arise during a mass influx of aliens. The DOJ added that the Attorney General may delegate this power if necessary to protect the public's safety, health, or national security; and in such a case,

the training requirements for state and local law enforcement can be waived or cut short (28 C.F.R. § 65.84(a)(4)).

Authorization to Enforce the Federal Alien Smuggling Statute

INA § 274 makes it a criminal violation to smuggle, transport, or harbor unauthorized criminal aliens (8 U.S.C. § 1324). Under § 274(c), Congress seems to indicate that states and local police are allowed to arrest individuals in violation of the smuggling statute because they are “officers whose duty is to enforce criminal laws” (8 U.S.C. § 1324(c)). This section states that no officer has the authority to make any arrest for a violation of this section except officers of the Service designated by the Secretary of Homeland Security and all other *officers whose duty it is to enforce criminal laws* (8 U.S.C. § 1324(c)).

This statute allows state authorities to enforce the criminal provisions of the INA that pertain to smuggling criminal aliens. This is unique to this statute, because there are no other statutes within the text of the INA that expressly authorize state and local law enforcement to carry out this function. Nevertheless, the court in *Gonzalez v. City of Peoria* 722 F.2d 468 (9th Cir. 1983) held that state and local authorities are permitted to arrest individuals for criminal violations of the INA, regardless of whether it has been expressly authorized in a section of the INA.

Delegated Authority by ICE

ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) provides local law enforcement agencies an opportunity to team with ICE to combat specific challenges in their communities. The program was developed to promote ICE’s

resources used by state, local, and tribal agencies. There are numerous programs that operate under ACCESS. The ICE website has a link where local agencies can request information and help from ICE regarding any of the programs under the coverage of ACCESS. Once the request for assistance is received, ICE agents meet with local law enforcement personnel to assess the localities' needs and draft a plan of action. The next step is for the local agencies to enter into partnerships with ICE depending on their individual needs (ICE ACCESS, n.d.). These programs are significant because they show a pattern within the immigration system. The DHS delegates its powers over immigration law and enforcement to the three separate agencies (CBP, ICE, and USCIS). Likewise, ICE delegates some of its enforcement authority over immigration to the states via the different programs described below. Most of these programs are taskforces, which are units specially organized for a specific task (*Merriam-Webster Online Dictionary*, 2011).

The Asset Forfeiture program, also referred to as the Equitable Sharing authorizes state and local law enforcement agencies to seize the assets used by criminal organizations in their illicit transaction. This partnership allows for equitable sharing, a program that allows federal, state, and local law authorities to receive a portion of the proceeds from seized assets, which increases the cooperation among agencies (Asset Forfeiture Branch, n.d.). Similar to the Asset Forfeiture Program, the Border Enforcement Security Task Force (BEST) allows states to share the proceeds from seized assets of criminal organizations. This taskforce focuses on identifying and dismantling criminal organizations that pose a threat to border security. Currently, there are local offices in Arizona, California, Texas and Washington. Local agencies aid BEST forces by creating a comprehensive approach to the identification and successful disruption of the criminal

organizations (Border Enforcement Security Task Force (BEST), n.d.). The Customs Cross-Designation, another program under ACCESS, also utilizes the concept of equitable sharing. Title 19 of the United States Code, section 1401 allows federal, local, and foreign law enforcement officers to partner with ICE in the enforcement of U.S. customs law (19 U.S.C §1401). The aim of this task force is to disrupt and dismantle transnational criminal organizations (Customs Cross Designation, n.d.). While there is no single accepted definition to the term transactional organized crime, in 1994, the term transactional crime was defined to include offenses whose inception, prevention, and/or direct or indirect effects involve more than one country (Mueller, 1998).

The similarity between these programs is clear; they boost cooperation between the federal authorities and state authorities through reciprocity. Both participants stand to gain by working together. This relationship fortifies the bond between the Federal Government and state and local authorities in the area of immigration law and enforcement. Such a bond, based on monetary gain, has the potential to impede the success of such programs.

The Law Enforcement Support Center (LESC) is in place to assist all levels of government, federal, state, and local law enforcement, in the identification of aliens suspected, arrested or convicted of criminal activity. Through electronic access to LESC records, even the corrections and court system communities can have timely and accurate information regarding about a suspected undocumented aliens immigration status. This facility is a single point of contact for local, state and federal law enforcement agencies. The services provided are available 365 days a year. The law enforcement officers can request information from the files contained in the National Crime Information Center (NCIC), which controls all ICE criminal and

administrative records, and also all files maintained by DHS. The information that can be obtained is voluminous, almost 100 million records. Within 10 minutes of submitting a query, law enforcement agencies can have the immigration status of suspected individuals. The agents working within the Center can place detainers on aliens that are wanted by ICE once the search results in a hit. Training is available for law enforcement in order to facilitate and maximize the use of LESC. This training provides instruction on ICE's role and responsibilities. In Fiscal Year 2010, the number of requests for information sent to LESC was 1,133,130; from these requests, LESC confirmed 6,150 hits from the NCIC database. About 0.5 percent of all inquiries in the FY 2010 resulted in the identification of criminal aliens. Also, out of the 277,000 previously deported aggravated felons, immigration fugitives, and wanted criminals that are recorded in the NCIC system, in FY 2010, LESC placed detainers in about 20,446 of these individuals (Law Enforcement Support Center, n.d.). All the statistics available for the LESC program concern criminal undocumented aliens. The relationship between ICE and state and local authorities results in the apprehension of criminal aliens and fugitives.

Some of the programs under ICE's ACCESS initiative focus on a more specific type of illegal immigrant population. These programs seek to deport the individuals society deems undesirable, the child molesters, gang members, and counterfeit goods smugglers. The Operation Community Shield (OCS) program utilizes state, local and federal resources to apprehend gang members. In this program, ICE uses its criminal and administrative capabilities against gangs and gang members. The purpose behind OCS is safer communities (Operation Community Shield/Transnational Gangs, n.d.). Another program that shares the same purpose as OCS is Operation Predator, a program developed to identify, investigate, and when appropriate,

deport child predators. Through partnerships, ICE is able to prosecute and stop the transnational groups that derive proceeds through the exploitation of children (Child Exploitation/Operation Predator, n.d.). These programs are designed to get rid of the foreign nationals who do not deserve to be a part of this country due to their undesirable conduct.

Other Cooperative Agreements

The following programs, Criminal Alien Program (CAP), National Fugitive Operations Program and Secure Communities, grant state and local authorities the power to perform some immigration enforcement functions; however, this power is not based on the INA. § 287(g). These powers arise from a number of other sections within the INA. INA § 236, authorizes the creation and implementation of a system through which federal immigration authorities may identify aliens convicted of aggravated felonies who are in the custody of state or local authorities (8 U.S.C. § 1226); INA § 238, requires the expedited removal of certain criminal aliens at local, state, and federal correctional facilities (8 U.S.C. § 1228); INA § 287(d), authorizes federal immigration authorities to place a detainer on an alien authorizing the individual's detention until federal authorities may assume custody upon being told that an alien arrested due to a controlled substance violation is in the custody of a local or state law enforcement facility (8 U.S.C. § 1357(d)). The programs analyzed below are avenues Congress has created to allow local and state law enforcement to participate in immigration enforcement activities.

Criminal Alien Program (CAP)

In 1991, the former Immigration and Naturalization Services created the Criminal Alien Program (CAP)—formerly known as the Alien Criminal Apprehension Program. Today the program's main objective, much like it was at its inception, is the identification of criminal aliens. Immigration officers identify criminal aliens while they are incarcerated but prior to their release. Detecting the presence of a criminal alien while still incarcerated allows the Department of Homeland Security and the Department of Justice to remove the alien while in custody (Criminal Alien Program, n.d.).

The Immigration and Customs Enforcement agency, Enforcement and Removal Operations officers and agents assigned to CAP screen inmates in prisons at all levels, federal, state, and local jails. After the screening, officers place detainees on criminal aliens. The detainer allows officers to process the criminal alien prior to individual's release from custody. ERO then initiates removal proceedings. The Violent Criminal Alien Section (VCAS) ensures the public safety by aggressively prosecuting criminal offenders identified in conjunction with the U.S. Attorney's Office. This not only helps ensure the public's safety but serves as a deterrent to recidivism (Criminal Alien Program, n.d.).

Another task force within the CAP program is the Joint Criminal Alien Removal Taskforces (JCART). This taskforce identifies, investigates and arrests at-large criminal aliens. The offenses committed by the subjects who are the main priority of this taskforce include but are not limited to, drug trafficking offenses, violent crimes, and sex offenses. The taskforce also pursues aliens who are involved in human trafficking, smuggling, and transactional organized crime. The taskforce collaborates with probation and parole officers to maximize data collection

as well as with the U.S. Marshals Service, U.S. Customs and Border Protection, the Bureau of Prisons, local law enforcement agencies to carry-out special operations (Criminal Alien Program, n.d.).

Almost 27 percent of inmates in the custody of the Federal Bureau of Prisons (BOP) are non-U.S. citizens. ERO created the Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) center in Chicago to access this population of incarcerated non-U.S. citizens through CAP. The officers interview inmates through teleconference equipment and through the collaborations of the DEPORT Center and local ERO officers. Criminal detainees in federal detention facilities are taken into ERO custody when the term of their sentence is completed (Criminal Alien Program, n.d.).

In some cases, aliens are able to be removed before they have served their terms in state or local confinement facilities. The Rapid Removal of Eligible Parolees Accepted for Transfer is a program in which state correctional and parole services join forces with the Criminal Alien Program. It allows ICE to remove criminal aliens fast and efficiently from the country. ICE's website states that by "allowing for the conditional, early release of non-violent aliens with final orders of removal from the United States, the program also reduces the burden on American taxpayers" (Criminal Alien Program, n.d.).

