



DANE COUNTY

IMMIGRATION TASK FORCE

FINAL REPORT
February 2011

Chair, Luis Yudice
Co-Chair, Ramona L. Natera



DANE COUNTY IMMIGRATION TASK FORCE

COMMITTEE MEMBERS

Chairs

Luis Yudice, Chair Director of School Safety

Ramona L. Natera, Co-Chair Attorney at Law

Members

Rabbi Renee Bauer Director, Interfaith Coalition for Worker Justice
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Shiva Bidar Sielaf Alder, District 5, Madison Common Council

Melanie Hampton Dane County Board Supervisor

Jonathon Hawkins Public School Teacher

Dianne Hesselbein Dane County Board Supervisor

David Mahoney Sheriff, Dane County Sheriff's Department

February 7, 2011

Dear Citizens of Dane County:

The Dane County Immigration Task Force was created by a County resolution in August of 2009 with the mission of exploring the manner in which County government could improve relations with its immigrant community. Specifically, the Task Force was charged with the following:

- To improve relations between Dane County law enforcement and the immigrant community.
- To ensure that Dane County complies with the federal requirements of U.S. Immigration and Customs Enforcement.
- To work with the National Association of Counties to identify examples from other counties throughout the country regarding approaches to improve relations between the criminal justice system and the immigrant community.

To accomplish our mission, the Task Force gathered and explored information related to this topic, and held five listening sessions where the public was invited to provide testimony in a public forum. These sessions were held in Madison, Middleton and Stoughton. The following are highlights of our findings:

The Task Force was charged with examining issues affecting the immigrant community and access to county government programs. However, in the context of this issue, we found it difficult to separate national policies from local policies and practices that impact the immigrant community. In essence, federal immigration policies drive the local agenda and impact state and local governments. Therefore, in the process of understanding how the immigrant community is impacted in its ability to access county services, it is also critical to understand how issues such as the inability to obtain a drivers license or state identification card impacts the immigrant family, as well as the larger community.

Efforts by local governments to enforce national immigration laws do not work and there is no evidence that they do anything to stem the flow of undocumented immigrants into local communities. Furthermore, it is highly unlikely that the adoption of state laws or municipal ordinances to restrict immigrants from accessing employment, education, or other services, has any effect on the larger immigration issue.

However, to say that these laws have no impact whatsoever would be incorrect. Whether intended or not, local enforcement efforts often create hardships for families by creating barriers to services that are available to the larger community. What local anti-immigration efforts do in effect is to marginalize a segment of our community and force them to live in a world of fear. For immigrants, the simple tasks of visiting their child's school, driving to the grocery store, or going to the doctor have the potential to result in arrest and deportation. The fear of being separated from family is very real in Dane

County. In the immigrant community, it is not uncommon for families to draft legal documents, similar to wills, which outline guardianship for their children in the event that the parents are deported while the children remain behind in this country.

Municipalities and county governments across the country have attempted to address what is a national public policy issue, with local controls, which may in fact have the reverse effect on their communities. Rather than integrating these families into the local norms and values, they are forced into an underground existence that prevents them from openly participating and contributing to the good of the community. The recent homicide in Madison and the Madison Police Department's efforts to reach out to the Latino community speaks in part to this issue.

Attempts to utilize local law enforcement to enforce federal immigration laws have been counterproductive and have been resisted by many police agencies. Rather than making the communities safer, these efforts have had the effect of alienating the immigrant communities and undermined collaboration with police. An unintended consequence of creating fear in these communities is to discourage the reporting of crime to law enforcement. Domestic abuse, child abuse and neglect, sexual assaults, robberies and countless other offenses may not be reported for fear of the police and of their real or perceived involvement in the enforcement of immigration laws. It is clear that despite the Madison Police Department's progressive policies on immigration, they must still counter the fear that is entrenched in the immigrant community of all law enforcement agencies.

Likewise, state laws that bar immigrants from obtaining drivers licenses are intended to prevent them from driving, and thereby, to discourage illegal immigration, but there is little evidence of their effectiveness. Individuals who appeared at the public listening sessions spoke at length on this topic and gave emotional testimony about the hardships these laws create for their families. Rather than promoting safer communities by encouraging immigrants to participate in driver training courses and to obtain insurance, the laws have had the reverse effect. People still drive, but they do so without the training or insurance.

The specific recommendations contained in this report reflect the Task Force's beliefs that a safe community can best be maintained if all Dane County residents are given equal access to opportunity and are given equal protection under the law. Furthermore, we strongly urge policy makers to develop local policies that remove barriers to services, specifically those intended for children and families in health, education, and public safety.

Many of the findings contained in this report are consistent with those of the 2009 Dane County Task Force on Racial Disparities in the Criminal Justice System. We urge our elected officials to adopt and implement our recommendations, as well as those of the Task Force on Racial Disparities.

In closing, we were honored to have been a part of this effort and trust that it will contribute to the education of our community and to enhance the quality of life of all residents of Dane County.

Respectfully submitted,

Luis R. Yudice
Chair

Ramona L. Natera
Co-Chair

Members of the Task Force:

Luis Yudice, Chair
Ramona Natera, Co-Chair
Dane County Supervisor Hesselbein
Dane County Supervisor Hampton
Sheriff Mahoney
Rena Bauer
Jonathan Hawkins
Alder Bidar-Sielaff, City of Madison

Dane County - ITF: SUMMARY OF FINDINGS

Mirroring the impact of national policies on local communities, the issues affecting immigrants, documented and undocumented, impact the Dane County community as a whole. The Dane County Immigration Task Force collected information on the concerns, opinions, and experiences of the public both directly (through four public listening sessions) and indirectly (through the selection of committee members representative of the Dane County community). Over the course of the task force's work, many issues were raised.

For purposes of discussion, they have been divided into four categories:

1. Barriers to Integration
 - A. Demands for Social Security Numbers and Driver's License
 - B. Relationship with Local Law Enforcement
2. Equal Protection Under Law
3. Fear of Law Enforcement and Government Agencies
 - A. Disproportionate Impact on Victims and Children
 - B. Perceived Bias in Law Enforcement
 - C. Opportunistic Crime
4. Access Local Government and Support Services

BARRIERS TO INTEGRATION

Overwhelmingly, testimony at the listening sessions showed that immigrants in Dane County wish to be a part of the community. However, immigrants in Dane County, especially children, see themselves as held separate: excluded and unwanted. Fears of persecution are causing members of the immigrant community to withdraw, and preventing them from making all their desired contributions to our community. Policies—from federal to local—are creating barriers to healthy integration of immigrants. The barriers can be as simple as a lack of interpretation/translation services, or as complex as federal laws that have stripped immigrants of legal forms of identification.

Many of these barriers seem to be unintentional: institutions don't realize the exclusion their policies cause. They often impact legal and undocumented immigrants alike. Unfortunately, once an institution (e.g. after-school program or food banks) sets in place exclusionary policies it often leads to those policies persisting in related programs.

DEMANDS FOR SOCIAL SECURITY NUMBERS AND DRIVER'S LICENSE

One of the most pervasive barriers is the demanding of a social security number (SSN) in order to participate in programs and receive services. Sorting and filing of program participants is not what the SSN was intended for, but such use is now widespread, making people afraid to access services. SSNs are demanded for such programs as: public libraries, after-school and pre-college programs, scholarships, and many UW sponsored events and programs. There is a history of some public institutions (including the UW-Madison) reporting students who are discovered to lack SSNs to US Immigration and Customs Enforcement (ICE.) The misuse of SSNs has led to the exclusion of immigrants from educational opportunities and social services. Many in the community question whether or not that is intentional breeding more distrust.

Equally damaging to integration is the lack of driver's licenses. Due to the REAL ID Act, undocumented immigrants who have taken the necessary steps to obtain legal drivers licenses are now unable to renew them. This leads to a succession of difficulties. Immigrants who are unable to drive legally must nevertheless drive in order to live in Dane County. They end up driving untrained and uninsured, posing a greater risk to themselves and the community. They are also risking serious fines, arrest, and deportation, which lead to further unsafe behaviors, such as fleeing the scene of an accident. Additionally, drivers licenses (like SSNs) are a heavily demanded piece of identification, barring those who do not have them from basic services like libraries and school programs, or from accessing the most basic of financial services.

RELATIONSHIP WITH LOCAL LAW ENFORCEMENT

Underlying this whole discussion is the fear immigrants have of the link between local law enforcement and ICE. This has led to fear of being involved in public processes, including attending the public hearings of our task force. Undocumented immigrants, legal residents, and the public employees who serve them are unsure of the safety and consequences of involving law enforcement. They are also afraid to pursue questions for fear of attracting attention that could lead to deportation, broken families, and abandoned children.

EQUAL PROTECTION UNDER LAW

Immigration policy, including local law enforcement's involvement with ICE, has raised serious questions about whether or not immigrants are being provided equal protection under the law. The involvement of ICE with local law enforcement policies has led to severe consequences for minor infractions and created a barrier for victims seeking help or cooperating with local police forces. There is a pervasive perception that the law is enforced differently depending on the race and ethnicity of those involved.

Large numbers of undocumented immigrants are victims of crimes that never get reported. Immigrants say they used to seek help from the police, and help the police with their investigations, but now feel that allowing themselves to be involved with the law is equivalent to throwing themselves into jail for deportation. Individuals are afraid to the

point that they will not even report noise disturbances. Community members who serve immigrants (e.g. social workers and teachers) are less likely to report crimes because of the possibility of victims being deported. Community members testified that they are addressing crime in their neighborhoods by dealing with it themselves.

The combination of the REAL ID Act, increased ICE activity, and pre-existing policies of the Dane County Jail (DCJ) have made the consequences of even minor traffic infractions life altering. Any individual who self declares as a non-US citizen while being processed at the DCJ is reported to ICE for the purpose of gaining any information they may have regarding identification and background of the individual. As a result, the DCJ provides information to ICE that may be used in actions regarding the individual's immigration status. That means immigrants who are accused, but not convicted, of crimes are frequently facing consequences that exceed those faced by non-immigrants who are convicted. A simple misunderstanding or case of mistaken identity can lead to a family being ripped apart by deportation, with children left behind and unable to be cared for. Even a legal resident that is involved in a traffic accident can find himself stripped of his residency and deported.

Many participants in the sessions expressed despair over whether the county would ever take action on these issues.

FEAR OF LAW ENFORCEMENT AND GOVERNMENT AGENCIES

The apparent lack of equal protection under the law has led to a fear of law enforcement and other government agencies in Dane County, and is the greatest barrier to full membership in the community and accessing services. Many in the community do not know their rights, do not know how to safely interact with law enforcement, and are therefore afraid to come in contact with the police, either as victims or witnesses. Immigrants are afraid to act on their rights because of the imbalance of power created by the threat of ICE. Individuals are unable to find out why relatives have been deported. They are not told and are afraid to inquire too deeply for fear of bringing attention of law enforcement on friends and family. Unable to find out officially why people have been taken, individuals are forced to try to reason it out on their own. Many end up drawing connections to involvement with local law enforcement (traffic tickets, filing of neighborhood complaints, providing testimony, etc.). The fact that some arms of local law do initiate contact with ICE muddies the waters.

Many immigrants feel that, even when obeying local laws, that they are viewed as criminals. They are afraid of "the police," and will flee rather than risk assisting law enforcement officers. The fear immigrants feel toward law enforcement is pervasive and exists towards all law enforcement, not specific agencies with specific policies. As long as some in law enforcement are contacting ICE, it will be feared that all law enforcement is contacting ICE.

