

The Role of Local Police

Striking a Balance
Between Immigration Enforcement
and Civil Liberties



EXECUTIVE SUMMARY

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The Police Foundation is a national, nonpartisan, nonprofit organization dedicated to supporting innovation and improvement in policing. Established in 1970, the foundation has conducted seminal research in police behavior, policy, and procedure, and works to transfer to local agencies the best information about practices for dealing effectively with a range of important police operational and administrative concerns. Motivating all of the foundation's efforts is the goal of efficient, humane policing that operates within the framework of democratic principles and the highest ideals of the nation.

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An executive summary and the full report of *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* are available online at <http://www.policefoundation.org/strikingabalance/>.

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IN RECENT YEARS, THE UNITED STATES HAS experienced historically high rates of immigration. Not only has the population of immigrants increased four-fold since the 1970s, in the last fifteen to twenty years immigrants have also settled away from traditional gateway cities and into new destinations throughout the country that have had very little experience with integrating new immigrants. The immigrant population has also grown more diverse, originating from all parts of the globe, in particular Latin America and Asia versus the predominantly Caucasian European migration of the early twentieth century. These demographic shifts have produced racial tensions, particularly in new destination communities, and given rise to contentious debate about the nation's immigration policies and practices, with longstanding resident communities demanding that government—federal, state, and local—more aggressively enforce immigration laws.

Traditionally, the prevailing view was that the responsibility for enforcing federal immigration laws was solely in the purview of the federal government. In recent years, however, local law enforcement agencies throughout the country have been drawn into the middle of the immigration debate, especially since 9/11, through pressure placed on them by their elected leaders, their communities, and the media to engage in federal immigration enforcement, a responsibility that has not traditionally been part of their organizational mandate. Beginning in the 1990s, federal immigration agencies, overwhelmed by the enormity of the task of apprehending, detaining, and deporting the country's almost twelve million unauthorized immigrants, launched programs and initiatives to induce the cooperation and assistance of the nation's approximately 18,000 state and local law enforcement agencies in identifying and deporting unauthorized

immigrants living in the interior of the country. Prior to 1996, these programs were mostly directed at improving cooperation between local law enforcement and federal immigration authorities with respect to criminal detainees. In 1996, however, Congress passed legislation expanding the role of local law enforcement in federal immigration enforcement. The most well-known program is the U.S. Immigration and Customs Enforcement's (ICE) 287(g) program, which authorizes federal officials to enter into written agreements with state and local law enforcement agencies to carry out the functions of immigration officers, including investigation, apprehension, and detention.

While local law enforcement agencies collaborate with federal immigration authorities in a wide range of activities, most of this project's discussions focused on the ICE 287(g) program. Police executives have felt torn between a desire to be helpful and cooperative with federal immigration authorities and a concern that their participation in immigration enforcement efforts will undo the gains they have achieved through community oriented policing practices, which are directed at gaining the trust and cooperation of immigrant communities. Police are also concerned about the impact of local law enforcement of immigration law on already strained state and local resources, and particularly on the ability of local law enforcement to maintain its core mission of protecting communities and promoting public safety.

With support from the Ford Foundation, the Police Foundation launched a national effort to bring together law enforcement agencies, public officials, and community stakeholders to collaboratively examine the implications of local law enforcement of immigration laws. The main goal of the project was to provide local law enforcement with a venue to debate and dis-

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seminate their perspectives on the issue of their role in immigration enforcement so that they may have an influence in the national policy debate. A central project component was a series of focus groups held across the country that included local police, public officials, and representatives of immigrant communities and designed to elicit the perspectives and insights of those directly impacted by the issues surrounding immigration. The conversations and questions raised in the focus groups influenced the development of the agenda for a national conference in Washington in August 2008, at which scholars, policy makers, law enforcement professionals, and immigrant community representatives from across the U.S. participated in facilitated discussions and presented data and research on the issues involved in the debate. Finally, a short written survey was distributed to law enforcement executives who attended the national conference.

Although there were clearly differences of opinion among the diverse group of law enforcement representatives participating in the various project activities regarding the costs and benefits of local law enforcement participation in federal immigration enforcement, a majority of police chiefs seem to regard the costs of participation in civil immigration enforcement efforts, where there is no criminal nexus, as outweighing the potential benefits. In particular, many police executives were concerned with the impact on the relationship between immigrant communities and police and the probability of reduced cooperation of witnesses and victims of crime, thereby having a negative overall impact on public safety. They were also concerned about increased victimization and exploitation of immigrants, a possible increase in police misconduct, the fiscal impact on law enforcement budgets, the high possibility of error given the complexity of immigration law, the possibility of racial

profiling and other civil lawsuits, and the effect on immigrant access to other municipal services. It also became clear, despite a healthy level of debate over specific issues, that certain recommendations and policy positions listed below were widely held among the group.