National Fugitive Operations

The National Fugitive Operations Program (NFOP) was created by ICE within the Enforcement and Removal Operations section in 2003. The program's primary function is to "reduce the alien population in the United States" (Fugitive Operations, n.d.). The responsibilities of the NFOP are to identify, locate, and arrest fugitive aliens—aliens that have

been previously removed from the U.S., aliens convicted of crimes, aliens subject to automatic deportation that enter the country through illegal means, and any other individual that defies immigration laws. The NFOP uses a program called the Absconder Apprehension Initiative which utilizes data it gets from the National Crime Information Center databases as a “virtual force multiplier” (Fugitive Operations, n.d.).

In collaboration with NFOP’s Absconder Apprehension Initiative, ERO created the program, ICE ERO Most Wanted. The Most Wanted program makes the faces and names of the 10 most wanted fugitive criminals by ERO public. This initiative has seen results, in Fiscal Year 2011 the number of fugitive alien cases decreased by more than 26,559, resulting in 479,773 fugitive alien cases in total (Fugitive Operations, n.d.). When the program was first initiated it was comprised of eight Fugitive Operations Teams (FOTs) through the U.S. Currently, the program has 104 FOTs which executed more than 40,000 arrests in FY 2011. To assist the NFOP, ICE created the Fugitive Operation Support Center (FOSC) in June 2006. FOSC is utilized in conjunction with the Counterterrorism and Criminal Exploitation Unit (CTCEU) to enhance the effectiveness of NFOP in its mission to address the growing fugitive alien problem in the country. The NFOP’s mission to reduce the fugitive alien population in the United States has been enhanced by the use of technology and partnership with local law enforcement agencies. The program has successfully analyzed data on more than 1.5 million suspects to determine if any targets have voluntarily left the country, adjusted their status, or have been incarcerated making them no longer fugitives (Fact Sheet: ICE Fugitive Operations Program, 2011). In furtherance of ICE’s priority, the removal of criminal alien, law enforcement agencies

have united with ICE to assist in the removal of these individuals. Secure Communities is an initiative created for the purpose of focusing limited resources to make communities safer.

Secure Communities

The goal and priority of local law enforcement agencies is to maintain their communities safe. Likewise, ICE's priority is the removal of criminal aliens. ICE initiated the Secure Communities program to focus its limited resources on the removal of criminal aliens. The program utilizes already-existing federal information-sharing partnerships. Local and state law enforcement agencies assist ICE in the identification of removal aliens by sharing the fingerprints of individuals in their custody. Just as it has been done for decades, once an individual is booked, their fingerprints are sent to the Federal Bureau of Investigation (FBI). The FBI then shares the fingerprints with ICE to determine if the individual is unlawfully present in the U.S. or otherwise eligible for removal based on criminal conviction. This program places no additional burden on local authorities. Furthermore, the federal government determines what immigration enforcement action is appropriate. ICE clarifies that *only* federal officers make immigration enforcement decisions, within this program, and "they do so *only* after an individual is arrested for a *criminal* violation of state law, separate and apart from any violations of immigration law" (Secure Communities, n.d.). The fact that Secure Communities, unlike 287(g) Agreements, involves no direct enforcement of federal law by local officers, explains why this programs is not as controversial. Secure Communities is similar to the Criminal Alien Program (CAP) in that local and state authorities get involved in the identification of criminal aliens.

When the program was first activated in 2008, only 14 jurisdictions were activated, but since then the program has grown exponentially. As of March 20, 2012, there are 2,504

jurisdictions activated. A substantial number of jurisdictions, 79% to be exact, are participating in Secure Communities. This program, through fingerprint sharing has helped ICE remove 129,878 criminal aliens from the United States as of February 29, 2012 (Activated Jurisdictions, 2012). The program works through annual appropriations from Congress to ICE for the removal of the more than 10 million estimated undocumented aliens in the U.S. Because of the limited resources, ICE prioritizes the removal of criminal aliens. Local and State agencies that are active Secure Communities jurisdictions help ICE maximize their resources by sharing the fingerprints of individuals arrested on violations of state law. Figure 2 illustrates the jurisdictions currently participating in Secure Communities.

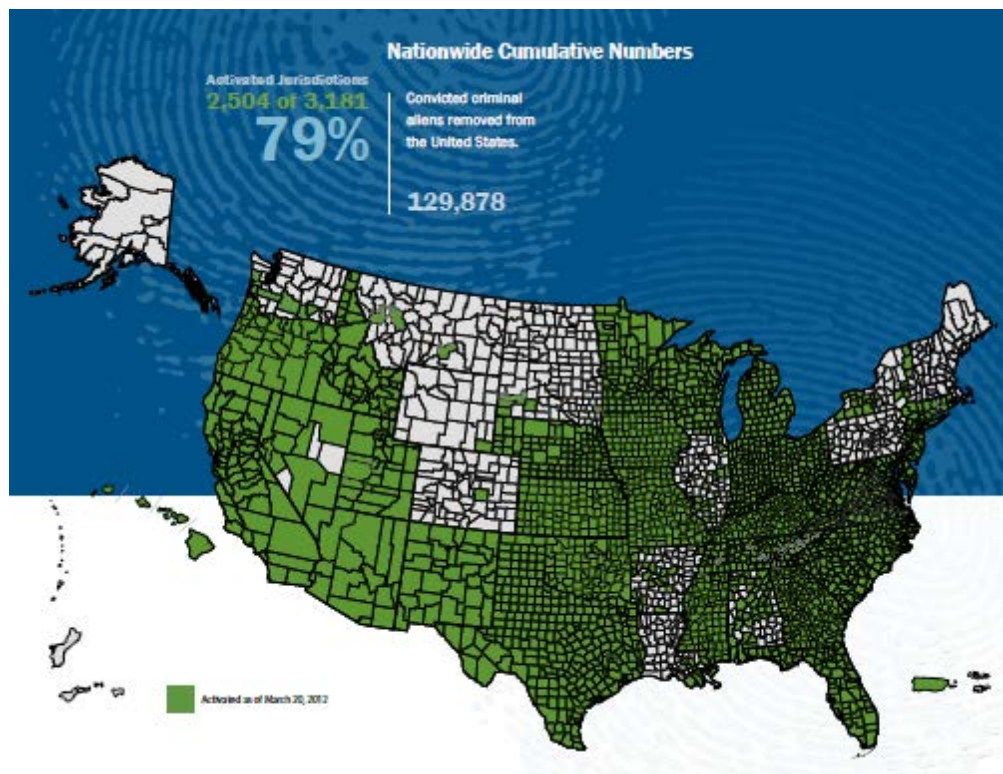


Figure 2: Map illustrating active Secure Communities in the United States. Source: U.S. Immigration and Customs Enforcement.

Some of the concerns with the Secure Communities are negative effects on community policing and civil rights violations. Local authorities worry that Secure Communities could affect the number of witnesses and victims of crimes coming forward to report criminal activities in their communities. ICE has responded that additional training will be provided to ensure that local officers understand the goals and priorities of the program. On the issue of civil rights, ICE has advised that it will continue to respond to complaints on civil rights violations. Prosecutorial Discretion is one of the safeguards in place to protect from those who may engage in racial or ethnic profiling (Secure Communities, n.d.). The fact that ICE has these safeguards in place shows that the potential for racial and ethnic profiling exists in these programs where state and local authorities are responsible for the identification of criminal and non-criminal aliens. ICE Director Morton issued a memorandum explaining how ICE officers can use prosecutorial discretion authority. The term prosecutorial discretion means that an agency in charge of enforcing a law can decide to what extent to enforce the law against a person (Morton, 2011). In immigration terms, when ICE decides to use its prosecutorial authority, it is deciding to not assert its full enforcement authority on an individual. This discretionary function can be seen when ICE decides to cancel a notice of detainer, decides whom to stop, question, or arrest for an administrative violation, and when to grant parole or stay a final order of removal, among other things. The authority to exercise prosecutorial discretion rests with the Director of ICE and other authorized ICE employees such as ERO agents, HSI agents, and attorneys within the Office of the Principal Legal Advisor (OPLA) when appropriate under their specific responsibilities and with appropriate supervision.

Secure Communities reduces opportunities for racial or ethnic profiling by means of equal treatment for all. The argument is that because all people booked into jails are fingerprinted the potential for racial profiling is less. Additionally, ICE has implemented several initiatives to further reduce the potential for racial profiling. These initiatives include: statistical monitoring of aliens identified through the program to arrest-rate data, new training program designed to reduce confusion among local officers as to how Secure Communities is to be used, ICE is now requiring states and local jurisdiction to provide the arrestee with a copy of the new detainer form which emphasizes that individuals are not to be detained for more than 48 hours, lastly, DHS and ICE respond seriously to complaints and report them to the DOJ for further investigation (Secure Communities, n.d.).

Despite ICE's attempts, through training and changes to their procedures, the potential for racial and ethnic profiling persists. This concern fuels the opponent's arguments in regards to state's increasing involvement in immigration law enforcement.

CURRENT STATE PRACTICES

There are numerous states participating in programs that assist the Federal Government in the enforcement of immigration law. While the states' degree of involvement varies, for the most part the purpose is the same, to reduce the undocumented alien population within the individual jurisdictions. Some of the states that are seeking to increase their cooperation in the enforcement of immigration law via state statutes are Arizona, Utah, Georgia, Indiana, Colorado, Oklahoma, Missouri, South Carolina, and Florida.