The climate of fear has led to deep distrust, not only of law enforcement, but of social services and local media. The suspicion and mistrust bred by current policies have lead community members to distrust even such good faith acts as the Sheriff calling for driver's cards for undocumented immigrants. The stress of fear has had a noticeable impact on the

mental health of the community, both adults and children. Immigrants feel they need to make emergency preparedness plans in case of encounters with the police lead to the deportation of parents and the forced abandonment of children.

DISPROPORTIONATE IMPACT ON VICTIMS AND CHILDREN

All of this has had a disproportionate impact on children and the victims of crime. Because of language barriers and a lack of access to interpreters, children often need to act as middlemen between their families and the government. This creates a great deal of stress on young children being asked to translate in legal, business, and emergency situations. The anxiety is increased for the many children who are afraid that something they say or do will lead to the deportation of entire families. Children assume that contacting the police is not an option, and instead families must handle crimes or other emergencies on their own or with help from whatever "safe" places they can find. Finding those safe places is increasingly difficult for them, and Madison Metropolitan School District has recorded steep drops in attendance as ICE activities increase in the area.

Children born outside the United States but raised here do not see themselves as foreigners; they see themselves as Americans and Wisconsin-ites. They fear deportation to countries they do not know and are hurt and confused by their exclusion from the community they see their friends belonging to. As one child said, "That's the distressing thing about it, I can't do half the things I need to do in life. I just can't do it." Because they fear the police and see no path to higher education or legal work, more children are resorting to gangs for acceptance, money, and protection.

PERCEIVED BIAS IN LAW ENFORCEMENT

Community members commented that traffic stops of Latinos, and the fines that go with them, have increased in recent years. Participants also testified to law enforcement officers demanding ID, even from pedestrians, in order to prove neighborhood residence, with the threat of arrest if they did not provide it. Though the creation of a "driver's card" would be a great help for the immigrant community, it is feared that it will not stop the harassment. Difficulties with language and communication make these situations worse. Not only are there inadequate interpretation/translation services, it is felt by many that the language barrier is actively used to keep immigrants at a disadvantage when dealing with law enforcement.

OPPORTUNISTIC CRIME

Criminals and opportunists in the community use the threat of ICE (and the Dane County Sheriff's Office's cooperation with it) as a tool to manipulate and control the immigrant community. Immigrants are harassed easily, and the perpetrators know that victims will not feel able to approach the police. Some, in fact, use the threat of police/ICE involvement as *part* of the harassment. Unable to get credit cards or open bank accounts, immigrants are also obligated to carry cash for all transactions, which has led to Latinos being targeted by criminals as profitable

victims, especially since the victims are unlikely to report assaults for fear of deportation.

This feeling of abandonment by the community creates the alienation, resentment, and fear that, in turn, damage the Dane County community as a whole.

ACCESS TO LOCAL GOVERNMENT AND SUPPORT SERVICES

All of this creates fear and frustration not just for immigrants, but for those who work to provide support for everyone in the community. Legal professionals who appeared at listening sessions noted how the inconsistent treatment of immigrants between counties made their jobs more difficult. They also pointed out that the steep consequences of even one night spent in the DCJ have led to increased costs to the county in the form of prolonged litigation.

Because law enforcement is not trusted, other community members (e.g. teachers, social workers) are being asked by immigrants for advice and guidance that they are unqualified to give. Workers in education and social services are unable to encourage immigrants to go to the police for help because they are uncertain of what the consequences will be for victims, witnesses, and bystanders. Deportation, or prolonged incarcerations in ICE holding facilities, creates a strain on existing support services (social workers, schools, etc.) who are obligated professionally, legally, and ethically to deal with the mental health and social issues that result. Continuing being a victim of abuse is seen as less of a threat than going to the police. Those who work with the immigrant community fear that they themselves are open to legal action because of information they provide or crimes they are hesitant to report. The end result is the community as a whole suffers.

***IMMIGRATION TASK FORCE
OF THE DANE COUNTY BOARD OF SUPERVISORS
RECOMMENDATIONS***

1. **ISSUE:** Article 36 of the Vienna Convention on Consular Relations requires local law enforcement agencies to notify a detainee's home country consulate of their arrest.

RECOMMENDATION: Law enforcement agencies in Dane County should continue the current policy of notifying a detainee's home country consulate of their arrest pursuant to the Vienna Convention requirements.

2. **ISSUE:** The Dane County Sheriff's policy of notifying the Immigration and Customs Enforcement (ICE) of all undocumented inmates who are processed in the Dane County Jail (DCJ) has had the unintended effect of tearing families apart and undermining trust in local law enforcement.

RECOMMENDATION: The Dane County Sheriff's Office should end the current practice of contacting ICE for cases involving non-US citizen inmates during the booking process.

3. **ISSUE:** Public testimony identified problems of undocumented individuals who are unable to obtain a Wisconsin identification or driver's license. These problems range from being unable to pick up a child at an after school program to being cited for driving without a license to being unable to open a bank account.

RECOMMENDATION: Dane County should support a driver's identification program that would allow undocumented individuals to drive in Wisconsin, obtain auto insurance and be used to the extent possible for purposes of identification within the State of Wisconsin.

4. **ISSUE:** Inconsistent policies and practices among local law enforcement agencies when dealing with non-U.S. citizens results in arbitrary enforcement of state laws and is perceived as racial profiling.

RECOMMENDATION: Law enforcement in Dane County should develop uniform policies for their patrol units on enforcement of immigration laws to not stop, arrest, or detain an individual, solely based on his or her immigration status. For an example of such policy, refer to the Madison Police Department policy as of June 2, 2010 (attached), presented to the Task Force.

5. ISSUE: Our nation's federal immigration policies are ineffective and negatively impact the lives of residents in Dane County by creating a climate of fear, marginalizing a vulnerable population and threatening public safety.

RECOMMENDATION: We urge the US Congress to enact comprehensive immigration reform based on the following principles:

- Uniform and consistent immigration policies that are transparent and efficient.
- A pathway to citizenship for undocumented immigrants currently living in the United States.
- Family reunification that eliminates current family-based visa backlogs and includes provisions for equal immigration rights for LGBTQ persons and their permanent partners.
- Smart enforcement policies and safeguards that foster respect for the rule of law and due process, while always preserving the civil and human rights of all persons.

6. ISSUE: Due to the fear of being reported to ICE and deported, victims and witnesses of crime are afraid to contact and/or collaborate with local law enforcement agencies for fear of deportation.

RECOMMENDATION: Law enforcement agencies in Dane County should increase outreach and education in the immigrant community. In order to effectively do this, we strongly encourage the recruitment, hiring, and retention of personnel in these agencies that reflect the diversity of our community.

7. ISSUE: The immigrant community does not distinguish one law enforcement agency from another and any agency's collaboration with ICE promotes distrust of all law enforcement agencies.

RECOMMENDATION: The Dane County Sheriff's Office and other local law enforcement agencies should continue their current practices of not entering into 287(g) Immigration and Nationality Act (INA) agreements with ICE. Local law enforcement officers should not enforce federal immigration law.

8. ISSUE: Use of social security numbers by government agencies and schools to identify program participants denies access to services for immigrants and their children who lack social security numbers but may be eligible for programs.

RECOMMENDATION: Social security numbers should only be requested when mandated by Federal law. Schools, libraries and service provider agencies should use means other than social security numbers to identify participants.

9. ISSUE: Lack of interpreters among county agencies results in creating a barrier to immigrant's accessing county services and at times families rely on family members, children, and friends to serve as interpreters.

RECOMMENDATION: Dane County agencies should provide qualified interpreters in order to better provide access to services for all residents.

10. ISSUE: Individuals detained in the Dane County Jail are not always aware of their right to counsel in immigration proceedings.

RECOMMENDATION: The Dane County Jail should have language specific information available to inmates about their rights in immigration proceedings.

11. ISSUE: Domestic abuse is often exacerbated in immigrant communities due to several factors which include economic hardships, lack of external family supports, social isolation, fear of deportation and lack of trust in government agencies. In addition, immigrant victims of domestic violence who attempt to leave abusive situations may not have access to bilingual shelters, financial assistance, or transportation.

RECOMMENDATION: Create a panel composed of prosecutors, defense attorneys, law enforcement and advocates to discuss domestic abuse in the immigrant community and develop programs and funding strategies to address the problem. Dane County should prioritize funding of agencies that provide outreach, translation services and assistance to immigrant families who are impacted by domestic abuse.

ATTACHMENTS TO FINAL ITF REPORT

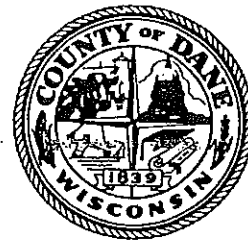
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BOARD OF SUPERVISORS County of Dane

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July 16, 2009

MEMORANDUM

TO: Interested Parties
Dane County Clerk Bob Ohlsen

FROM: Supervisor Scott McDonell, Chair
Dane County Board of Supervisors

SUBJECT: Appointment of Dane County Immigration Task Force

On May 21, 2009, the Dane County Board of Supervisors adopted Resolution 14, 2009-2010, creating the Dane County Immigration Task Force. The resolution provides that the task force have nine members representing the range of community interests, including members of the immigrant community and faith community, and representatives of the criminal justice system, schools, and public health, appointed by the County Board Chair.

The duties of the task force are to: ensure that Dane County complies with the federal requirements of U.S. Immigration and Customs Enforcement; improve relations between Dane County law enforcement and the immigrant community; work with the National Association of Counties to identify examples from other counties throughout the country regarding approaches to improve relations between the criminal justice system and the immigrant community

I am appointing the following to the committee:

Luis Yudice (chair) -- Madison Metropolitan School District, Safety and Security Coordinator
Rabbi Renee Bauer -- Director, Interfaith Coalition for Worker Justice of South Central Wisconsin
County Supervisor Dianne Hesselbein -- Dane County Board, District 9 (Middleton and Madison)
County Supervisor Melanie Hampton -- Dane County Board, District 14 (Madison)
Sheriff David Mahoney -- Dane County Sheriff's Office
Alder Shiva Bidar-Sielaf -- Madison Common Council, District 5
Salvadore Carranza -- President, Latinos United for Change and Advancement
Ramona Natera -- Attorney, UMOs
Jonathon Hawkins - Teacher, Wright Middle School, Madison Metropolitan School District

I am designating Mr. Yudice to chair the committee and call the first meeting. The Dane County Corporation Counsel's Office will provide staff support to the committee.

Please let our office know if you have any questions or need additional information.

RES. 14, 09-10

CREATING THE DANE COUNTY IMMIGRATION TASK FORCE

It is the policy of Dane County to promote the use of its services by all who are entitled to and in need of them. Individuals may seek and obtain the assistance of county agencies regardless of personal or private attributes, without negative consequences to their personal lives.

Obtaining pertinent information, which is essential to the performance of a wide variety of governmental functions, may be difficult or impossible if some expectation of confidentiality is not preserved. Preserving confidentiality requires that governments regulate the use of confidential information by their employees. In September 2004, the Dane County Board of Supervisors adopted Res. 65, 04-05, "Dane County Privacy Policy Concerning Access to County Services," which defined confidential information and specified that county employees not disclose such information except in certain situations.

Concern remains among community members regarding disclosure of confidential information, particularly immigration status, to law enforcement officers. According to the Sheriff's Office, individuals removed by the United States Immigration and Customs Enforcement (ICE) generally committed serious offenses. Of the 14,142 bookings into the Dane County jail during 2008, there were 315 instances where the individual was not a U.S. citizen and notification was sent to ICE. ICE placed a hold on a third of these individuals (105), and in 75 cases ICE removed the individuals from the Dane County jail. The majority were removed as a result of a Statute crime, such as dealing drugs, theft, or domestic violence, or as a result of repeated drunk driving.