- The costs of participating in the U.S. Immigration and Customs Enforcement's (ICE) 287(g) program outweigh the benefits.
- Police officers should be prohibited from arresting and detaining persons to solely investigate immigration status in the absence of probable cause of an independent state criminal law violation.
- If a local agency nevertheless enters the 287(g) program, its participation should be focused on serious criminal offenders and should be limited to verifying the immigration status of criminal detainees as part of the 287(g) Jail Enforcement Officer program.
- Local and state authorities participating in federal immigration enforcement activities should develop policies and procedures for monitoring racial profiling and abuse of authority.
- In order to preserve the trust that police agencies have built over the years by aggressively engaging in community oriented policing activities, local law enforcement agencies should involve representatives of affected communities in the development of local immigration policies.
- There is a need for empirical research on ICE's 287(g) program and other methods of police collaboration with federal immigration authorities so that we have more objective data by which to better understand the way in which these programs are carried out in the field and their impact on public safety and civil liberties.
- Local law enforcement agencies should employ community-policing and problem-solv-

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ing tactics to improve relations with immigrant communities and resolve tension caused by expanding immigration.

- Local law enforcement leaders and policing organizations should place pressure on the federal government to comprehensively improve border security and reform the immigration system, because the federal government's failure on both issues has had serious consequences in cities and towns throughout the country.

While much of the dialogue generated during the project centered on the specific benefits and costs of local law enforcement participation in immigration enforcement, the conversation often reverted to discussions about the core role of police and general principles of community policing. Local police must serve and protect *all* residents regardless of their immigration status, enforce the criminal laws of their state, and serve and defend the Constitution of the United States. As police agencies move away from their core role of ensuring public safety and begin taking on civil immigration enforcement activities, the perception immigrants have of the role of police moves from protection to arrest and deportation, thereby jeopardizing local law enforcement's ability to gain the trust and cooperation of immigrant communities. "How can you police a community that will not talk to you?" asked one police chief participating in the project. Without the cooperation of immigrant witnesses and victims of crime, local law enforcement's ability to identify, arrest, and prosecute criminals is jeopardized.

Over the past fifteen years, the community-policing movement has made significant gains in making communities safer, and police executives participating in the project expressed concern that local immigration enforcement efforts threaten to undo these gains. The com-

munity-policing movement has demonstrated that the effectiveness of police is heavily dependent on the relationships the police have with the communities they serve. Therefore, in developing and monitoring local immigration policies, it is critical that local law enforcement regularly communicate with affected communities and make every effort to establish a mutually cooperative and supportive relationship with immigrant communities.

The final project report presents the most salient arguments, positions, points of consensus, and recommendations that arose during the focus groups, conference presentations and discussions, and survey responses. Also included, as appendices to the report, are a comprehensive summary of the focus group discussions, results of the conference law enforcement executive survey, the conference agenda, presenters' bios, selected presentations, sample police department policies on immigration enforcement, and six papers (abstracts below) prepared specifically for the national conference by scholars from various academic disciplines.

Abstracts of Papers Prepared for This Project

Legal Issues in Local Police Enforcement of Federal Immigration Law

**by Nancy Morawetz and Alina Das,
New York University School of Law**

As local police consider taking on enforcement of federal immigration law, they should carefully consider the legal complexity of their role and legal constraints on methods of enforcement in a legal and institutional system that operates quite differently from local criminal justice systems. Local police enforcement of federal immigration law must account for local, state, and federal laws that govern

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the rights of community residents and the obligations of localities. It must also account for the civil nature of most immigration violations. Most importantly, it must be conducted in a way that avoids several common misconceptions about the supposed targets of immigration law enforcement, including confusion over their rights, status, and place in the community. The risk of error is high, and already several localities have been subject to lawsuits over unlawful arrests and detentions, the use of racial profiling in enforcement, poor conditions of confinement, and other violations of law. This paper discusses the legal complexities of federal immigration law enforcement in the local setting and the changing demographics of communities. Risks of liability provide yet another factor for police departments to consider before making a decision about whether to tread into this new field of enforcement.