States Participating in Arizona-style Legislation

States have used the theory of cooperative enforcement and Arizona's Support Our Law Enforcement and Safe Neighborhoods Act (S.B. 1070) to create similar legislation. For example, Utah's House Bill 70 (2011) passed in March 2011, Georgia's House Bill 87 (2011) and Indiana's Senate Bill 590 (2011) passed in May 2011, and Alabama's Beason-Hammon Alabama Taxpayer and Citizen Protection Act passed in June 2011. Although lower court judges have enjoined some of these bills—completely or in part—the push for state legislation is increasing. The section below analyzes the states' attempts at increasing immigration enforcement efforts.

Arizona's S.B. 1070

On April 23, 2010, Arizona enacted the Support Our Law Enforcement and Safe Neighborhoods Act also known as S.B. 1070. Sponsored by Russell Pearce, the intent of S.B. 1070 (2010) is

to make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States. (Support Our Law Enforcement and Safe Neighborhoods Act, S. 1070, 49th Cong., 2nd Sess. (2010))

The enactment of this bill was not without controversy. The supporters of S.B. 1070 argue that the Federal Government has failed to deter the illegal migration of aliens into the country, and specifically into Arizona. Arizona's population of illegal immigrants nears 360,000, roughly 3% of the overall state population (Hoeffler, Rytina, & Baker, 2012). To reduce the illegal alien population in Arizona, the state decided to take action and enacted S.B. 1070. In response to controversy regarding the original provisions of the bill, it was amended through H.B. 2162 (2011). The opposition to Arizona's law came from various government agencies and civil rights groups. Through the Department of Justice, the Obama Administration and a few private organizations filed several separate lawsuits against S.B. 1070. The lawsuits sought to block the law from taking effect by means of a temporary injunction from the court. Because of DOJ's motion for preliminary injunction, Judge Susan Bolton of the U.S. District Court for the District of Arizona temporarily enjoined four sections of the law. A temporary injunction is a request to the court by a party to prevent another party from carrying out a course of conduct that may injure the petitioning party until the completion of a trial (Black's Law Dictionary, 2009). In Arizona, the injunction is still in place because the U.S. Supreme Court will hear the case on April 25, 2012.

Merely a day before their scheduled effective date, Judge Bolton enjoined sections § 2(B), § 3, § 5(C), and § 6. In *United States v. Arizona*, 703 F. Supp. 2d 980 (D. Ariz. 2010), the District Court for the District of Arizona enjoined § 2(B) which required officers to make a reasonable attempt to determine an individual's immigration status during a lawful stop, detention, or arrest and § 3 which made the failure to carry alien registration documents a state crime. In addition, § 5(C) which made it a crime for unauthorized aliens to solicit employment, and § 6 which allowed state authorities to make warrantless arrests if officer had probable cause to believe that individual had committed a public offense making person removable.

A brief overview of the enacted sections of S.B. 1070 shows that the court in this case did not enjoin the other sections of the bill criminalizing activities related to the transportation and harboring of illegal aliens. Furthermore, provisions allowing legal residents of Arizona to file lawsuits challenging policies that restrict or prohibit the enforcement of federal immigration law passed. The latter, § 2(H), allows residents to sue a local law enforcement agency if they refuse to cooperate with the federal authorities in the enforcement of immigration law. Although the Court allowed most of S.B. 1070, the State of Arizona appealed the District Court's decision on April 11, 2011. The Court of Appeals for the Ninth Circuit, in *United States v. Arizona*, 641 F.3d 339 (9th Cir. 2011), affirmed the lower court's decision to enjoin the four sections.

The Supreme Court will decide the constitutionality and the United States' arguments that federal preemption applies to the enjoined sections this year. The Supreme Court's decision could also determine the permissibility of others states' statutes. The section below analyzes the Alabama bill that closely follows Arizona's S.B.1070.

Alabama

In June, 2011 Alabama passed what has been called the toughest state legislation addressing immigration in the country. The Beason-Hammon Alabama Taxpayer and Citizen Protection Act (2011) stretches from requiring public schools to check new student's immigration status to criminalizing all association with an undocumented alien. The law, also known as H.B. 56 (2011), states that "[t]he State of Alabama finds that illegal immigration is causing economic hardship and lawlessness in this state and that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status" (Beason-Hammon Alabama Taxpayer and Citizen Protection Act, H. 56, 2011 Cong., Reg. Sess., (2011)). The State of Alabama determined that there is a compelling need for the State Board of Education to accurately measure and assess the population of students who are aliens not lawfully present in the U.S. because the costs incurred by school districts for the public education of children who are illegal aliens can adversely affect the availability of public education resources to students who are U.S. citizens or permanent residents. The legislature hoped to accomplish this by passing a law requiring public schools to determine the citizenship and immigration status of students enrolling. Alabama's H.B. 56 was scheduled to take effect on September 1, 2011; however, three separate lawsuits by the Obama Administration, the Department of Justice, and several civil rights were filed to block this law (Taylor, 2011).

As a result of a request for injunctive relief, Judge Sharon Blackburn blocked the law from taking full effect until September 29, 2011. Judge Blackburn declared some aspects of the bill constitutional and enjoined others. The parts of the law that passed are enough to make it the

strictest immigration law in the country. The section below analyzes sections that the U.S. sought to block.

In the motion for preliminary injunction, filed on August 1, 2011, the U.S. government requested that § 10, §11(a), §12(a), §13, §16, §17, §18, §27, §28, and § 30 be enjoined contending that the sections were preempted by federal law and were therefore in violation of the Supremacy Clause. Granting injunctive relief on legislative enactments is not a task taken lightly by the courts. Because legislative acts are enacted by representatives elected by the people, enjoining these laws is in essence going against the wishes of the public. In the case of *Northeastern Florida Chapter of the Association of General Contractors of America v. City of Jacksonville, Florida*, 896 F.2d 1283 (11th Cir.1990), the court explains that only after clear showing that the injunction before trial is definitely supported by the Constitution and by strict legal and equitable principles that confine the courts can the court use preliminary injunctions. The court used strict standards of legal principles to determine whether to enjoin the mentioned sections. This section will explain each of the sections of H.B. 56 mentioned and a discussion of the court's ruling will follow.

The ruling was issued pursuant to the case of *United States v. Alabama*, 813 F.Supp.2d 1282 (N.D. Ala. 2011). The first section mentioned in the injunction motion, H.B. 56 § 10, creates a criminal misdemeanor violation under Alabama law for willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. § 1304(e) or 8 U.S.C. § 1306(a) and is unlawfully present in the United States. The court did not enjoin this section and made a determination that the government's preemption claim was not likely to succeed at trial. Because the Alabama statute deferred to the federal alien registration

requirements, the court decided that no clear conflict existed between the state statute and federal statutes. Furthermore, the court stated that because the penalties for violating the state statute only complemented the federal statutes, the Alabama statute was not inconsistent with the purpose of Congress. Lastly, the court held that Congress had not occupied the field of alien registration so thoroughly that Alabama's law mirroring what Congress is already doing leaves room for a preemption issue.

House Bill 56 § 11(a), makes it a misdemeanor crime for an unauthorized alien to apply for, solicit, or perform work in the state. The court enjoined this section because it determined conflict preemption existed. To support its decision, the court stated that because Congress explicitly chose *not* to criminalize work through the INA, the fact that Alabama chose to do this is in direct conflict with the purpose and objectives of Congress and therefore the doctrine of conflict preemption applies.

House Bill 56 § 12(a), which requires a law enforcement officer to make a reasonable attempt, when practicable, to determine the citizenship and immigration status of a person stopped, detained or arrested when reasonable suspicion exists that the person is an alien who is unlawfully present in the United States was not enjoined by the court. Because the INA did not expressly preempt states from legislating on issue of verification of individual's citizenship and immigration status, and the Federal Government retained discretion as to whether it wished to pursue those found to be unlawfully present, a state statute dealing with these functions is not presumed to be preempted by federal law.

H.B. 56 § 13, makes it unlawful for a person to 1) conceal, harbor or shield an alien unlawfully present in the United States, or attempt or conspire to do so; 2) encourage an

unlawful alien to come to the State of Alabama; or 3) to transport (or attempt or conspire to transport) an unlawful alien. The state statute prohibited conduct specifically authorized under federal harboring and transportation scheme and therefore is conflict preempted.

SH.B. 56 § 16, which forbids employers from claiming as business tax deductions any wages paid to an unauthorized alien was expressly preempted by federal statute. Federal law states that local laws are preempted if they impose civil or criminal sanctions, other than through licensing, upon those who employ unauthorized alien. The court held that denying tax deductions that the employer was otherwise eligible for based on the immigration status of the employee was a sanction within the meaning of the federal statute and thus preempted.

H.B. 56 § 17, which establishes a civil cause of action against an employer who fails to hire or discharges a U.S. citizen or an alien who is authorized to work while hiring, or retaining, an unauthorized alien was ruled to be expressly preempted by federal law because local laws that impose civil or criminal sanctions on employers providing work for unauthorized aliens, other than through licensing or similar laws, are not allowed as per federal law. This federal authority is the Immigration Reform and Control Act of 1986. The state statute sought to impose liability on the employer based only on hiring or retaining unauthorized aliens.