The National Association of Counties (NACo) currently has an initiative to encourage counties to engage in a civil dialogue on immigration. The president of NACo has made immigration issues a priority and hopes counties can build consensus on the local level.

NOW, THEREFORE, BE IT RESOLVED that the Dane County Board of Supervisors hereby emphasizes that it is the county's policy on privacy not to disclose "confidential information" including immigration status, for individuals seeking access to county services, including those who are victims or witnesses of crime, are involved in traffic stops, or are seeking public health services or other services.

BE IT FURTHER RESOLVED that the Dane County Board of Supervisors hereby establishes the Dane County Immigration Task Force.

BE IT FURTHER RESOLVED that the task force shall have nine members representing the range of community interest including members of the immigrant community and faith community, as well as representatives of the criminal justice system, schools, and public health, appointed by the County Board Chair.

BE IT FURTHER RESOLVED that the task force shall have the following duties and mission:

- Insure that Dane County complies with the federal requirements of U.S. Immigration and Customs Enforcement.
- Improve relations between Dane County law enforcement and the immigrant community; and
- Work with the National Association of Counties to identify examples from other counties throughout the country regarding approaches to improve relations between the criminal justice system and the immigrant community.

BE IT FURTHER RESOLVED that the task force report initial findings and recommendations to the Dane County Board of Supervisors no later than November 1, 2009.

BE IT FINALLY RESOLVED that Office of the Corporation Counsel shall provide administrative and technical support for the task force.

Adopted by the Dane County Board of Supervisors May 7, 2009.



BOARD OF SUPERVISORS

County of Dane

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February 5, 2010

Immigration Task Force Committee
Dane County Board of Supervisors

Dear Community Agencies:

In May of 2009, the Dane County Board of Supervisors adopted Resolution 14, 09-10 to create a task force charged with examining issues related to immigration and access to County services. The specific task force duties are the following:

- Insure that Dane County complies with the federal requirements of U.S. Immigration and Customs Enforcement
- Improve relations between Dane County law enforcement and the immigrant community; and
- Work with the National Association of Counties to identify examples from other counties throughout the country regarding approaches to improve relations between the criminal justice system and the immigrant community

The Task Force is composed of nine members representing a range of community interests including members of the immigrant community and faith community, as well as representatives of the criminal justice system, schools, and public health, all appointed by the County Board Chair.

As part of its work, the Task Force is interested in hearing first-hand testimony from members of the community on the question: **What barriers do you have that prevent you from obtaining services through the county, such as:**

- Obtaining assistance related to employment issues or benefits
- Obtaining social services including health benefits and Medical Assistance
- Requesting assistance from the Dane County Sheriff's Department

The Task Force will hold listening sessions to obtain testimony on this matter:

Wednesday, 2/10/10 from 5:30p.m. to 6:30p.m. at the Catholic Multicultural Center, 1862 Beld St., Madison.

Monday, 2/15/10 from 5:30p.m. to 6:30p.m. at the Middleton Public Library, 7425 Hubbard Ave., Middleton.

Monday, 3/10/10 from 6:30p.m. to 7:30p.m. at the Stoughton Firestation, 401 E. Main St., Stoughton.

Please assist us by encouraging and assisting members of the community to attend this meeting. Further information regarding future meetings and locations will be provided at a later date.

VOLUNTEERS WILL PROVIDE INTERPRETER SERVICES

For further information, please contact Assistant Corporation Counsel Carlos Pabellon at 266-1394.

DANE COUNTY PRIVACY POLICY CONCERNING ACCESS TO COUNTY SERVICES

WHEREAS, it is the policy of Dane County to promote the utilization of its services by all who are entitled to and in need of them; and

WHEREAS, individuals should know that they may seek and obtain the assistance of county agencies regardless of personal or private attributes, without negative consequences to their personal lives; and

WHEREAS, the obtaining of pertinent information, which is essential to the performance of a wide variety of governmental functions, may in some cases be difficult or impossible if some expectation of confidentiality is not preserved, and preserving confidentiality in turn requires that governments regulate the use of such information by their employees; and

WHEREAS, in furtherance of this policy, confidential information in the possession of county agencies relating to immigration status or other personal or private attributes should be disclosed only as provided herein;

NOW, THEREFORE, BE IT RESOLVED that the Dane County Board of Supervisors hereby approves the following privacy policy regarding individuals seeking access to county services:

Section 1. As used herein, "confidential information" means any information obtained and maintained by a county department or agency relating to an individual's sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in any individual's income tax records.

Section 2. No county officer or employee shall disclose confidential information, unless

- (a) such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
- (b) such disclosure is required by law; or
- (c) such disclosure is to another county officer or employee and is necessary to fulfill the purpose or achieve the mission of any county department or agency; or
- (d) in the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any county department or agency; or
- (e) in the case of information relating to immigration status, (i) the individual to whom such information pertains is suspected by such officer or employee or such officer's or employee's agency of engaging in criminal activity other than mere status as an undocumented alien or (ii) the dissemination of such information is necessary to apprehend a person suspected of engaging in criminal activity, other than mere status as an undocumented alien or (iii) such disclosure is necessary in furtherance of an investigation of potential terrorist activity.

County departments and agencies shall promulgate such rules as may be appropriate to detail circumstances in which confidential information may or may not be disclosed pursuant to this policy. Any county officer or employee other than law enforcement officers with a question relating to the disclosure of confidential information under this section shall consult with the Corporation Counsel.

Section 3. Information regarding immigration status.

- (a) A county officer or employee, other than law enforcement officers, shall not inquire about a person's immigration status unless:

- (1) Such person's immigration status is necessary for determination of program, service or benefit eligibility or the provision of county services; or
 - (2) Such officer or employee is required by law to inquire about such person's immigration status.
- (b) Law Enforcement Officers.
- (1) For purposes of this subsection, "criminal activity" means unlawful activity other than status as an undocumented alien.
 - (2) Law enforcement officers shall not inquire about a person's immigration status unless investigating criminal activity other than mere status as an undocumented alien.
 - (3) Law enforcement officers shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity.
 - (4) Law enforcement officers and other employees shall not inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance.

Adopted by the Dane County Board of Supervisors September 23, 2004.

9-600 ENFORCEMENT OF IMMIGRATION LAWS

The Madison Police Department recognizes and values the diversity of the community it serves. The purpose of this policy is to provide guidance to our officers on this issue and to ensure equal protection and fairness is afforded to all persons, regardless of their immigration status.

The Madison Police Department will cooperate with the Immigration and Customs Enforcement (ICE) as it would with any other law enforcement agency. However, it is the policy of this department that its officers shall not arrest or detain any person solely for a suspected violation of immigration laws, except upon the request of ICE. All requests by ICE for this purpose will be directed to the Officer in Charge (OIC). The OIC will immediately notify the Chief of Police or one of the Assistant Chiefs of Police for further direction. In the absence of the Chief of Police or Assistant Chiefs of Police, the senior Captain available will be notified.

Officers are required to obtain approval from their commander or the OIC prior to arresting or detaining any person solely for a suspected violation of immigration laws, even if requested by ICE.

Madison Police Officers have a responsibility to investigate and contact any person they believe is involved in suspicious activity. If upon investigation probable cause to arrest exists, unrelated to the person's immigration status, officers may effect an arrest for that specific violation.

IMMIGRATION DOCUMENTS

Officers shall not ask any person to produce an Alien Registration Card (Green Card) or other immigration document except when assisting the ICE. This does not prohibit an officer from considering an Alien Registration Card as a form of identification if an individual offers it as such. Immigration documents identified as evidence in a criminal investigation may be seized according to State Statute 968.10 (Search and Seizure) and State Statute 968.11 (Search Incident to Arrest).

COMPILATION OF INFORMATION RELATED TO SHERIFF'S AUTHORITY TO
COMPLY WITH REQUESTS OF "ICE" REGARDING REPORTING

Resolution 65, 2004-2005, applies to the Sheriff's Office through section 3(b)(2), which provides that "[l]aw enforcement officers shall not inquire about a person's immigration status *unless investigating criminal activity other than mere status as an undocumented alien.*" If the Sheriff's actions fall within the exception that is italicized above or within the constitutionally protected powers of the sheriff, the resolution has no effect.

I. Sheriff's authority and discretion.

The Sheriff is a constitutional officer. Article 6, § 4(1)(a) of the Wisconsin Constitution provides in part, "sheriffs ... shall be chosen by the electors of the respective counties once in every 4 years." Wis. Const. Art. VI, §4(1)(b).

A sheriff's broad grant of constitutional powers and duties is contained in Article 6, section 4 of the Wisconsin Constitution. The Sheriff, when executing those duties, is immune from regulation by the Dane County Board.

The constitution nowhere defines what powers, rights and duties are held by the office of sheriff. Therefore, courts have attempted to define the sheriff's constitutional duties. First, in *State ex rel. Kennedy v. Brunst*, 26 Wis. 412, 414 (1870), the Supreme Court held that the framers intended the office of sheriff to include "those generally recognized legal duties and functions belonging to it in this country, and in the territory, when the constitution was adopted," and that these "time immemorial" duties of the office of sheriff were constitutionally protected from interference by the legislature.

In 1920, the Supreme Court defined the constitutional powers, rights and duties of the sheriff as those "immemorial principal and important duties that characterized and distinguished the office." *State ex rel. Milwaukee County v. Beuch*, 171 Wis. 474, 482, 177 N.W. 781 (1920).

Constitutional powers of a sheriff that have been defined by courts. Two of the powers that have fallen within the constitutional prerogative of a sheriff are maintaining law and order and preserving the peace. *Manitowoc County v. Local 986B*, 168 Wis. 2d 819 (1992). (The court in the *Manitowoc* case concluded that a sheriff had the constitutional right to assign a specially qualified deputy to fill a unique undercover position.) The operation of the jail and the custody and care of jail inmates have also been found to be a constitutional power and the discretion of the Sheriff. *Kocken v. Wisconsin Council 40, AFSCME, AFL-CIO*, 732 N.W.2d 828, 837 (Wis. 2007).

Courts have determined that the sheriff is given broad discretion in determining *how* he or she performs his or her duties. For example, in *Professional Police Ass'n v. Dane County*, 149 Wis. 2d 699, 710 (1989), the Court held that "if the duty is one of those immemorial principal and important duties that distinguished the office of sheriff at common law, *the sheriff 'chooses his own ways and means of performing it.'*"

Powers of a sheriff that are not constitutional. In 1995, the Court (in *Heitkemper v. Wirsing*, 194 Wis. 2d 182, 533 N.W.2d 770) explained that those powers of the sheriff obtained through the common law were not constitutionally protected. For example, "internal management and administrative duties" are

not protected by the constitution. *Id.* Hiring and firing food service personnel, even though they are in the jail, has been found to be such a management duty.

II. *The Dane County situation.*

The Dane County Sheriff's immigrant notification policy is implemented during the process of booking inmates into the Dane County Jail. Sheriff Mahoney and Chief Deputy Boylan provided the following relevant facts.

The Sheriff's Office makes an inquiry regarding citizenship and immigration status when a person is booked into the jail. The department does not make similar inquiries regarding these issues at other times, such as during traffic stops. The inquiry consists of two questions: 1) place of birth; and 2) citizenship. If a person indicates that his or her citizenship is anything other than American, he or she is asked for documentation of immigration status. If the person has no documentation to establish positive identification, the Sheriff's Office contacts ICE, to obtain the necessary identifying information. The Sheriff has confirmed that this is an informal arrangement with ICE and there is no written agreement between Dane County and ICE.