Making Civil Liberties Matter in Local Immigration Enforcement

**by Raquel Aldana, William S. Boyd
School of Law, University of Nevada-
Las Vegas**

The exponential rise in local law enforcement involvement in the enforcement of immigration laws raises significant questions regarding a state's source of power to enforce a traditionally federal power. As well, this trend presents local police with new challenges on how to protect the civil liberties and retain the trust of immigrant communities. In this paper, the author explains the unresolved controversy of the source and scope of local powers to enforce federal immigration laws and details the civil liberties concerns that arise from local law enforcement's involvement in immigration enforcement. The author then offers recommendations for ensuring greater civil rights compliance by local law enforcement agencies

that still choose to enforce immigration laws, as well as explains immigrants' rights during these police encounters.

Undocumented Immigration and Rates of Crime and Imprisonment: Popular Myths and Empirical Realities

**by Rubén G. Rumbaut, University of
California-Irvine**

The perception that the foreign-born, especially "illegal aliens," are responsible for higher crime rates is deeply rooted in American public opinion and is sustained by media anecdote and popular myth. In the absence of rigorous empirical research, stereotypes about immigrants and crime often provide the underpinnings for public policies and practices, and shape public opinion and political behavior. These perceptions, however, are not supported empirically; in fact, they are refuted by the preponderance of scientific evidence. In addition to reviewing previous literature on immigrant criminality, Rumbaut looks at national violent and property crime rates since the early 1990s, during the period of highest immigration. He then analyzes incarceration rates of young men eighteen to thirty-nine, comparing differences between the foreign-born and the U.S.-born by national origin and by education, and, among the foreign-born, by length of residence in the U.S. Rumbaut also examines findings from two major surveys (IIMMLA and CILS) in Southern California, the region of greatest immigrant concentration in the United States, and focuses comparative attention on those nationalities representing distinct modes of incorporation.

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Why Integration Matters: The Case of Undocumented Immigrant Youth and Moving Beyond Enforcement

by Roberto G. Gonzales, University of Washington-Seattle

Today's immigration debates have brought to the fore conflicting visions within the United States over how to address a population of eleven to twelve million undocumented immigrants. However, contemporary debates have yet to catch up to current realities and complexities of undocumented families and thus do not account, for the most part, for a growing population of undocumented children educated in the United States. Drawing upon three and a half years of fieldwork and over one hundred life histories with adult children of undocumented immigrants in Southern California, this paper seeks to address the complicated realities of contemporary immigration by examining the experiences of undocumented youth in the larger community context. It argues that while enforcement efforts are counterproductive, police and other community officials have an important role to play in the integration process of undocumented youth.

Local Enforcement of Immigration Laws: Evolution of the 287(g) Program and Its Potential Impacts on Local Communities

by Randolph Capps, Migration Policy Institute

By August 2008, sixty-two state and local agencies had entered into 287(g) agreements with U.S. Immigration and Customs Enforcement (ICE), although most were signed since 2005. Most of the jurisdictions adopting agreements are in southeastern and southwestern states, in conservative political areas, and in locations where recent growth in unauthorized immigration has been rapid. This paper begins with a brief timeline and overview of the 287(g)

program and discusses some of the broad outlines of how it has been implemented to date. Then, for further background, population and political trends that underlie the adoption of 287(g) programs across the country are discussed. The third section of the paper relates preliminary findings about the implementation of 287(g) in Arkansas, based on a site visit there in June 2008. The site visit to the adjacent communities of Rogers and Springdale, Arkansas, confirmed that 287(g) officers there were checking immigration status in a variety of operations, including: routine traffic stops, worksite investigations, drug raids, and at the county jails in both communities. Several hundred immigrants had been arrested, detained, and sent into the custody of ICE for deportation over the course of the first six months. Latino community leaders who had originally supported the program in Springdale had withdrawn their support due to the wide net that the 287(g) officers had cast, and the program's broad impacts on local residents, including schoolchildren. The paper ends with policy recommendations and general observations about potential impacts of 287(g) operations on cities, immigrant communities, and children.

Immigration and Local Policing: Results from a National Survey of Law Enforcement Executives

by Scott H. Decker, Paul G. Lewis, Doris Marie Provine, Arizona State University, and Monica W. Varsanyi, John Jay College of Criminal Justice

One of the most important challenges for law enforcement agencies in many communities is how to respond to immigration and the presence of undocumented residents. Departments often face conflicting pressures from local politicians, federal authorities, community groups, and the private sector. Yet they have little avail-

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able information to help them make sound policy decisions. This paper reports on the results of a recent nationwide survey of police executives on several issues, including differences between departments and communities and their attitudes about immigration and local law enforcement; relationships with federal immi-

gration and customs enforcement authorities; and the range of policies on immigration policing being developed by cities and departments. The survey also explores levels of commitment to community policing practices and the potential for conflict with enforcement of immigration laws by local police.



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