The court held that H.B. 56 § 18, which amends the Alabama Code to include a provision that if a person is arrested for driving without a license, and the officer is unable to determine that the person has a valid driver's license, the person must be transported to the nearest magistrate; and the officer should make a reasonable effort to determine the immigration status of the driver, and if found to be unlawfully present in the U.S., the driver shall be detained until prosecution or until handed over to federal immigration authorities was not preempted by federal

law. Also, H.B. 56 § 27, which bars Alabama courts from enforcing a contract to which a person who is unlawfully present in the United States is a party was not preempted. In addition the court held that H.B. 56 § 28, which requires every public elementary and secondary school in Alabama to determine if an enrolling student was born outside the jurisdiction of the United States or is the child of an unlawfully present alien and qualifies for assignment to an English as second language class or other remedial program, was not preempted by federal law. Lastly, the court decided that H.B. 56 § 30, which makes it a felony for an alien not lawfully present in the United States to enter into a business transaction with the State of Alabama or any political subdivision, was not preempted by federal law.

The measures that were allowed are enforced by the local authorities. These include checking the status of students registering at public schools and of suspects pulled over by police. Also, the judge's ruling allows police to hold suspected illegal immigrants without bond; bars state courts from enforcing contracts involving illegal immigrants; makes it a felony for an illegal immigrant to do business with the state; and makes it a misdemeanor for an illegal resident not to have immigration documents.

The state's public school system felt the ramifications of the passage of this law immediately after the judge's ruling. School officials have reported withdrawals of children of illegal immigrants in large numbers. Although there are no reported numbers yet the absence of immigrant children in the classrooms is noticeable. The Superintendent of a highly Hispanic-populated area appeared on a Spanish television show urging the population of illegal immigrants to keep their children in school and not fear prosecution from the police (Reeves, 2011).

Florida

In the State of Florida, there has been a movement for more local enforcement of immigration law. With approximately 740,000 illegal aliens, Florida is the third most populated state, in terms of unauthorized immigrants (Hoeffler, Rytina, & Baker, 2012). Figure 3 shows the distribution of the unauthorized alien population among states as well as the changes in population between the years 2000 and 2011.

State of Residence of the Unauthorized Immigrant Population: January 2011 and 2000

State of residence	Estimated population in January		Percent of total		Percent change	Average annual change
	2011	2000	2011	2000	2000 to 2011	2000 to 2011
All states	11,510,000	8,460,000	100	100	36	280,000
California	2,830,000	2,510,000	25	30	12	30,000
Texas	1,790,000	1,090,000	16	13	64	60,000
Florida	740,000	800,000	6	9	-8	(10,000)
New York	630,000	540,000	6	6	18	10,000
Illinois	550,000	440,000	5	5	26	10,000
Georgia	440,000	220,000	4	3	95	20,000
New Jersey	420,000	350,000	4	4	19	10,000
North Carolina	400,000	260,000	3	3	53	10,000
Arizona	360,000	330,000	3	4	9	—
Washington	260,000	170,000	2	2	51	10,000
Other states	3,100,000	1,750,000	27	21	77	120,000

Figure 3: State of residence of the unauthorized immigrant population: January 2011 and 2000. Source: U.S. Department of Homeland Security

In 2011, the Florida legislature introduced House Bill 7089 (2011). This bill was introduced in the Regular Session 2011 in the Florida legislature but did not advance. As this bill did not pass and was withdrawn from consideration fairly quickly there is no discussion about its legality but the intent was also increased participation in the enforcement of immigration law.

HUMANITARIAN ISSUES

As of January, 2011, there are approximately 11.5 million illegal immigrants living in the United States (Hoeffler, Rytina, & Baker, 2012). The increase in the unauthorized alien population is alarming and state and local authorities are reacting to this societal change. States believe that increasing their enforcement functions will help the Federal Government in controlling illegal immigration into the U.S. However, as with all aspects of the law, increased enforcement at different levels of government can be catastrophic. There are many humanitarian issues that arise from increased enforcement. Some of the controversial aspects of this issue are the potential civil rights violations, the strain on resources necessary to enforce laws at the local level, and the lack of proper training at state and local levels.

Racial Profiling

Potential police misconduct is a concern with state and local authorities enforcing immigration law. Discriminatory practices, such as racial profiling, have the potential to become an issue when police officers are making an impromptu determination of a person's immigration status in this country. It is also difficult to identify illegal aliens without appearing to discriminate based on race or ethnicity. Racial profiling refers to the discriminatory practice of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin (Racial Profiling: Definition, 2005). This issue has become more important as a result of the recent enactment of Arizona's S.B. 1070 and other similar state laws. A recent

incident in New Jersey shows how local law enforcement can abuse their power even though they believe they are only complying with the law.

In 2007, a photographer from Newark, New Jersey discovered a decomposing body in a nearby city. Geraldo Carlos photographed the body and contacted his supervisor at the newspaper, the Brazilian Voice, who subsequently contacted the Newark Police Department. Upon arriving, the Chief of the Newark Police Department, Samuel Demaio, questioned Mr. Carlos. The questioning became public when the Newspaper filed a complaint against the Newark Police Department. The complaint in the case, *Lima v. Newark Police Department*, No. 08-0426 (D.N.J. 2008) described the encounter. The first questions Mr. Demaio asked were, “Are you legal?” and “Do you have a green card?” (p. 5)

Three months before this incident, the Attorney General of New Jersey had issued a directive as to when and how local police officers should question individual on their immigration status. The directive stated that: “state, county, and local law enforcement agencies necessarily and appropriately should inquire about a person's immigration status . . . after an individual has been arrested for a serious violation of State criminal law” (Attorney General Directive, 2007). Given that Geraldo Carlos was never a suspect in the ongoing investigation of the decomposing dead body, the Chief’s questioning was inappropriate, a violation of the Attorney General’s directive, and of the U.S. Constitution. The newspaper editor filed suit against the police department, giving rise to *Lima v. Newark Police Department*, No. 10-1743 (2010). The lawsuit that was filed pursuant to this incident was based upon violations to the U.S.

Constitution and New Jersey Constitution. The consequences of authorizing state and local law enforcement to enforce immigration law can be severe.

Racial profiling occurs in other aspects of law enforcement. Last month, the Los Angeles Police Department conducted an investigation in response to allegations of racial profiling and found that the officer accused had in fact used race as a factor in conducting his duties (Rubin, 2012). The investigation concluded that the police officer was targeting Latino drivers because of their ethnicity. In Arizona, the Maricopa County Sheriff's Office (MCSO) has been accused of racial profiling and civil rights violations. The Department of Justice conducted an investigation and concluded that the office "had a pattern of racially profiling Latinos, basing immigration enforcement on racially charged complaints and punishing Hispanic jail inmates for speaking Spanish" (Billeaud, 2011). These investigations show that law enforcement officers are using race while conducting their policing duties. If local law enforcement officers enforced immigration law as part of their crime fighting duties, the potential for racial profiling is a well-founded concern. A report from the Department of Justice details the results of an in-depth investigation of the Maricopa County Sheriff's Office in Phoenix, Arizona.

The investigation commenced in June 2008 with the assistance of various experts. The Department sought to determine whether the Sheriff's Office was participating in unconstitutional conduct and thus violating the Constitution and laws of the United States. The investigation consisted of reviewing statistical data, touring the County's jails, and interviewing past and present inmates, among other things. This thorough investigation into the office's practices concluded that the Sheriff's Office "through the actions of its deputies, supervisory

staff, and command staff, engages in racial profiling of Latinos; unlawfully stops, detains, and arrests Latinos; and unlawfully retaliates against individuals who complain about or criticize [the office's] policies or practices" (Perez, 2011, p. 2).

The report analyzed statistical data of traffic stops on Maricopa County roadways and found that Latino drivers are four to nine times more likely to be stopped than similarly situated non-Latino drivers. It also based their findings on individual accounts that corroborate the use of discriminatory policing practices by deputies. First the Department of Justice explained that because the Maricopa County Sheriff's Office receives federal funds, they must abide Title VI of the Civil Rights Act of 1964 which states that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving [f]ederal financial assistance" (42 U.S.C. § 2000d). Also, they must abide by the Equal Protection Clause described in a previous section. In *Washington v. Davis*, 426 U.S. 229 (1976), the court held that an agency violates the Equal Protection Clause when its decision-maker adopts a facially neutral policy or practice with a discriminatory intent, and that policy or practice has a discriminatory effect.

The report reached the conclusion that Maricopa County Sheriff's Office discriminates against Latinos by engaging in police practices that violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title VI of the Civil Rights Act of 1964. It explained that in the course of establishing its immigration enforcement program, the county has implemented practices that treat Latinos as if they are all undocumented. The

county's failure to implement safeguard and protocols to conduct their immigration enforcement programs has led to discriminatory practices against Latinos (Perez, 2011).

The expert determined based on traffic stop records that Latino drivers were being stopped at much higher rates than non-Latinos in similar situations while on the roadways. The most interesting aspects of the report detail witness accounts regarding the County's immigration enforcement practices and show how they are harming innocent Latinos. The first account, explains that in June 2008 a legal resident of the U.S., who was Latino, was pulled over by a Maricopa County Sheriff's Officer due to an alleged failure to use the turn-signals. Upon the deputy's request for a driver license or other documents, the driver produced an Arizona identification card, a *valid* work visa, a Social Security card, and a Mexican passport. Although he did not produce a driver license, the multiple documents provided were in satisfaction of Arizona's law regarding unlicensed drivers. The deputy continued to pursue the matter and instructed the driver to sit on the curb for 15 minutes. Ultimately, the driver was placed under arrest for failing to provide any type of proper identification, despite the documents provided. The victim in this case was incarcerated for 13 days before being released and the citation dismissed (p. 7).