The Sheriff states that positive identification of the individual is necessary both for investigative reasons and to ensure the safety of the jail. He explained that the primary purpose of the policy is to positively identify the arrested individual, and that often, arrestees give false names and may have false identification. Thus, the Sheriff believes identification not only falls under the exception in the resolution -- "*unless investigating criminal activity other than*

mere status as an undocumented alien" – but also encompasses two of the sheriff's constitutional duties (ensuring safety of the jail and public protection).

III. *The Vienna Convention.*

In addition, in the Sheriff's view, it is necessary to determine the citizenship of all foreign nationals incarcerated in the jail in order to comply with the requirement of the Vienna Convention on Consular Relations, which is binding on the United States, and requires that all detained foreign nationals be advised of their right to have their consulate notified.

The United States is a party to the Vienna Convention on Consular Relations. This is a United Nations treaty to which 170 nations are signatories. An international treaty ratified by the U.S. Senate is binding law upon the states under the Supremacy Clause to the U.S. Constitution.

Article 36 of the Vienna Convention requires a nation arresting or detaining a foreign national to afford the detainee access to his or her consulate and to notify the foreign national of the right to consular notice. Informing the foreign national of the right to consular notification is the responsibility of the arresting or detaining authority. Under the Convention, signatory countries may opt for mandatory notification to their consulate regardless of whether the foreign national requests such notification.

The U.S. State Department has published guidelines for compliance with the Vienna Convention, including "Steps To Follow When a Foreign National Is Arrested or Detained." Step No. 1 is "Determine the foreign national's country. In the absence of other information, assume this is the country on whose

passport or other travel document the foreign national travels.” Therefore, inquiry by the Sheriff regarding an inmate’s citizenship is required in order to comply with this treaty. The Sheriff has indicated that if a foreign national has citizenship documentation Federal immigration authorities are not contacted. If a foreign national does not have documentation, the Sheriff contacts ICE for positive identification and verification of citizenship.

**SECTION: 601.01****SUBJECT: ADMISSION PROCEDURES****POLICY:**

Jail staff will perform the admission procedures necessary to ensure that persons are properly admitted into the custody of the Dane County Jail. Documentation generated during the admissions process of the person will be forwarded to the appropriate internal departments and external agencies.

DEFINITION:

Weapon - A weapon is defined as any instrument carried by a law enforcement official used to control a person that may inflict injury, serious bodily harm, and/or death. Examples include, but are not limited to, the following: firearm, chemical spray, impact weapon, and edged weapon.

Adult - Means a person who is 18 years of age or older, except for purposes of prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance. "Adult" means a person who has attained 17 years of age in accordance with 1995 Wisconsin Act 77.

Child - Means a person who is less than 18 years of age, except for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance. "Child" does not include a person who has attained 17 years of age.

PROCEDURE:**I. Initial Procedures**

The Booking Deputy will ensure that any arresting officer, transporting agency or law enforcement official secures all weapons and ammunition before entering the booking Sally port of the Public Safety Building Jail.

II. Medical Clearance

- A. When a person is brought to the Public Safety Building Jail by an arresting officer, transporting agency or law enforcement official, the Booking Deputy will determine whether or not the person has an injury or illness which should be evaluated and possibly treated before he/she is accepted into custody. If a question arises as to the



medical status of a person, the medical staff should be consulted as to whether the arrested person may be accepted into the jail. The medical staff will make a recommendation to the Booking Deputy.

- B. If a serious injury or illness is detected, the Booking Deputy will inform the arresting, transporting or law enforcement official that the person will not be accepted into the jail's custody until the person receives medical clearance.
- C. The Booking Deputy will provide the arresting officer, transporting agency or law enforcement official a copy of the Medical Clearance/Referral Report form. The officer, agency or official will be directed to transport the person to a hospital, emergency room or other medical facility where the person can be seen and evaluated by a medical professional.
 - 1. If special instructions for care of the person are included either on the Medical Clearance/Referral Report form or a separate "care" sheet, the intake-screening nurse will review the instructions. The intake-screening nurse will determine if the medical staff is reasonably able to follow the instructions and if the person can be safely held in the jail. If the medical staff states the person may be admitted into the jail, the Booking Deputy will continue with the admissions process.
 - 2. If the person is not medically cleared for admission, the Booking Deputy will contact Jail Administration or the OIC for further instructions. The Booking Deputy will notify the arresting officer, transporting agency or law enforcement official of the refusal to accept the person.
- D. The Booking Deputy will ensure the Medical/Referral Report form is forwarded to medical staff, and the pink copy of the report may be given to the arresting officer, transporting agency or law enforcement official if requested.
- E. When a person is brought to the Public Safety Building Jail by an arresting officer, transporting agency or law enforcement official the Booking Deputy will determine whether or not the person has a serious mental health issue or is too mentally unstable (i.e. extremely suicidal, etc.) to be housed in the Dane County Jail. If the Booking Deputy or mental health staff determines the person appears to be a danger to himself/herself or others, the Booking Deputy will inform the arresting officer, transporting agency or law enforcement official that the person will not be accepted into the jail's custody until the person receives a clearance from Crisis Intervention.
- F. If a prisoner is taken to the segregation area without completing the medical intake procedure, the Booking Deputy will inform the medical intake nurse and provide the nurse with the prisoner's name and any known medical issues. The medical intake nurse is to be notified right after the prisoner is placed in segregation and the Booking



Deputy will make an entry in the jail incident log regarding the notification. The medical intake nurse will then check historical medical records to determine if the prisoner has any known medical needs that will need to be addressed before the prisoner completes the medical intake procedure. If the prisoner is new to the Dane County Jail, the Booking Deputy should ask the prisoner if there are any medical issues that will need to be addressed. The Booking Deputy will make an entry in the jail log regarding the prisoner's answer. If a prisoner refuses to provide the medical information, this will also be noted in the jail incident log.

III. Incarceration Authorization of Adult Offenders

- A. The Dane County Jail will not accept a person into custody unless there is proper and lawful authorization to incarcerate the person.
- B. When a person is brought to the Public Safety Building for admission, the Booking Deputy will require the arresting officer, transporting agency or law enforcement official to deliver a copy of the document(s) authorizing incarceration of the person, and will check such document(s) for authenticity and completeness.
- C. In order to accept a person into custody, the Booking Deputy must have one of the following complete and authentic documents:
 - 1. Dane County Jail Booking Form - is completed by the arresting officer during the admissions process and will include the following information: name and address of the arrested person, date of arrest, lawful charges of the arrest including a specific statute or ordinance allegedly violated, other information obtained as noted on non-shaded portion of the form, and the signature of the arresting officer.
 - 2. Probable Cause Affidavit and Judicial Determination Form - is completed by the arresting officer during the admissions process and is required when a person is admitted to the jail on an arrest with new charges. It is not needed under a warrant arrest or a probation hold. The form will include the following information: arresting officer information, summarization of the probable cause, officer's name (signature and date), and notary public stamp (date and signature).
 - 3. Summons, Municipal Ordinance Arrest, Complaint or Uniform Traffic Citation - each of these documents must be accompanied by the Dane County Jail Booking form and a Probable Cause Affidavit and Judicial Determination form, signed by the arresting officer, transporting agency or law enforcement official.



4. Warrant, Ordinance Warrant or Bench Warrant - each document will include the following information: date of issue, signature of judge, name and statute number of the crime, name and physical description of the person arrested.
5. Judgment of Conviction and Sentence to the County Jail/Fine Order - the document must be original and include the following information: date of issue, signature of judge or official stamp of the Clerk of Courts, name and statute number of the crime, name of the person to be confined, and requirement to be fulfilled to satisfy commitment.
6. Order to Detain - document is issued by a probation and parole agent and it authorizes the jail to detain the agent's client. The form will include the following information: date of issue, name of person to be confined, signature of probation and parole agent or field supervisor. The jail will accept an agent's verbal order to detain his/her client. However, the agent must provide a hard copy via facsimile or personal delivery as soon as practical.
7. NCIC or CIB Hit Printout Teletype - the teletype must contain the following information: name of person to be confined, name of charge, requirement to be fulfilled to satisfy release, and the agency authorizing the NCIC or CIB entry. Before the Booking Deputy accepts a person on this basis, he/she must confirm the validity of the NCIC or CIB hit with the issuing agency, and whether the agency will transport the person from the Dane County Jail. If the hit is from an out-of-state agency, the Booking Deputy must verify the NCIC or CIB hit. If the hit is verified, and it is during non-business hours (business hours 9am-5pm Monday through Friday), the Dane County Jail will hold the person until the out-of-state agency can confirm whether or not they are willing to extradite.
8. Writ of Habeas Corpus Ad Prosequendum or Writ of Habeas Corpus Ad Testificandum - the copy will include the following: date of issue, official stamp of the Clerk of Courts, date of filing of document, and name of person to be confined.
9. Execution Commitment (on civil arrest for judgment recovery) - the original will contain the following information: date of issue, signature of a judge, and name of person to be confined.
10. Arrestees who have been identified, either through information the arrestee gave to the arresting officer for inclusion on the booking form, or through other means, as foreign nationals (legal citizens of countries other than the USA, its territories or possessions) should be asked by the Booking Deputy to verify this information. The Booking Deputy should then determine whether the country of the arrestee's citizenship requires (or requests) consular notification of the arrest of one of its



citizens. Guidelines for consular notification are kept in Central Booking. The Booking Deputy will assist foreign nationals in the appropriate consular notification. In instances where it is not mandatory we notify the Consulate, the Booking Deputy shall offer the arrestee the option to have their Consulate notified. This offering shall be documented in the Jail Incident Log.

If, during the process described above, the Booking Deputy determines that a potential violation of Federal law exists regarding the legality of the arrestee's residency status within the USA, the Booking Deputy should contact the Immigration and Nationalization Service (INS). The INS will then be responsible for determining whether a suspected violation of Federal law has occurred, and will then place an INS detainer on the arrestee.

- D. If the Booking Deputy is unsure as to whether or not an incarceration is proper or authorized he/she should contact a supervisor.
- E. The Central Booking Deputy will ensure a copy of the appropriate incarceration document is filed in the prisoner's records file. Any documents not required by the jail will be returned to the arresting officer, transporting agency or law enforcement official.

IV. Incarceration Authorization of Youthful Offenders

- A. In accordance with Wisconsin State Statute 938.02(1), the Dane County Jail will incarcerate any person who has attained the age of 17 years or older, and is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance. The following admission procedure applies:
 - 1. All booking documentation described in Section III, Incarceration Authorization of Adult Offenders, applies to persons age 17 or older.
 - 2. Jail clerks should use the normal judicial status for persons age 17 or older.
- B. In accordance with Wisconsin State Statute 938.183, the Dane County Jail may incarcerate any person age 15 and 16 under any of the following circumstances:
 - 1. The person is alleged to have committed a special circumstances battery (WI State Statute 940.20 or 946.43) while housed in a secure facility **and** the person has been previously adjudicated delinquent.
 - 2. A juvenile who is alleged to have attempted or committed a violation of Statute 940.01 (1st degree intentional homicide) or to have committed a violation of



Statute 940.02 (1st degree reckless homicide) or 940.05 (2nd degree intentional homicide).

3. A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of, or has pending, a previous violation following waiver of jurisdiction. Attention Jail Clerks: normal judicial status will be used in this circumstance. However, if the previously waived adult court charge has been dropped, or if the youthful offender has been acquitted, the previously waived charge no longer exists. As such, the youthful offender is considered a first time offender. Housing and court jurisdiction decisions are based on this concept.
 4. A juvenile is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation over which the court of criminal jurisdiction had original jurisdiction under this section or if proceedings on a previous violation over which the court of criminal jurisdiction has original jurisdiction under this section, are still pending. (These would be the charges listed previously in Section IV, B, 2.)
 5. Order for Detention - this document stipulates that the youthful offender has been waived into the jurisdiction of the adult courts. The copy will include the following information: date of issue, signature of a judge, and name of person to be confined.
- C. The Dane County Jail will incarcerate 14-year-old juveniles if the offender is waived into adult court *and* upon the order of a judge. All other youthful offenders under the age of 15 will be held in secure detention at the Juvenile Reception Center (JRC). The following booking procedures apply to youthful offenders under the age of 15 with an original adult jurisdiction charge:
1. The youthful offender under 15 will undergo booking into the Dane County Jail. Upon completion of the booking process, the youthful offender will be returned to the secure custody of the JRC.
 2. The booking documentation is tracked in the same fashion as adult offenders.
- Attention Jail Clerks:** The normal adult judicial status will be used, however, the location of the offender will indicate Juvenile Reception.
- D. Juvenile traffic, boating, snowmobile, and ATV violators are incarcerated as follows:
1. Any person age 17 and over can be incarcerated in the Dane County Jail for traffic, boating, snowmobile, and ATV offenses.



2. Any person age 16 and under will not be incarcerated in the Dane County Jail on traffic, boating, snowmobile, and ATV offenses. These persons should be referred to the JRC.
3. If a juvenile has been "waived" (as listed above in Section IV, B, 3) and arrested on criminal traffic, criminal boating, criminal snowmobile or criminal ATV offenses, the individual may be incarcerated in the Dane County Jail.

Attention Jail Clerks: There are special booking procedures for youthful offenders between the ages of 15 and 16.

- E. For youthful offenders between the ages of 15 and 16, the jail clerks should use the following special procedures:
 1. If "waived" and the offender is being booked for the first time on the waived charge, use the waived juvenile judicial status code.
 2. The normal judicial status will be used for each subsequent booking for either new charges or subsequent bookings on the originally waived juvenile charge.
 3. The normal judicial status will be used if the offender is admitted on new original adult jurisdiction charges. (Listed previously in Section IV, B, 2.)
- F. The Dane County Jail will hold offenders of Aftercare (juvenile probation) once the person reaches 18 years of age. The inmate will not need to be kept separate from other inmates even though it is a juvenile probation hold.

Attention Jail Clerks: The DOC on-call supervisor should be contacted at 608-288-3375 to arrange transport of the inmate.

V. Actions in the Booking Search Area

- A. The arresting officer, transporting agency or law enforcement official initiates preliminary collection of the person's property and completes the following paperwork: Dane County Jail Booking Form, Probable Cause Affidavit and Judicial Determination Form, and Pre-Booking Medical Form.
- B. The Booking Deputy takes the following actions: conducts a preliminary medical assessment of the person to include a preliminary breath test (PBT). The Booking Deputy will document any signs of alcohol or drug use or impairment in the Jail Log. If there are signs of alcohol use and the person refuses a PBT the intake-screening nurse will determine if the person should be accepted and if they need to be placed in segregation for medical observation. If the person refuses a PBT and there are no



signs of intoxication the person may be sent to Male Dorm or Female Housing after being cleared by the nurse. An inmate that was under the influence of alcohol at booking may not leave the first floor of the PSB until they register .00 on a PBT or a period of time passes that will ensure all alcohol has dissipated from their system.

- C. The Booking Deputy will initiate a blue Prisoner Routing Slip; inventory the person's money; review and verify the Dane County Jail Booking form; ensure that the arresting officer has completed a Probable Cause Affidavit and Judicial Determination form; place all admission documentation in a yellow property bag; and conduct a full search of the prisoner before entry into the jail proper.
- D. The Booking Deputy will ensure all monetary notes, coins, certificates, and unusual or antique coins have been removed from the person's possession. The Booking Deputy advises the newly admitted prisoner that the money will eventually be secured and accounted for in a cash register, and he/she will receive a receipt for the money. The prisoner is further advised that any certificates and unusual or antique coins will be stored with his/her property, and will be returned upon release from custody.
- E. The Booking Deputy will use the Morpho Fast Touch ID during the booking procedure. The use of the Fast Touch ID will help ensure the proper identification of the person being booked into the jail. If the newly admitted prisoner has never been booked into the Dane County Jail, and the Morpho Fast Touch ID identifies a state ID number, the Booking Deputy shall run a criminal history on the prisoner to ensure proper identification.

VI. Searches During Admissions

- A. All persons admitted to the Dane County Jail will be searched during the admissions process. Searches of prisoners during admissions are conducted to detect weapons, drugs or other contraband, and ensure a safe jail environment for prisoners and staff.
- B. The Booking Deputy will conduct a full search of each person admitted into the jail, in the booking search area of the Public Safety Building Jail. If required, the Booking Deputy or designated deputy will conduct a strip search of newly admitted persons in accordance with the policy on Searches of Prisoners. The deputy conducting the search will document the results in accordance with the policy on Searches of Prisoners.

VII. Telephone Calls at Admission

- A. The Booking Deputy will allow all newly arrested prisoners access to the telephones in Central Booking following the completion of necessary admission procedures in the booking search area.



- B. Prisoners will be allowed to make a reasonable number of calls to arrange bail, contact an attorney or make other necessary notifications.
- C. All telephone calls are collect, regardless if the call is local or long distance.
- D. A deputy will assist a prisoner with the use of the telephone if the prisoner is incapable of using the telephone for any particular reason, and the deputy may talk directly with the party called to explain the prisoner's situation (e.g., the charges against the prisoner, the amount of bail, the location of the jail, and general bail procedures).

VIII. Actions in the Intake Area

- A. Booking Deputy -- enter data from the Dane County Jail Booking form into the computer; request prisoner to sign for a copy of the Dane County Jail Rules; conduct the Pre-booking Medical Screening of the prisoner and advise the Medical Intake Nurse of suicide risks and/or medical complications; forward prisoner's money to Booking Intake Clerk where it is placed into the prisoner's commissary account; forward all pertinent prisoner admission documentation to the appropriate internal department (Mental Health, Medical, Movement Team, and any other pertinent area).
- B. Prisoners may release money to a friend or relative. The prisoner must complete a Release of Funds form authorizing such action. All money existing in the prisoner's commissary account will be released to the prisoner upon release from jail. The prisoner must sign a receipt in order to receive their money upon release. All certificates, personal checks, and unusual or antique coins removed from the prisoner during the admissions process will be returned to the prisoner upon release from custody.
- C. Duties of the Sheriff's Aides after a prisoner has completed the Medical Intake Questionnaire with the Booking Intake Nurse include: photograph prisoner; fingerprint prisoner; create prisoner locator card and identification bracelet; conduct a thorough inventory of property and document the same on the Prisoner Property Record. The Sheriff's Aide shall also print a Jail Release Form through Picturelink and an Arrest Summary Report through Spillman.
- D. Prisoners may release all of their property except for a change of clothes to a friend or relative. The prisoner must complete a General Request form authorizing such action. All of the prisoner's personal property will be released to the prisoner upon release from the jail. The prisoner must sign the Prisoner Property Record stating he/she has received all of his/her personal property.



- E. Movement Deputies assigned to the first floor will be responsible for the following: placement of newly-arrested prisoner in the correct housing areas according to custody status; verify and release prisoners according to release status (i.e. to self, to probation/parole agent, other law enforcement agency, etc.); assist deputies in the various housing areas located on the first floor.

IX. Issuance of Items to Prisoners

- A. Prisoners admitted to the Dane County Jail will be issued a uniform (shirt and pants), shoes, bedding, towel, washcloth, and hygiene items. These items will provide prisoners in the Dane County Jail the opportunity to maintain adequate standards of hygiene care.
- B. Deputies will ensure prisoners return all issued items when released from custody. A prisoner will pay for any missing or damaged item of issued jail property. An item cost list will be maintained at each housing area. The prisoner will complete a General Request form authorizing the release of the necessary money to the bookkeeper to pay for the missing item(s). Deputies will make an appropriate computer entry when an item of jail property is issued or exchanged for a prisoner.

X. Orientation of New Prisoners

- A. The deputies assigned to a "temporary" housing area (i.e. female receiving, female segregation, male receiving, male segregation) will attempt to address any questions a new prisoner may have.
- B. Deputies assigned to the Public Safety Building Jail third and fourth floor housing areas, and the Ferris Center are responsible for providing a detailed orientation to each newly assigned prisoner, and attempt to answer any specific questions they may have.
- C. Deputies assigned to the City County Building Jail will attempt to address any questions a newly assigned prisoner may have by direct contact with the prisoner, through a General Request form, during cell inspections or by the prisoner viewing the jail information channel on the television.

XI. Supervisors

- A. Will routinely observe the admissions process to determine that procedures are conducted in accordance with policy and procedure.
- B. Will routinely review documentation to see that official records are accurately completed.



- C. Will train or retrain jail staff as necessary in the admissions procedures.
- D. Will counsel employees as necessary and appropriate when procedures are not appropriately followed.

Plyler vs. Doe, 1982

- A Summary -

In 1982, the Supreme Court rules in *Plyler v. Doe*, 457 U.S. 202 (1982), that public schools were prohibited from denying immigrant students access to a public education. The Court stated that undocumented children have the same right to a free public education as U.S. citizens and permanent residents. Undocumented immigrant students are obligated, as are all other students, to attend school until they reach the age mandated by state law.

Public schools and school personnel are prohibited under *Plyler* from adopting policies or taking actions that would deny students access to education based on their immigration status.

Based on the Supreme Court's ruling, public school districts should consider the following practices in working with ELL students:

- School officials may not require children to prove they are in this country legally by asking for documents such as green cards, citizenship papers, etc. They may only require proof that the child lives within the school district attendance zone, just as they might for any other child.
- Schools should be careful of unintentional attempts to document students' legal status which lead to the possible "chilling" of their *Plyler* rights.
- **The following school practices are prohibited:**
 - Barring access to a student on the basis of legal status or alleged legal status.
 - Treating students disparately for residency determination purposes on the basis of their undocumented status.
 - Inquiring about a student's immigration status, including requiring documentation of a student's legal status at initial registration or at any other time.
 - Making inquiries from a student or his/her parents which may expose their legal status.
- **Federal Program Requirements** - Federal education programs may ask for information from parents and students to determine if students are eligible for various programs, such as Emergency Immigrant Education. If that is the case, schools should ask for voluntary information from parents and students or find alternative ways of identifying and documenting the eligibility of students. However, schools are not required to check or document the immigrant status of each student in the school or of those students who may be eligible for such programs. The regulations do not require alien registration numbers or documentation of immigration status.
- **Social Security Numbers** - Schools should not require students to apply for Social Security numbers. If schools decide to pass out Social Security registration forms to assist the Social Security Administration, they must tell parents and students, in appropriate languages, that the application forms are merely a service and it is up to the parents and students whether the applications are actually filed. They should stress that schools will not monitor the filing of these applications. Additionally, schools should not require any student to supply a social security number.
- **School Lunch Programs** - In order to qualify for Free or Reduced Lunch Programs, all applicants are required to furnish either of the two following types of information:

- Social Security numbers of all household members over the age of 21, should they have one
- For all household members above the age of 21 who do not have a Social Security number, an indication of the application that he or she does not possess one.
- If a student or household members over the age of 21 do not have a Social Security number, "none" should be written in that space or another identifying number could be assigned by the school.
- Parents and students should be reminded that the Family Educational Rights and Privacy Act (FERPA) prohibits any outside agency, including the Immigration and Naturalization Services (INS), from getting this information without obtaining permission from the student's parents or a valid court order.
- School lunch programs are interested in determining household income, not in determining a student's legal status.
- **Communication with INS** - Any communication to INS initiated by a school or school official concerning a specific student is prohibited. If parents and/or students have questions about their immigration status, school personnel should refer them to legal service organizations, immigrant rights organizations, or local immigration attorneys. They should not advise immigrants to go directly to INS offices without first getting proper advice from an attorney or immigrant rights advocate.
- **Requests for information by INS** - School personnel are prohibited from cooperating with INS in any way that may jeopardize an immigrant students' right of access (with the exception of the administration of F-1 and J-1 visas). INS requests for information can only be released upon the presentation of a valid subpoena. All school personnel should be advised of this policy. If a subpoena is presented, it may be advisable to check with an attorney to properly check into the validity of the subpoena.
- **Requests by INS to enter a school** - School personnel should not cooperate with INS in any manner that jeopardizes immigrant students and their right of access. The school principal should meet with INS officials in the front office with a credible witness present, deny the INS officials consent, and request to see a legal warrant. If a warrant is presented, the principal should determine that it:
 - Lists the school by its correct name and address
 - Lists students by name
 - Be signed by a judge
 - Be less than ten days old
 - Be served by an INS officer with proper identification.
 - To protect other students in the school, the principal should bring the INS officials to the office and request that they remain there while the named student(s) is brought to them. The principal should immediately inform the Superintendent and school attorney.