The second account, involves a legal resident of the U.S., and his 12 year-old son, a U.S. citizen, who were both Latino. This incident occurred in May 2009 when a group of deputies from Maricopa County were conducting a raid of a neighboring house to the victim. During the raid, of the neighboring property, two deputies entered the victim's home. Although they obtained consent to enter the property, there was no consent to search; however, the deputies continued to search the home without a warrant. Despite finding no evidence of criminal activity

in the victim's house, both the legal resident and his 12 year old son were handcuffed with zip-ties and instructed to sit in the sidewalk among 10 other individuals. After being detained for over an hour, the victim and his son were released without any citation (p. 7). These witness accounts are just two of many investigated by the Department of Justice. They show that racial profiling and discriminatory police practices occur in jurisdictions trying to enforce immigration law.

The report covered other areas of discriminatory police practices, such as inadequate access to services and treatment of Latino inmates that do not speak sufficient English, retaliatory practices against individuals exercising their First Amendment rights, use of excessive force against Latinos, and failure to pursue and investigate sex crimes because of gender or national origin bias. Racial and ethnic profiling are not the only concerns with the increased use of local police officers in the enforcement of immigration law, the strain in the relationship between the community and police agencies is also very concerning.

Policing in the Community

The increased use of local police officers in the enforcement of immigration law causes the relationship between the officers and the communities to be strained. As the report by the Department of Justice states the research indicates the implementation of the immigration enforcement program in Maricopa County has led to a "wall of distrust" between county officers and the Latino residents. This wall of distrust has compromised the police officers' ability to provide police protection to the county's Latino residents.

The bond that exists between law enforcement and the community allows officers to conduct their crime-fighting responsibilities. If the community is scared to talk to law

enforcement, crimes would be unsolved and criminals would go unpunished. The DOJ’s report includes opinions by different law enforcement members that were interviewed during the course of the investigation. A Maricopa County deputy opined that the county’s immigration-related operations “affect [their] ability to work in a community that hates [them]” (p. 16). Some police officers believe that the way Maricopa County has enforced immigration laws has “poisoned the relationship between law enforcement and Latinos” (p. 16). This ruined relationship hinders law enforcement efforts within the Latino community in general. This situation affects other communities as well; especially those counties with large Latino communities. California, Texas, and Florida, which account for 47% of the total undocumented population in the U.S., would be impacted most if the trust-relationship between Latino communities and law enforcement is broken. Illegal immigrants from Central and South America account for approximately 75% of the undocumented population in the U.S. (Hoeffler, Rytina, & Baker, 2012). The figure below shows that the Latino population in the U.S. is quite large and if police officers lose the relationship with this community, the result could be chaotic. Figure 4 illustrates the breakdown of the undocumented population by country of birth.

Country of Birth of the Unauthorized Immigrant Population: January 2011 and 2000

Country of birth	Estimated population in January		Percent of total		Percent change	Average annual change
	2011	2000	2011	2000	2000 to 2011	2000 to 2011
All countries	11,510,000	8,460,000	100	100	36	280,000
Mexico	6,800,000	4,680,000	59	55	45	190,000
El Salvador	660,000	430,000	6	5	55	20,000
Guatemala	520,000	290,000	5	3	82	20,000
Honduras	380,000	160,000	3	2	132	20,000
China	280,000	190,000	2	2	43	10,000
Philippines	270,000	200,000	2	2	35	10,000
India	240,000	120,000	2	1	94	10,000
Korea	230,000	180,000	2	2	31	—
Ecuador	210,000	110,000	2	1	83	10,000
Vietnam	170,000	160,000	2	2	10	—
Other countries	1,750,000	1,940,000	15	23	-10	(20,000)

Figure 4: Table showing the country of birth of the unauthorized alien population and the percentage change from 2000 to 2011. Source: U.S. Department of Homeland Security

Detention Facilities

Another issue that may arise from the increased involvement of local and state law enforcement agencies in immigration law enforcement would be that of detention. First, the detained population is large and housing a population of that magnitude is difficult. Secondly, if local jails are used to house non-criminal aliens detained on immigration-related violations in the same facilities as criminal inmates, they could be treated equally. Lastly, correctional officers are not all trained by ICE and therefore may lack the proper training to interact with this population.

The supervised illegal alien population is quite large. In FY 2008, ICE supervised 378,582 aliens from 221 countries. As of September 1, 2009, ICE was detaining 31,075 aliens in more than 300 facilities throughout the United States and territories; while another 19,160 aliens were in alternative to detention (ATD) programs which are community-based supervision strategies that offer detained aliens less restrictive conditions of control (Schriro, 2009). Although on average, a detainee is released within 30 days of arrest, the release time varies from case to case. Figure 5 is a graph showing the percentage of aliens released within specific timeframes. Not only is the supervised illegal alien population large but the amount of time spent on average in a detention facility can range between a few hours to over a year. The potential long periods of detention could increase the risk that detainees' civil rights would be violated.

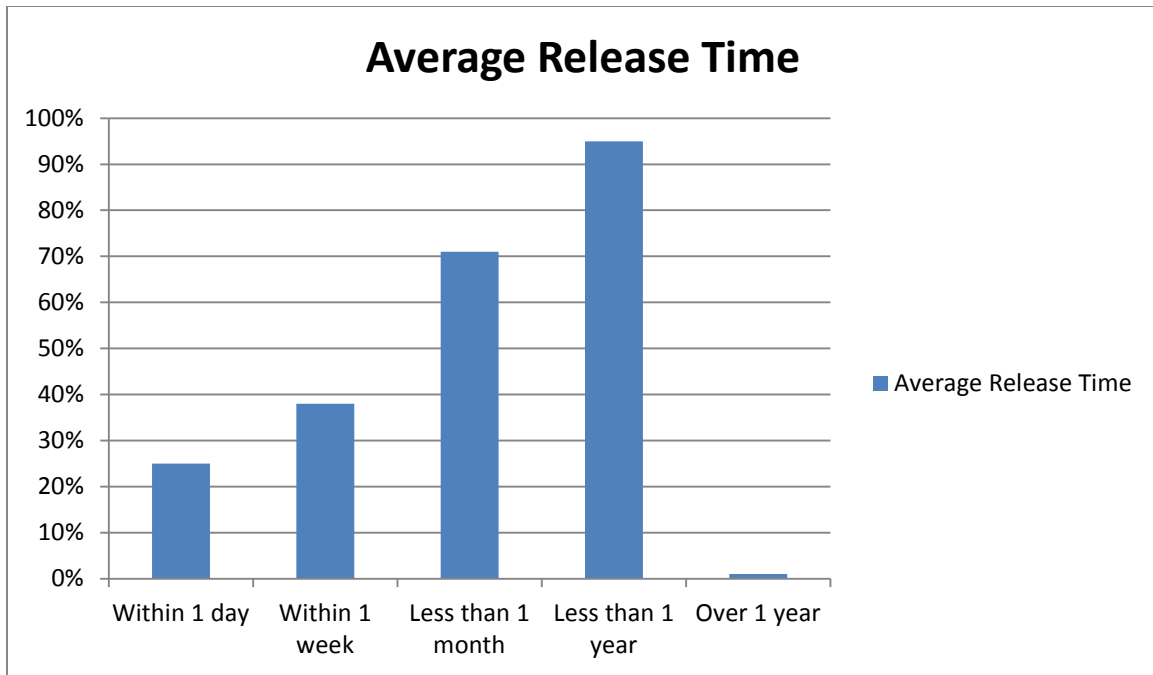


Figure 5: Graph depicting the percentage of detained aliens released within specific timeframes. Source: Statistics obtained from report by U.S. Immigration and Customs Enforcement.

The report conducted by the Department of Justice in Phoenix, Arizona discussed above details the abuses that were taking place in Maricopa County jails. Although these incidents are specific to this jurisdiction, the same violations could occur in others. The investigation of the treatment inmates with limited English proficiency receive in jail in Maricopa County revealed that officers refuse to accept forms from these inmates in Spanish which results in the inmate not getting basic jail services and not being able to file grievances for alleged mistreatment. The report includes witness accounts of instances in which officers have told inmates that “[t]his is America ...[y]ou have to fill [your tank order] out in English” (p. 9). In addition, officers sometimes pressure inmates into signing documents that they do not understand because the document is in English. These forms are oftentimes voluntary return forms in which the inmate

is agreeing to return to his or her home country voluntarily. Again, the inmates are being pressured to sign the forms without understanding them and without consulting an attorney. Furthermore, the officer's conduct can result in injury to inmates. An example of this is when an inmate fails to obey an officer's command because they do not understand it, the whole area gets punished and other inmates can retaliate against the inmate that disobeyed the order. Although not all of these issues can be readily corrected, for example an inmate's inability to speak English proficiently, there are measures that would alleviate these clear violations. Some of these remedies could be providing each non-English proficient inmate with the jail's policies in Spanish and allowing forms to be filled out in Spanish or even maintaining an in-house interpreter to help inmates with the forms. These and other recommendation will be explained in a section below.

Perception vs. Reality

How people in the U.S. feel and react to immigration law and immigrants, often is driven by skewed perceptions. In her book, *"They take Our Jobs"! and 20 Other Myths about Immigration*, Aviva Chomsky (2007) describes and explains why certain myths such as immigrants take American jobs and immigrants do not pay taxes, are based on perceptions and not reality. This sentiment is captured by Rita J. Simon's (1996) when she stated,

[i]mmigrants contribute to the stability of American society and support their adopted country's political system, even though conventional political theory argues that ethnic diversity is disruptive or threatening to the political equilibrium of a democracy; . . .