School District Personnel should always consult an attorney to clarify their duties and responsibilities under Plyler. This document is intended solely for guidance.

Source:

"Immigrant Students: Their Legal Right of Access to Public Schools. A Guide for Advocates and Educators" by John Willshire Carrera, Esq. National Coalition of Advocates for Students. Boston MA

13.1 Resolution Affirming the City of Ithaca's Appreciation of its Immigrants and Urging the U.S. Congress to Enact Comprehensive Immigration Reform

1. WHEREAS, we believe in the dignity of all City of Ithaca residents, regardless of immigration status, and recognize the importance of our immigrants' many contributions to the social, religious, cultural and economic life of the City; and
2. WHEREAS, according to the 2000 U.S. Census, one out of every ten City of Ithaca residents over the age of 18 is a non-citizen; and
3. WHEREAS, pursuant to Ordinance Number 2003-13, adopted on July 9, 2003, the Common Council of the City of Ithaca enacted a new Article I of Chapter 215 ("Human Rights Protection"), which Article is entitled "Antidiscrimination;" and
4. WHEREAS, among other things, said Article extended human rights protection to City residents regardless of immigrant or citizenship status; and
5. WHEREAS, the City of Ithaca has a major stake in a just and fair immigration system at the federal level; and
6. WHEREAS, our nation's immigration system continues to be broken, with the federal government pursuing an ineffective enforcement-only strategy that attempts to make the nation's antiquated immigration laws fit current realities; and
7. WHEREAS, our nation urgently needs legislation to correct the failings of our immigration system, to improve public safety and national security, to protect all workers regardless of immigration status from mistreatment by employers, to restore civil rights and liberties to all, to strengthen families, communities and our economy; and
8. WHEREAS, the failure to achieve comprehensive immigration reform undermines respect for *all* immigrants and engenders an atmosphere of divisiveness and mistrust that is unhealthy for our society, and especially harmful for a diverse community like Ithaca; and
9. WHEREAS, our broken immigration system has allowed persistent unequal administration of justice based on race or national origin at the local level as documented by the Southern Poverty Law Center in its September 2009 report "*Climate of Fear: Latino Immigrants in Suffolk County, N.Y.*," and which has undermined effective community policing by discouraging the reporting of crime and cooperation with prosecutors in immigrant communities due to well-founded fears of immigration enforcement action against them, thereby putting entire communities at risk and undermining public safety for all; and
10. WHEREAS, for the past decade federal immigration enforcement agents have been conducting raids of people's homes without specific purpose or permission from a court of law and incarcerating anyone who cannot produce immigration status documents,

resulting in minimal advances for national security and destructive effects on families, including children who are U.S. citizens by birth returning home from school to find that their parents have been taken away; and

11. WHEREAS, pursuant to the Resolution titled "Statement on Immigration Enforcement," adopted on April 4th, 2007, the Common Council of the City of Ithaca reaffirmed its Police Department's traditional practice of not participating "in actions against immigrants solely on the basis of specific residents' immigration status" and treating immigrants "with the same respect as all other City residents;" and

12. WHEREAS, despite the aforementioned City resolution, our federal government's continued pursuit of a strict enforcement-only strategy could have severe local consequences, including: the division of families in our City; the criminalization of socially beneficial work being performed by local agencies, churches and businesses which work with undocumented workers; the elimination of judicial review and due process for valued City residents; and the undermining of trust between City residents and their government; and

13. WHEREAS, comprehensive immigration reform would help build healthy families and communities in our City by eliminating the tremendous backlog in family immigration faced by U.S. citizens and documented immigrants; and would create legal and orderly processes for those who want to come to the United States to work; and

14. WHEREAS, comprehensive immigration reform would allow undocumented immigrants who have been living and working in the United States to emerge from the shadows and enter a path towards earning permanent legal status and citizenship; and

15. WHEREAS, comprehensive immigration reform would free up enforcement resources to focus on those who pose a serious risk to national security or have violent criminal records; and

16. WHEREAS, comprehensive immigration reform would allow employers who are trying to follow the law to do so without being undercut by unscrupulous employers who drive down wages and workplace standards; and

17. WHEREAS, comprehensive immigration reform would boost our country's ailing economy by raising incomes for all workers, yielding over \$1.75 trillion to our GDP over a ten year period, generating billions in additional tax revenue and consumer spending, and supporting hundreds of thousands of jobs, according to "*Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform*," a January 2010 joint report by the Immigration Policy Institute, Center for American Progress, and U.C.L.A.; and

18. WHEREAS, said study's findings have been publicly affirmed by the Cato Institute, which in its August 2009 study, "*Restriction or Legalization*," reached similar

conclusions, with both studies also concluding that attempting to mass deport millions of unauthorized workers, taxpayers, and consumers would only damage our economy; and

19. WHEREAS, comprehensive immigration reform would support our City's commitment to the full integration of newcomers by providing immigrants with quality English instruction and the tools necessary for meaningful citizenship; and

20. WHEREAS, the Honorable Kirsten Gillibrand, U.S. Senator of the State of New York, requested in writing in February 2009 that the Department of Homeland Security immediately cease their practice of warrantless raids; and

21. WHEREAS, the Honorable Charles E. Schumer, U.S. Senator of the State of New York and Chairperson of the Senate's Subcommittee on Immigration Affairs, has declared his intention to introduce comprehensive immigration reform legislation to the Senate; and

22. WHEREAS, a bill, the "Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009," H.R. 4321, was introduced to the House of Representatives on December 15th, 2009 by Representative Solomon P. Ortiz from Texas, and is a significant step towards comprehensive immigration reform; now therefore be it

1. RESOLVED, that the Common Council of the City of Ithaca calls on the U.S. Congress to enact comprehensive immigration reform that will include replacing our ineffective enforcement-only policy; ceasing the practice of warrantless raids; and providing a pathway for undocumented immigrants towards earning legal permanent status and citizenship; and further

2. RESOLVED, that the Common Council of the City of Ithaca expresses its appreciation to all people from around the world who have made Ithaca their home and in so doing have helped to make Ithaca one of the most vibrant, safe and attractive communities in the United States; and further

3. RESOLVED, that the City of Ithaca's Clerk send copies of this resolution to U.S. Senators Schumer and Gillibrand; to Representatives Maurice Hinchey and Michael Arcuri; and all the other members of the Honorable New York State Congressional delegation.

MINUTES OF THE IMMIGRATION TASK FORCE
OF THE DANE COUNTY BOARD OF SUPERVISORS
Meeting of February 15, 2010

The Immigration Task Force of the Dane County Board of Supervisors met at the Middleton Public Library, 7425 Hubbard Ave., Middleton, Wisconsin, on Monday, February 15, 2010 at 5:30p.m.

PRESENT: Bidar-Sielaf, Hawkins, Hesselbein, Mahoney, Natera, Yudice.

OTHERS PRESENT: Pabellon

ABSENT: Bauer, Hampton

1. Call to Order. Meeting called to order at 5:40 p.m.
2. Approval of Minutes. Natera moved, seconded by Hawkins, to recommend approval of the minutes of February 10, 2010. *Motion carried, 6-0.
3. Explanation of Listening Session by Chair Yudice. Yudice welcomed everyone for attending. Yudice explained how the Task Force was formed, described its duties, and clarified that the purpose of the session was not to debate or discuss national immigration policies but rather to see how the County can improve access to its services for the immigrant community. Yudice also explained that speakers will be limited to 5 minutes and those wanting to speak must sign up to do so. Speakers would be called by the order on the sign up sheet. Yudice also explained that the meeting would be scheduled for one hour. All members introduced themselves prior to taking public comment.
4. Public Comment.
 - A. The first speaker was Blanca Merino. Merino informed the committee she was a productive member of the community, paid taxes, and was a social worker. Merino explained that to remain productive, and to accomplish simple tasks like obtain a library card and a bank account, she needs to have a form of I.D. and a driver's license. Merino also mentioned that she will be charged more for insurance if she does not have a license or driver's card.

Mahoney informed Merino that he has asked the Legislature to pass the Driver's ID card bill.

Bidar-Sielaf asked whether Merino has had any issues related to reporting crimes in light of her concerns. Merino responded she had not.

Yudice asked whether Merino has had any issues access social services from the County. Merino responded that she did not have any such issues, because she has good references, and that the lack of ID and obtaining a license is the main problem.

- B. The second speaker was Bertha Solono. Solono informed the Task Force that she has been a licensed cosmetologist for 18 years, and this has enabled her to work and obtain health insurance. Solono also explained that her driver's license is about to expire and this may jeopardize her ability to remain working. Solono expressed her concern about not knowing her legal rights and relayed an incident when a police officer cited her for speeding, rather than just issuing a warning.

Mahoney informed Solono that he believed it was very important for everyone to obtain a driver's license and auto insurance. Mahoney also explained that a Driver ID card was a good idea.

Solono wondered whether the Driver ID card, if it were available, would be treated by law enforcement the same way as a real driver's license. Solono expressed a concern that because it was a different form of ID, holders of the ID would be subject to discrimination.

Bidar-Sielaf asked other members of the committee if she could present her own views on the issue. Discussion by Yudice, Hawkins, Hesselbein, and Natera followed regarding Bidar-Sielaf's request, and the group agreed that the presentation of views should occur after public comment had been completed.

Solono asked the Task Force to inform her about what rights she may have when being pulled over by the police, and Yudice explained that the committee could not provide legal advice.

Yudice asked whether Solono was comfortable contacting police if necessary, and Solono responded she was because she had a driver's license.

- C. Yudice asked if Morgan Young would like to speak, but Young declined.
- D. The third speaker was Chris Ochoa. Ochoa informed the committee that he was a criminal defense attorney, and his concern involved his Latino clients. Ochoa explained that he practices law in both Green and Dane Counties, and has noted a difference in how law enforcement in the two jurisdictions handle the issue of reporting individuals to ICE. Ochoa further explained that because jail time may result in a report to ICE and possible deportation, many

of his clients refuse to give a plea, and he is forced to litigate those cases at greater expense to taxpayers.