[e]ven more than native born Americans, immigrants are enthusiastic and ardent supporters of the American experience, in part because they chose to come to this country

and because the country they chose to live in has provided them with a better life than the one they had, or could expect to have had in their country of birth; ... [b]y comparison then, the United States is a society that deserves and receives their respect and loyalty. (Simon, 1996)

Myth 1: Immigrants take American Jobs

One of the most common myths about immigration is that immigrants take American jobs. There are two fallacies with the notion that immigrants take American jobs. The first is the concept that jobs have a national identity; are they “American” jobs? The second is the notion that immigrants reduce the number of jobs available to people who already live in the United States.

It is a fact that today’s economy is a global one. The idea that jobs have a national identity is outdated. Most industries seek to reduce costs by employing the people who would work for less. Employers tap a vulnerable labor force by seeking the poor and weak in countries where great poverty and inequality exists. The part that is hard for some people to comprehend is that businesses access this vulnerable labor force here in the United States as well by supporting policies that keep immigrants coming (Chomsky, 2007).

The deregulation of economic sectors under various presidencies has been the main cause of outsourcing. High-paying jobs decreased while only low-paying jobs were available. This local change in the United States created a global reaction because of the globalization of the economy. Businesses were forced to cut expenses by moving production to other countries in

search of a greater profit margin. Historically, the U.S. has created this division of labor (high-paying vs. low-paying jobs). Because of the global presence of business, the outsourcing of jobs, it is illogical to label jobs as “Americans” when describing employment (Chomsky, 2007).

The second fallacy is the idea that immigrants reduce the number of jobs available to Americans. Immigration actually plays a significant role in the scheme of employment, and unemployment rates. The idea held by many is that there are a set number of jobs, and with more people, there will be fewer jobs to fill vacancies. Thus, an increase in population growth would correlate with an increase in unemployment rates, while a period of population decline would equal decreasing unemployment rates. However, this notion has been disproved by the Pew Hispanic Foundation’s study on unemployment rates in the U.S. They found that no correlation exists to show that native-born workers suffered or benefitted from increased numbers of foreign-born workers (Chomsky, 2007). The number of jobs is not finite but rather elastic. As population grows, there are more people to fill the jobs but there are also more jobs because of the increased demand for products and services. The same applies when there is a decrease in population; with fewer people there will be less need for services and businesses will close down. In summary, more people equal more jobs. This holds true both locally and globally. As population increases so does the need for goods and services.

The Great Depression was a period in which the unemployment rate skyrocketed; however, this was also a time of very low immigration. Even after this period where the unemployment rate neared 20%, the fluctuations have been significant, ranging from 10% in the

1980s to 5-8% in the twentieth and twenty-first centuries. It is evident that there are multiple factors that affect unemployment rates, not only immigration (Chomsky, 2007).

Myth 2: Immigrants don't pay taxes

In debates regarding the virtues and vices of immigration, it is often argued that immigrants do not pay taxes. The public sentiment is quite strong in this subject. Many argue that immigrants, specifically undocumented immigrants, received the benefits of working in the United States but pay none of the dues. According to Chomsky (2007), immigrants, regardless of legal status, pay the same taxes as citizens; all pay gasoline taxes, property taxes, and sales taxes. Although it is not argued that some immigrants get paid under the table in cash, and therefore, do not pay federal or state taxes, the same is true for some citizens. Today's economy is informal; it is not regulated, and operates mostly in the services sector.

Baby-sitters, gardeners, and housecleaners, often get paid in cash, regardless of the legal status of the worker. Even factory jobs have fallen into this informal economy sector. Through subcontracting, employers can hire cheap labor to produce a high profit/ low-cost environment. More often than not, these workers do not get paid the federally required minimum wage, are not protected by safety regulations and unions, and do not qualify from health insurance or paid-time off benefits.

A study in Los Angeles, California, estimated that out of the city's 40 million people, one-fourth were undocumented. Furthermore, 15% of the city's workforce is in the informal economy sector. Out of this 15% of jobs in the informal economy, undocumented immigrants

occupied 60% of these jobs. Although there are a number of undocumented immigrants that work in the formal economy, they do so by using false social security numbers. It is estimated by the Social Security Administration that three-fourth of undocumented immigrant workers use false social security numbers (Chomsky, 2007).

While this fact outrages some people, providing false social security numbers, mainly affects the undocumented worker. Taxes are deducted from their paychecks but it is impossible for them to get any of the benefits of paying taxes; such as social security and unemployment benefits. Contrary to popular opinion, the money taken out of the paychecks of nearly three-fourths of the estimated 12 million undocumented immigrants goes into the government's pockets. It is estimated that annually, \$7 billion unclaimed dollars go into the Social Security Administration's "earnings suspense file" (p. 38). This amount of money allows the SSA to break even each year, and accounts for the difference between what is paid-out in benefits to what it is collected in payroll tax deductions.

RECOMMENDATION

Making a determination of the states' proper role in the enforcement of immigration law is not without controversy. Immigration law and enforcement is a complex topic that originated many years ago. To add to the complexity, the ever changing laws in the United States can make a well-analyzed thesis outdated in a matter of days. There is a simple and a complex answer to the legal question of this thesis. The question is whether state and local authorities are constitutionally allowed to perform immigration related functions. The simple answer is that although Congress has plenary jurisdiction over immigration law itself, states are allowed to enforce criminal violations of immigration law. The complex side of this answer is that although states can enforce the criminal violations, the civil violations (such as deportation) are and should be the sole jurisdiction of the Federal Government.

There are three reasons why immigration enforcement, at least the civil provisions, should be the Federal Government's jurisdiction. First, if state and local law enforcement began enforcing immigration law as they enforce the ordinances and laws of their jurisdiction, the impact on the communities would be substantial. The cooperation of communities allows the local police to combat and deter criminal activities. If the community loses this trust in their relationship with the police, criminals and crimes would go unpunished. Furthermore, the valuable time and resources of local authorities could be best used to apprehend criminal law violators. Secondly, resources at the local level, much like the federal, are scarce. States have seen a decrease in traditional funds required to fight crimes, if they are also using funds to fight immigration law violations, resources would be depleted quickly. Although some federal assistance would be given to the states that enforce immigration law, these funds would not be

enough to cover all the costs incurred. This should not be construed to mean that if we cannot detain and deport all 12 million, we should not try to enforce immigration law, but it is more efficient for states to use their resources to fight local crime and allow the federal authorities to use their funds for federal issues like immigration. Lastly, the thought of local law enforcement making determinations of who to detain and question about their immigration status is disconcerting. The fact that police officers would have to decide who to question about their immigration status while conducting their traditional crime-fighting duties makes the idea of racial profiling and civil rights violations all too real.

Under the Fourteenth Amendment to the Constitution, equal rights protections have been extended to the states. However, since the terrorist attacks of 9/11 immigration, enforcement has increased. Faced with the choice of limiting immigration law enforcement to the federal authorities or ensuring public safety by allowing states to participate in immigration enforcement functions, Congress and the general public would choose the latter. Allowing the enforcement of immigration at the local level would increase the apprehension of suspected terrorists and criminals. This is appealing; however, this idea should not obscure the fact that illegal immigrants are usually not terrorists or criminals, and most importantly they are human beings. Racial profiling and due process violations are real and occur on a daily basis. The pursuit of an illegal immigrant-free country should not undermine the people's inalienable rights.

Based on research and analysis I recommend that the states not take a more active role in immigration enforcement. Inquiry as to status should be made only after a valid detention and arrest for a crime; in other words, the reason the alien was detained in the first place is because he violated a state or local law or ordinance. Anything less than a valid arrest, based on proper

legal standards used in criminal cases, should not be the basis for an inquiry on the immigration status of an arrested individual. Aliens who violate immigration law, are not *criminals*, there is a distinction between violating a criminal law and immigration law. In regards to the issue of resources, as previously stated, local authorities should focus their scarce resources on fighting local crime. The Federal Government can use their Congress appropriations to combat the illegal immigration problem.

The problem of criminalizing the civil violations of the INA is a pressing issue in this debate. Essentially, if states could enforce violation of the civil provisions, that is, arrest all immigration violators (e.g. the student who overstayed a student visa), there will be an over criminalization problem. As noted before, immigration is a foreign-policy issues as well as domestic one and the government needs to keep a healthy balance.

Often discussed approaches, such as mass deportation or mass amnesty, are neither desirable nor feasible. The mass deportation of the undocumented population would affect the economy, foreign-policy, and domestic protests would emerge. Likewise, amnesty for all of the undocumented immigrants is not feasible. The immigration system is crowded. If 12 million applications for adjustment of status were filed, the backlog would be massive. Additionally, the falsification of documents and other fraudulent practices would be used to circumvent the immigration system. A far more important issue that would result from comprehensive amnesty is an encouragement in illegal immigration. In essence, the U.S. would be sending a message that even if you migrate in violation of U.S. immigration law, it won't matter and you would still be granted some type of legal status. A mass influx of undocumented immigrants, or all

immigrants for that matter, would severely overburden the immigration system, the U.S. economy, and the country in general.

In conclusion, there are multiple considerations and ramifications of deciding who is best equipped to enforce immigration policy. The Federal Government should continue to enforce the civil provisions of the INA, while states take a back seat approach. Local and state authorities can continue to support the government's goals without performing full immigration enforcement functions. More training should be required for all local police officers to enforce even the criminal violations. As the investigation into the Maricopa County's Sheriff's office in Phoenix, Arizona showed, currently, police officers are not properly trained to avoid racial profiling, discrimination in policing activities, and civil rights violations. It should be made abundantly clear to law enforcement officers that only after an individual has been detained on valid grounds, can their immigration status be questioned and that alleged violations of criminal laws with the purpose of investigating the immigration status of an individual are not constitutionally permitted and that officers who engage in this practice would be severely punished. This will not limit state's authority over persons within their jurisdiction but rather to protect citizens from civil rights' violations. This approach might even reduce costs in terms of law suits against a state or local agency for racial or ethnic profiling complaints.

Thomas Donohue, the president and CEO of the U.S. Chamber of Commerce stated that "[historically], immigrants' dreams and hard work have been a driving force behind America's strength and prosperity" (Donohue & Stern, 2007). He further said that [t]oday, immigrants are providing vital services and fueling tremendous economic growth [and] [w]e need the continued contributions if we are to grow and remain competitive in today's global economy" (Donohue &

Stern, 2007). This idea is often undermined. The undocumented immigration population works, and despite arguments, the majority pay payroll taxes. Granting work authorization permits, to current tax-payers, passing strict laws to deter future illegal immigration, and reforming immigration law, can be feasible approaches to the growing immigration law issue without opening the floodgates to illegal immigration.

**APPENDIX A: U.S. IMMIGRATION POLICY TIMELINE FROM “THEY
TAKE OUR JOBS!” AND 20 OTHER MYTHS ABOUT IMMIGRATION”**

U.S. Immigration Policy Timeline From “They Take Our Jobs!” And 20 Other Myths about Immigration”

(Aviva Chomsky, 2007)

- 1790** First naturalization law passed, restricting naturalization to “free white persons.”
- 1798** Alien and Sedition Acts provide for deportation of “dangerous” aliens.
- 1803** Louisiana Purchase doubles the size of U.S territory, incorporating new populations.
- 1808** Importation of slaves prohibited.
- 1819** First federal immigration legislation requires reporting of all entries.
- 1830** Indian Removal Act leads to deportation of 100,000 Native Americans to west of the Mississippi.
- 1848** Treaty of Guadalupe Hidalgo expands the borders of the United States to the Pacific. Mexican residents given the option of declaring U.S or Mexican citizenship.
- 1855** Immigrant women granted citizenship automatically upon marriage to a citizen, or upon an immigrant husband’s naturalization.
- 1857** Dred Scott decision mandates that African Americans cannot be citizens.
- 1864** Contract Labor Law permits recruitment of foreign workers.
- 1868** Fourteenth Amendment grants citizenship to African Americans born into the U.S.
- 1870** Naturalization Act allows “white persons and persons of African descent” to naturalize.
- 1875** Convicts and prostitutes prohibited from entering country.
- 1882** Chinese Exclusion Act prohibits entry of Chinese for 10 years.
- 1885** Contract Labor Law prohibits entry by sea of workers recruited abroad (in other words...continues to allow recruitment of Mexican contract workers).

1891 Bureau of Immigration established under the Treasury Department to oversee and enforce federal immigration law.

Steamship companies required to return immigrants who fall into excluded categories to their place of origin.

1892 Ellis Island opened to screen incoming immigrants arriving from Europe.

1898 Residents are not granted citizenship, but as “nationals” they can enter the continental U.S.

1902 Chinese Exclusion Act renewed indefinitely.

1903 Anarchists, epileptics, polygamists, and beggars ruled inadmissible.
Bureau of Immigration transferred to the Department of Commerce and Labor.

1906 Knowledge of English required for naturalization.

Bureau of Immigration becomes Bureau of Immigration and Naturalization (the two are split in 1913 and reunited in 1933 under the Department of Labor as the Immigration and Naturalization Service).

First implementation of inspections at the Mexican border, primarily aimed at excluding Chinese entering through Mexico.

1907 Gentleman’s Agreement with Japan restricts Japanese immigration.

Head tax is raised.

People with physical or mental defects, tuberculosis, and children unaccompanied by a parent are excluded.

Women lose citizenship upon marrying a noncitizen.

1917 Asiatic barred zone prohibits all immigration from Asia.

Literacy requirement established for immigrants from Europe.

Temporary guest-worker program exempts Mexicans from literacy requirement and head tax.

Puerto Ricans granted citizenship.

1918 Passport Act requires official documentation for entry into the United States.
Border Crossing Cards issued for Canadians and Mexicans.

1921 Quota Act limits European immigrants to 3 percent of each European nationality present in the U.S. in 1910. Visa issued in home country now required for entry. Non-Europeans are not included in the act: Asians are still barred, immigrants from the Western Hemisphere are allowed unlimited entry, and Africans are ignored.

1922 Mexican guest-worker program abolished.

Woman's citizenship separated from that of their husbands (except if a woman marries an alien who is racially ineligible for citizenship, in which case she loses her citizenship).

1924 Quota Act revised to 2 % of each nationality based on numbers in U.S in 1890. Still applies only to Europeans.

Border Patrol created.

Native Americans born in the United States granted citizenship (but still not allowed to naturalize).

1929 1924 Quota Act made permanent.

1930 Deportation of millions of Mexicans begins.

1934 Philippine Independence Act turns the Philippines into a commonwealth; Filipinos are no longer "nationals"; Philippines granted an immigration quota of 50.

1940 Alien Registration Act/ Smith Act. Provides penalties, including deportation of noncitizens, for subversive activities. Requires fingerprinting and registration of all aliens.

"Descendants of races indigenous to the Western Hemisphere" allowed to naturalize.

1941 Internment of "enemy aliens" (primarily Japanese) begins. 120,000 Japanese Americans incarcerated by 1945.

1942 Bracero Program established for contracting of temporary agricultural workers from Mexico.

1943 Chinese Exclusion Law repealed, and Chinese allowed to become naturalized citizens. China granted a quota of 105.
British West Indies program established for importation of temporary agricultural workers from the BWI to 11 eastern states (especially Florida).

1945 War Brides Act allows immigration of foreign women married to members of the US armed forces.

1946 Filipinos and (Asian) Indians allowed to naturalize (other Asians, including Koreans, Japanese, and Southeast Asians, still ineligible for citizenship). Philippines granted independence, and a quota of 100. India also given quota of 100.

1947 Operation Bootstrap in Puerto Rico sets the stage for the “great migration” of the 1950s.

Newly formed Pakistan granted quota of 100.

1948 Displaced Persons Act permits 205,000 European war refugees to enter over two years.

1949 CIA created and granted a quota of 100 to bring in aliens useful to “the national mission” without regard to admissibility.

1952 Immigration and Nationality Act (McCarran-Walter Act) technically eliminates race as a bar to immigration or citizenship. Asiatic barred zone abolished. Japan’s quota set at 185 annually. China’s remains at 105; other Asian countries given 100. Colonial subjects not eligible for quotas (e.g., black West Indians cannot enter under Britain’s quota even though they are British citizens).

H-2 temporary visa establishes a large but generally ignored guest-worker program.

Attorney general is authorized to “parole” immigrants over quota for reasons of “public interest.” This provision will be used for Hungarians fleeing the Soviet invasion in 1956, for 15,000 Chinese fleeing China’s 1949 Communist revolution, and for 145,000 Cubans fleeing the 1959 revolution there, as well as 400,000 Southeast Asian refugees between 1975 and 1980.

Prohibition on “subversives” (and specifically Communists, anarchists, and homosexuals) means many foreign intellectuals cannot travel to United States.

1953 Refugee Relief Act expands Displaced Persons Act of 1948 to allow 200,000 more entrants above quotas. “Refugee” defined as a person fleeing a Communist country or the Middle East. Asians allowed as refugees for the first time.

1954 “Operation Wetback” deports one million undocumented Mexicans.

Numbers entering under the Bracero program increase from 200,000 a year prior to Operation Wetback to 450,000 a year by the end of the 1950s.

1957 Refugee admissions no longer subject to quota system.

1959 Cuban Revolution; U.S. attorney general grants Cuban immigrants widespread parole to enter the United States as refugees.

Hawaii becomes a state, significantly increasing “Asian” population of U.S.

1962 Cuban Refugee Program provides financial assistance to Cuban entrants.

1964 Bracero program abolished.

1965 Hart-Celler Act establishes a uniform quota of 20,000 per country for countries outside the Western Hemisphere and a ceiling of 120,000 for immigrants from the Western Hemisphere. Family reunification, job skills, and refugee status are privileged. Immediate family members exempted from quota. Provisions made for 17,400 refugees per year.

H-2 temporary worker program continued.

Voting Rights act strengthens citizenship for African Americans.

1966 Cuban Adjustment Act offers Cubans automatic refugee and legal permanent residence status, chargeable to the Western Hemisphere quota.

1975 Indochina Migration and Refugee Assistance Act provides resettlement assistance for refugees from Cambodia and Vietnam (Laos added in 1976).

1976 Uniform quota of 20,000 applied to Western Hemisphere countries (Cuban refugees not charged to quota system).

1977 Indochinese refugees granted permanent resident status.

1978 Eastern and Western Hemisphere quotas combined to allow 290,000 global limit.

1980 Refugee Act brings U.S. law into compliance with UN Refugee Convention (which the U.S. signed in 1968). Allows entrance to 50,000 refugees a year outside of the quota system. Defines refugees as persons who have a “well-founded fear of persecution” based on “race, religion, nationality, membership in a particular social group, or political opinion.” Establishes federal programs for resettlement. Lowers global (non-refugee) quota to 270,000 a year.

Registered nurses granted special access to permanent legal status.

1981 Immigrants who are not legal permanent residents are denied access to most federal aid programs.

1982 Operation Jobs- INS raids workplaces, arrests 5,000.

1986 Immigration Reform and Control Act (IRCA) allows undocumented immigrants who can prove continued presence in the country since 1982 and fulfill other requirements to apply for legalization- 1.7 million apply. SAW (Special Agricultural Workers) provision allows legalization for those engaged in temporary agricultural work in 1985 and 1986. Nearly 1 million approved.