Mahoney invited Ochoa to call his office so that more information could be exchanged.

- E. The fourth speaker was Carlos Ramirez. Ramirez also expressed concern about how he would manage to work and take care of his family if his driver's license is not renewed. Ramirez explained that he was afraid that many in the immigrant community would drive anyway, get into an accident, but refuse to assist law enforcement and speed away from the accident.

Yudice asked whether a lack of driver's license would make Ramirez fearful whenever he had to take his children to school, and Ramirez stated he would be afraid. Yudice asked whether a lack of a driver's license would make him hesitate contacting the police, and Ramirez stated that he would have to think twice before doing so.

- F. The fifth speaker was Brenda Gonzales. Gonzales reminded everyone on the Task Force committee that these issues impact the community as a whole. Gonzalez also informed the committee that among those who do not feel comfortable contacting the police are victims of domestic violence.

Yudice asked whether accessing county services is also difficult. Gonzales informed the committee that in her experience accessing linguistic services throughout the county remains difficult, but that in the field of health care, interpretative services are improving.

- G. The sixth speaker was Elena Warshauer. Warshauer informed the committee she was a student at Edgewood, and that it was her opinion that much more needed to be done to grant equal rights to immigrants. Warshauer asked the committee to identify what steps the County has been doing to ensure equal rights to immigrants. Yudice explained the purpose of the committee in response.
- H. The seventh speaker was Yvonne Geertz. Geertz introduced herself as an immigrant, Board member of the Worker's Rights Center and member of the Immigrant Worker's Union. Geertz explained that the Sheriff's decision to report all offenses to ICE is not only unfair, but a violation of an immigrant's Due Process rights.
- I. The eighth speaker was Sandra Campos. Campos explained that like other speakers, she needs a driver's license to work and feel safe. Campos informed the committee that after-school programs are now requiring the presentation of an I.D. before a parent can pick up their child. Campos also stated that she is afraid to drive in the snow for fear of being stopped by law

enforcement. Campos advocated the passage of a law that would grant access to licenses for undocumented workers.

Mahoney asked whether Campos had heard that the fear of not reporting crimes to law enforcement was the result of not having an I.D. or for other reasons. Campos explained by giving an example of how the Madison Police Department demanded to see I.D. from her brother to verify his address.

- J. The ninth speaker was Rocio Molina. Molina introduced herself as an attorney practicing immigration law. Molina explained that she has seen many instances where victims of domestic violence do not want abusers to be deported because of the subsequent loss of child support and other reasons. Molina also informed the committee that she cannot advise clients to report domestic violence because of the fear of deportation. Molina further informed the committee that remedies available to immigration litigants are not useful for those individuals if they do not hold a driver's license. Molina explained that many individuals are held in the ICE center for long periods of time, sometimes two months, and because of the delay many will stipulate to a deportation.

Yudice asked whether Molina has seen any individuals deported because of the length of time before a hearing, and Molina responded that she had and that she had seen individuals sent to the ICE center after committing various types of violations – from a minor incident to sexual molestation.

- K. The tenth speaker was Isaurio Garcia. Garcia informed the committee that he was a father, and as such he was worried about driving and being able to take care of his family. Garcia was specifically worried about how he would be able to obtain an I.D which is necessary to do just about everything.

Bidar-Sielaf asked whether Garcia's children sense his fear and apprehension. Garcia responded that he believed this was the case, and he doesn't want anyone to get into trouble.

- L. The eleventh speaker was Nadia Noboa. Noboa explained that from the testimony today, the common theme was fear and that the County has a duty to address that fear. Noboa suggested additional attempts at outreach and education for the immigrant communities so that these communities will learn that more information about what services and actions take place at the courthouse.

- M. The twelfth and final speaker was Ignacio Retana. Retana informed the committee that the lack of a license can be the difference of working for \$15 an hour and \$8 an hour in certain circumstances. Retana explained that school aged children are unable to access school programs if it requires access to a car and they are unable to obtain a license. Retana stated that

by having law enforcement notify ICE for every incident, no matter how minor, that it is becoming impossible for undocumented workers to obtain residency and access services. Retana also stated that such policies are hurting families and ripping kids apart from their fathers or mothers.

Mahoney asked whether Retana was referring to a specific case that resulted in a child being separated from a father. Retana explained that it was an issue regarding child support but he was unclear as to specifics. Mahoney informed Retana that the Sheriff's Department's policy is that if an individual is paying some amount to child support, the individual will not be arrested for the outstanding amount.

Hesselbein asked Retana where he worked, and Retana answered he worked in the Madison schools of Cherokee and Wright.

Yudice then notified everyone that the public comment period had concluded unless anyone else wanted to speak. Yudice also invited everyone to stay if they wanted to hear the Task Force's discussion on next steps.

5. Discussion Regarding Timetable, Information That Needs To Be Collected And Changes That May Need To Be Made Prior To The Next Listening Session.

Mahoney notifies committee that he has to leave in order to meet another commitment.

Yudice informed the committee that the deadline to produce a report would remain in April, and invited other members to suggest changes that need to be made for the next sessions, including any changes in date, location, and format.

After much discussion, the committee agreed that the date of the next meeting will be changed to March 8, 2010 at 6:30 p.m. to 7:30 p.m. at the Stoughton Fire House. Yudice asked Pabellon to revise the letter to agencies and to forward that to committee members. Bidar-Sielaf asked Pabellon to have the revised date forwarded to the other Task Force members.

Discussion then ensued regarding the date and location for a fourth listening session. Yudice again reminded everyone that the time table expects a report by April. The Committee agreed that the fourth session will be on March 23, 2010 from 6:00 p.m. to 7:00 p.m. on the East Side of Madison with the location being either Sennett, Lafollete or Whitehorse schools - depending on availability. Yudice agreed to secure the location.

Yudice explained that the time table for the committee's work calls for a report to be completed, and therefore a discussion needed to be held on the format of the report, the contents of the report, who would be responsible authoring the report,

and the final recommendations. Discussion by Yudice, Natera, Hawkins, Hesselbein, and Bidar-Sielaf about format, length, authorship and content of the report. Yudice agreed that these issues should be discussed during the next two listening sessions in order to meet the committee's deadline.

6. Adjournment. Hawkins moved, seconded by Hesselbein, to adjourn. *Motion carried 5-0. The committee adjourned at 7:28p.m.

MINUTES OF THE IMMIGRATION TASK FORCE
OF THE DANE COUNTY BOARD OF SUPERVISORS
Meeting of February 10, 2010

The Immigration Task Force of the Dane County Board of Supervisors met at the Catholic Multicultural Center, 1862 Beld St., Madison, Wisconsin, on Wednesday, February 10, 2010 at 5:30p.m.

PRESENT: Bauer, Bidar-Sielaf, Hampton, Hawkins, Hesselbein, Mahoney, Natera, Yudice.

OTHERS PRESENT: Pabellon

1. Call to Order. Meeting called to order at 5:39 p.m.
2. Approval of Minutes. Hesselbein moved, seconded by Bauer, to recommend approval of the minutes of January 14, 2010. *Motion carried, 9-0.
3. Explanation of Listening Session by Chair Yudice. Yudice explained how the Task Force was formed, described its duties, and clarified that the purpose of the session was not to debate or discuss national immigration policies but rather to see how the County can improve access to its services for the immigrant community. Yudice also explained that speakers will be limited to 5 minutes and those wanting to speak must sign up to do so. Speakers would be called by the order on the sign up sheet. Yudice also explained that the meeting would be scheduled for one hour.
4. Public Comment. All members introduced themselves prior to taking public comment.
 - A. The first speaker was Lorenzo Camacho of Madison, WI. Camacho emphasized that the main difficulty for immigrants in obtaining employment was the necessity of having a driver's license. Camacho explained it is difficult for both documented and undocumented workers to obtain employment in areas outside of Madison without a driver's license. Camacho informed the task force that this was not the issue a few years ago.
 - B. The second speaker was Rogelio Bances from Madison, WI. Bances informed the Task Force that the biggest obstacle facing the immigrant community is the need for identification to obtain a job and even a bank account. Bances explained that the immigrant community wants to be compliant with the law, but the inability to obtain identification makes it difficult. Yudice asked whether there were any specific county services

that he believed the immigrant community could not access and why. Bances explained that some members of the immigrant community do not have a social security number and therefore cannot access medical services, employment services, etc. Yudice then asked the previous speaker Camacho whether there were any specific county services that he believed the immigrant community could not access and why. Camacho concurred with Bances.

- C. The third speaker was Juan Carlos Reyes of Madison, WI. Reyes informed the Task Force that he currently works for two community centers, one located in the north and the other in the south. Reyes also explained that as part of his duties, he helps promote job skills training for immigrants. Reyes stated that he has received a great deal of comments from his clients about concerns with the criminal justice system. Reyes explained that many of these concerns stem from miscommunication between law enforcement and Latinos in Madison. Reyes also offered to bring a number of his clients to the next meeting. Yudice asked whether there were any specific county services that he believed the immigrant community could not access and why. Reyes agreed that access to employment services and public health services is challenging, but that most of the problems he is aware of stem from the justice system. Hawkins asked for an explanation. Reyes replied that most of those with issues are undocumented and do not know how to respond when questioned by law enforcement. Bidar-Sielaf asked whether victims of crimes have been afraid to report. Reyes answered that in general the community would rather not have any contact.

Bauer posed a question to Bonces regarding whether he had any comments about the community's interaction with law enforcement. Bonces replied that the community is afraid to testify because of perceived fear that law enforcement will report them to ICE.

- D. The fourth speaker was Alberto Martinez. Martinez explained that he had lived in California for 12 years and Madison for the last 8 years. Martinez informed the task force that during his time in California he did not have any issues with the police, but since coming to Madison he has been cited 3 times for disorderly conduct for incidents instigated by American citizens and found guilty. Martinez believed that the cause of this is discrimination against Latinos by the police and the district attorney's office. Martinez suggested that the Task Force and other representatives analyze the problem to determine whether the issues stem from the way Wisconsin laws are written or whether it is those individuals who are enforcing the law who are causing the problems. Yudice asked whether law enforcement acted fairly. Martinez replied that he detected potential discrimination as both the victim and the police officer was African-American. Martinez also described a separate incident where he was

handcuffed and questioned when he had been the victim of the home invasion. Natera asked whether Martinez was treated fairly at the Dane County jail, and Martinez answered that he was treated the same as the other prisoners.

- E. The fifth speaker was Alex Gillis of Madison, WI. Gillis informed the Task Force committee that social security numbers were becoming a silent tool for organizations to neglect large populations of immigrants in Madison. Gillis explained that the request to produce a social security number was preventing immigrants from accessing child care services, pre-natal services, and even some charities were requesting social security numbers before providing food or clothing. Gillis stated that he would bring families to the next meeting in order to provide more examples of the problem. Gillis also identified an incident in Fitchburg when police were conducting a random traffic stop, and a large number of immigrants were cited for failure to have a driver's license. Mahoney informed Gillis that a bill before the Legislature would provide licenses to undocumented workers, and that he has urged local representatives to support it. Gillis explained that the underlying problem would still remain despite the bill's intent since the access to services would still be compromised.
- F. The sixth speaker was Sandra Rybacheck. Rybacheck stated that she was not with any organization, but that she assisted immigrants on her own. Rybacheck explained that from her interactions with the people she assists, these individuals are afraid to ask for help because of potential immigration problems. Rybacheck reported that women, in particular, are afraid, including pregnant women, that they will be discriminated against even if they need help. Rybacheck also reported that discrimination was rampant in the schools, and too often Latino parents or other minority parents are instructed to tell their child to take the blame for an incident. Yudice questioned whether there was any issue between the individuals she assisted and the police. Rybacheck responded that it is generally positive but that it is easier for immigrants if they happen to be permanent residents, rather than undocumented immigrants. Rybacheck further explained that for those immigrants who are not permanent residents, they do not and cannot ask for help from law enforcement. Rybacheck suggested that more opportunities for immigrant communities and law enforcement to communicate would go a long way to resolve any lingering concerns.