IRCA imposes employer sanctions requiring employers to verify immigration status of workers hired.

H-2 temporary worker program split between H-2A (agriculture) and H-2B (nonagricultural) workers.

1990 Global cap on immigration increased to 675,000 a year, including 480,000 family-sponsored, 140,000 employment-based, and 55,000 “diversity immigrants” from low-sending countries, especially Ireland.

American Baptist Church v. Thornburgh lawsuit settlement allows Guatemalans and Salvadorans to remain in the country and work while asylum cases are reevaluated.

1994 Operation Gatekeeper tries to close San Diego crossing points with fencing, stadium lights, and greatly increased border patrol presence. Migrant crossings start to shift eastward toward the Arizona desert.

North American Free Trade Agreement (NAFTA) increases economic integration between United States and Mexico.

1996 Personal Responsibility and Work Opportunity Reconciliation Act bars legal permanent residents from most federal aid programs (food stamps, Medicaid) unless they have lived in the U.S. for 5 years, and allows states to create further restrictions.

Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) greatly increases funding for Border Patrol and detention of aliens; increases penalties for unlawful entry and facilitates deportation; requires proof of citizenship for federal public benefits; requires educational institutions to provide INS with information on foreign students. Cubans exempted from many of the provisions.

1997 Nicaraguan Adjustment and Central American Relief Act (NACARA) allows Nicaraguans and Cubans easier access to legal permanent resident status.

- 2001** Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act prohibits entry of people associated with organizations or governments identified as supporting terrorism.
- 2002** Homeland Security Act replaces the Immigration and Naturalization Service (INS) with the newly created U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security.

**APPENDIX B: TABLE OF STATES THAT HAVE SIGNED 287(g)
AGREEMENTS**

Table of States that have Signed 287(g) Agreements

(Immigration and Customs Enforcement)

MUTUALLY SIGNED AGREEMENTS (68) AS OF 09/02/2011			
STATE	LAW ENFORCEMENT AGENCY	SUPPORT TYPE	DATES SIGNED
ALABAMA	Alabama Department of Public Safety	TASK FORCE	2003-09-10
ALABAMA	Etowah County Sheriff's Office	JAIL ENFORCEMENT	2008-07-08
ARIZONA	Arizona Department of Corrections	JAIL ENFORCEMENT	2005-09-16
ARIZONA	Arizona Department of Public Safety	JAIL & TASK FORCE	2007-04-15
ARIZONA	City of Mesa Police Department	JAIL & TASK FORCE	2009-11-19
ARIZONA	City of Phoenix Police Department	JAIL & TASK FORCE	2008-03-10
ARIZONA	Florence Police Department	JAIL & TASK FORCE	2009-10-21
ARIZONA	Pima County Sheriff's Office	JAIL & TASK FORCE	2008-03-10
ARIZONA	Pinal County Sheriff's Office	JAIL & TASK FORCE	2008-03-10
ARIZONA	Yavapai County Sheriff's Office	JAIL & TASK FORCE	2008-03-10
ARKANSAS	Benton County Sheriff's Office	JAIL & TASK FORCE	2007-09-26
ARKANSAS	City of Springdale Police Department	TASK FORCE	2007-09-26
ARKANSAS	Rogers Police Department	TASK FORCE	2007-09-25
ARKANSAS	Washington County Sheriff's Office	JAIL & TASK FORCE	2007-09-26
CALIFORNIA	Los Angeles County Sheriff's Office	JAIL ENFORCEMENT	2005-02-01
CALIFORNIA	Orange County Sheriff's Office	JAIL ENFORCEMENT	2006-11-02
CALIFORNIA	Riverside County Sheriff's Office	JAIL ENFORCEMENT	2006-04-28
CALIFORNIA	San Bernardino County Sheriff's Office	JAIL ENFORCEMENT	2005-11-19
COLORADO	Colorado Department of Public Safety	TASK FORCE	2007-03-29
COLORADO	El Paso County Sheriff's Office	JAIL ENFORCEMENT	2007-05-17
CONNECTICUT	City of Danbury Police Department	TASK FORCE	2009-10-15
DELAWARE**	Delaware Department of Corrections	JAIL ENFORCEMENT	2009-10-15
FLORIDA	Bay County Sheriff's Office	TASK FORCE	2008-06-15

MUTUALLY SIGNED AGREEMENTS (68) AS OF 09/02/2011

STATE	LAW ENFORCEMENT AGENCY	SUPPORT TYPE	DATES SIGNED
FLORIDA	Collier County Sheriff's Office	JAIL & TASK FORCE	2007-08-06
FLORIDA	Florida Department of Law Enforcement	TASK FORCE	2002-07-02
FLORIDA	Jacksonville Sheriff's Office	JAIL ENFORCEMENT	2008-07-08
GEORGIA	Cobb County Sheriff's Office	JAIL ENFORCEMENT	2007-02-13
GEORGIA	Georgia Department of Public Safety	TASK FORCE	2007-07-27
GEORGIA	Gwinnett County Sheriff's Office	JAIL ENFORCEMENT	2009-10-15
GEORGIA	Hall County Sheriff's Office	JAIL & TASK FORCE	2008-02-29
GEORGIA	Whitfield County Sheriff's Office	JAIL ENFORCEMENT	2008-02-04
MARYLAND	Frederick County Sheriff's Office	JAIL & TASK FORCE	2008-02-06
MINNESOTA	Minnesota Department of Public Safety	TASK FORCE	2008-09-22
MISSOURI	Missouri State Highway Patrol	TASK FORCE	2008-06-25
NEVADA	Las Vegas Metropolitan Police Department	JAIL ENFORCEMENT	2008-09-08
NEW JERSEY	Hudson County Department of Corrections	JAIL ENFORCEMENT	2008-08-11
NEW JERSEY	Monmouth County Sheriff's Office	JAIL ENFORCEMENT	2009-10-15
NEW MEXICO	New Mexico Department of Corrections	JAIL ENFORCEMENT	2007-09-17
NORTH CAROLINA	Alamance County Sheriff's Office	JAIL ENFORCEMENT	2007-01-10
NORTH CAROLINA	Cabarrus County Sheriff's Office	JAIL ENFORCEMENT	2007-08-02
NORTH CAROLINA	City of Durham Police Department	TASK FORCE	2008-02-01
NORTH CAROLINA	Gaston County Sheriff's Office	JAIL ENFORCEMENT	2007-02-22
NORTH CAROLINA	Henderson County Sheriff's Office	JAIL ENFORCEMENT	2008-06-25
NORTH CAROLINA	Mecklenburg County Sheriff's Office	JAIL ENFORCEMENT	2006-02-27
NORTH CAROLINA	Wake County Sheriff's Office	JAIL ENFORCEMENT	2008-06-25
OHIO	Butler County Sheriff's Office	JAIL & TASK FORCE	2008-02-05
OKLAHOMA	Tulsa County Sheriff's Office	JAIL & TASK FORCE	2007-08-06
SOUTH CAROLINA	Beaufort County Sheriff's Office	TASK FORCE	2008-06-25

MUTUALLY SIGNED AGREEMENTS (68) AS OF 09/02/2011			
STATE	LAW ENFORCEMENT AGENCY	SUPPORT TYPE	DATES SIGNED
SOUTH CAROLINA	Charleston County Sheriff's Office	JAIL ENFORCEMENT	2009-11-09
SOUTH CAROLINA	Lexington County Sheriff's Office	JAIL ENFORCEMENT	2010-08-19
SOUTH CAROLINA	York County Sheriff's Office	JAIL ENFORCEMENT	2007-10-16
TENNESSEE	Davidson County Sheriff's Office	JAIL ENFORCEMENT	2007-02-21
TENNESSEE	Tennessee Highway Patrol / Department of Safety	TASK FORCE	2008-06-25
TEXAS	Carrollton Police Department	JAIL ENFORCEMENT	2008-08-12
TEXAS	Farmers Branch Police Department	TASK FORCE	2008-07-08
TEXAS	Harris County Sheriff's Office	JAIL ENFORCEMENT	2008-07-20
UTAH	Washington County Sheriff Office	JAIL ENFORCEMENT	2008-09-22
UTAH	Weber County Sheriff's Office	JAIL ENFORCEMENT	2008-09-22
VIRGINIA	Herndon Police Department	TASK FORCE	2007-03-21
VIRGINIA	Loudoun County Sheriff's Office	TASK FORCE	2008-06-25
VIRGINIA	Manassas Park Police Department	TASK FORCE	2008-03-10
VIRGINIA	Manassas Police Department	TASK FORCE	2008-03-05
VIRGINIA	Prince William County Police Department	TASK FORCE	2008-02-26
VIRGINIA	Prince William County Sheriff's Office	TASK FORCE	2008-02-26
VIRGINIA	Prince William-Manassas Regional Jail	JAIL ENFORCEMENT	2007-07-09
VIRGINIA	Rockingham County Sheriff's Office	JAIL ENFORCEMENT	2007-04-25
VIRGINIA	Shenandoah County Sheriff's Office	JAIL & TASK FORCE	2007-05-10
ACTIVE MOAS PENDING 'GOOD FAITH' NEGOTIATIONS (1) AS OF 09/02/2011			
STATE	LAW ENFORCEMENT AGENCY	SUPPORT TYPE	DATES SIGNED
MASSACHUSETTS	Massachusetts Department of Corrections	JAIL ENFORCEMENT	2007-03-26

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