Yudice notified the group that Rybacheck was the last speaker, and that public comment was therefore completed.

5. Discussion Regarding Timetable, Information That Needs To Be Collected And Changes That May Need To Be Made Prior To The Next Listening Session.

Yudice stated that the next meeting would be at the Middleton Library in Middleton, WI on February 15, 2010.

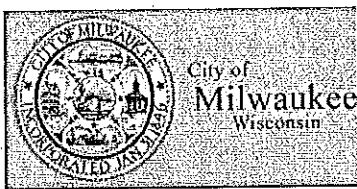
6. Other Business. None.

7. Adjournment. Hesselbein moved, seconded by Hawkins, to adjourn.
*Motion carried, 9-0. The committee adjourned at 6:43p.m.

At the direction of Luis Yudice, Chair

cc: Committee members; committee mailing list

Persons requiring an interpreter, materials in an alternate format or other accommodations to access this meeting are encouraged to contact the Dane County Corporation Counsel's Office at (608) 266-4427 or TDD (608) 266-9138, at least 72 hours prior to the meeting.



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File #: 100068 Version: 0

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Type: Resolution-Immediate Adoption

Status: Introduced

File created: 5/4/2010

In control: COMMON COUNCIL

On agenda:

Final action:

Effective date:

Title: Resolution opposing local policies that encourage discrimination on the basis of race or ethnicity and calling on the federal government to enact and enforce uniform and effective immigration policies.

Indexes: FEDERAL LEGISLATION, SOCIAL CONCERNS

[History \(0\)](#)

[Text](#)

Number

100068

Version

ORIGINAL

Reference

Sponsor

ALD. WITKOWIAK

Title

Resolution opposing local policies that encourage discrimination on the basis of race or ethnicity and calling on the federal government to enact and enforce uniform and effective immigration policies.

Analysis

This resolution urges opposition to piecemeal local immigration policies and practices that create a risk of racial and ethnic profiling and the deprivation of civil and human rights. The resolution further calls upon the federal government to enact uniform immigration policies that are transparent, humane, efficient, and which lead to a peaceful and productive nation.

Body

✓ Whereas, The City of Milwaukee has been built upon the contributions of immigrants from countries and regions throughout the world, contributing to a vibrant and diverse culture; and

Whereas, The Congress of the United States has considered and debated reforms of the immigration system over several years without resolution; and

Whereas, The United States Supreme Court has held in the case of *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976), that Article I, Section 8, of the United States Constitution confers upon Congress the power to legislate immigration law and set immigration policy; and

Whereas, State and local governments have attempted to address issues of undocumented aliens and unlawful immigration in a variety of ways, most recently resulting in the controversial passage of legislation in the State of Arizona known as Senate Bill 1070: and

Whereas, Legislation such as Arizona's S.B. 1070 confers federal immigration enforcement powers upon state and local law enforcement agencies without providing additional resources resulting in reduced capacity to meet local law enforcement needs; and

✓ Whereas, Immigration and naturalization policies and enforcement practices that vary from one local jurisdiction to the next result in uncertainty and unnecessary confusion and in fear of local authorities by citizens and by lawful immigrants and may disrupt business and employment practices; and

Whereas, Vague or ill-defined terms describing those circumstances in which persons may be stopped, questioned or detained due to suspicion of undocumented status may result in serious risks to civil and human rights; now, therefore, be it

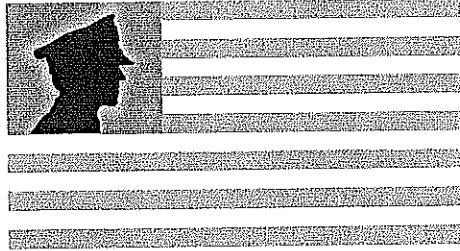
✓ Resolved, By the Common Council of the City of Milwaukee, that the Congress of the United States is strongly urged to swiftly enact comprehensive immigration and naturalization reform that preserves the civil and human rights of all persons, and that promotes domestic commerce; and, be it

✓ Further Resolved, That the Common Council of the City of Milwaukee opposes practices by state and local jurisdictional racial and ethnic profiling in efforts to address immigration and naturalization; and, be it

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The Role of Local Police

Striking a Balance
Between Immigration Enforcement
and Civil Liberties



EXECUTIVE SUMMARY

April 2009

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/>.

Executive Summary

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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SAMPLE LANGUAGE FOR POLICIES LIMITING THE ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL AUTHORITIES

November 2004

This document provides sample language with discussions of the purpose of each section for local policies promulgated to protect immigrants' access to police protection and public services. For a copy of sample language without the text explaining the purpose behind each section, please refer to Appendix A, which is attached.

Note that the language suggested throughout this document is drafted in city ordinance format, but the suggestions can easily be adopted for other initiatives (including county- or state-wide policies) such as:

- Resolutions
- Police policies/directives
- Executive Orders
- Legal opinions or memoranda

All of these approaches have been taken in various locations. The decision whether to enact , protections in an ordinance or in another form largely depends on the political situation in which the campaign is taking place.

For general advocacy guidelines on limiting local enforcement of federal immigration laws, see: <http://www.immigrationforum.org/documents/TheDebate/EnforcementLocalPolice/Advocacyideas.pdf>.

When drafting and advocating for a policy in your area, it is helpful to consult the text of other initiatives that have been passed around the country.

- For a list of localities that have passed such initiatives and links to many of their text, please see *Annotated Chart of Laws, Resolutions, and Policies Instituted Across the U.S. Limiting the Enforcement of Immigration Laws by Local Authorities* at: <http://www.nilc.org/immlawpolicy/LocalLaw/LocalLawEnforcementChartFINAL.pdf>
- You can also refer to *Trend: Local Efforts to Encourage Immigrants to Access Essential Social Services and Cooperate with the Police Without Fear of Immigration Consequences* at: <http://www.nelp.org/docUploads/confidbrief121103%e2Epdf>.

The suggestions offered below represent samples from initiatives that have been promulgated. Since no single policy serves as a "model," the purpose of this document is to provide language that advocates can use in drafting policies that would provide the most extensive protection for immigrants seeking access to police protection and public services.

What follows are sample language and key points of coverage for a city ordinance promulgated to limit local enforcement of federal immigration laws. The suggestions offered below are presented in the order of the different sections that would make up a standard ordinance.



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The Preamble

Regardless of what type of policy you are drafting, it is a good idea to begin with a statement of purpose, *i.e.* why it is important for your city, county, or state to enact such an initiative. A preamble serves two principal functions. The first is to be part of the “legislative history” of the initiative to help clarify the intent of the ordinance if in the future a court is asked to interpret certain provisions. The second function is to express its purpose to the community, so to help residents feel empowered to understand and utilize the protections it provides.

Preambles to ordinances and resolutions generally are written in “whereas” format – *i.e.* each sentence begins with “Whereas.” Police policies and legal memoranda typically begin with introductory paragraphs similar to a preamble. It is useful to refer to the text of initiatives that have already passed for ideas and language on what the preamble should address (*e.g.* by referring to the *Annotated Chart*). At the same time, this is the section of a policy where principles, statistics, and historic statements particular to your locality can and should be expressed. Some examples of areas that statements the preamble may cover are:

- Statements affirming the presence and contribution of immigrant populations, including number/percentage of foreign-born residents in your city, county, or state.¹
- The city’s, county’s, or state’s tradition of diversity and respect for all residents.
- The need for such an initiative, including to provide guidance to city employees and to promote the safety and health of all community members.
- The fact that over 58 such initiatives have been promulgated in 21 states across the country.
- The importance of local governments’ interest in maintaining the confidentiality of certain information, *e.g.* “Whereas preserving the confidentiality of certain information is integral to the operation of City government.”
- Specific reference to the erosion of immigrant rights and civil rights for all due to post 9/11 policies such as the USA PATRIOT Act.
- Opposition to the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671), Homeland Security Enhancement Act (HSEA) (S. 1906), and any other federal legislation that may be proposed to encourage local enforcement of federal civil immigration matters.
- The fact that the ordinance supercedes all conflicting policies, ordinances, rules, procedures and practices.

Definitions

A section defining the terms used by the ordinance is very helpful. The advantages of including such a section are that you avoid having to spell out terms each time they appear in the text, and the section clarifies terms that are commonly used but that may not be fully familiar to everybody reading the ordinance. Some sample terms and definitions are:²

¹ Demographic data for specific metropolitan areas and their respective city and suburban portions based on the 2000 Census may be found at <<http://mumford.cas.albany.edu/census/index.asp>> ; information on immigrants in the U.S. is available at <http://www.urban.org/content/IssuesInFocus/AmericasImmigrants/Immigrants.htm>; and at <http://www.migrationinformation.org/>.

² Some terms that may be employed in this section may already be defined elsewhere in your locality’s governing laws (*e.g.* in your municipal code). Be sure to check any terms you choose to define against existing definitions of same or comparable terms.

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DEFINITIONS

- **“Citizenship, immigration, or residency status”:** All matters regarding questions of citizenship of the United States or any other country, questions of authority from the Department of Homeland Security to reside or otherwise be present in the United States, and the time or manner of a person’s entry into the United States. The use in this ordinance of the term “residency” shall not mean street address or location of residence in *[city]* or elsewhere.
- **“City agency”:** Any and each entity directly controlled by the city.
- **“City agents”:** Any and each employee, including those who work in public safety, employed directly by the city.
- **“Confidential information”:** Any information obtained and maintained by a City agency relating to an individual’s sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in any individual’s income tax records.
- **“General city services”:** All services except those specifically listed as public safety services. Includes, but is not limited to *[add or subtract as applicable in your locality]*:
 - Medical services, such as general medical care and emergency medical assistance, including labor and delivery.
 - Mental health services such as crisis intervention.
 - Public health services for immunization and for the testing and treatment of symptoms of communicable diseases.
 - Public benefits programs. *(i.e. state or federally funded public benefits that may be partially administered by a city such as Temporary Assistance for Needy Families (TANF), General Assistance, Medical Assistance, and Food Stamps.)*
 - Nutrition programs such as school lunch and breakfast programs.
 - Children’s protective services.
 - Programs for children with special needs.
 - Programs for the disabled.
 - Services involving real estate tax payments or water/sewer bills.
 - Labor and employment enforcement.
 - Access to information on financial aid/community development programs.
 - Access to the courts.
 - Access to the schools.
 - Transportation services.
 - Shelter services.
 - Emergency disaster relief.
- **“Illegal activity”:** Unlawful, criminal activity but shall not include mere status as an undocumented immigrant.
- **“Immigrant”:** Any person who is not a citizen or a national of the United States.
- **“Law enforcement entities”:** *[add or subtract as applicable to your locality]* Police, sheriff’s office, jails, juvenile department, and corrections department.
- **“Public safety services”:** Police and fire departments, Emergency Medical Service (EMS) authorities, City Attorney’s office.
- **“Undocumented immigrant”:** A noncitizen who does not have lawful immigration status, in violation of federal civil immigration laws.

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The Body of the Ordinance

This is the heart of the initiative. The purpose of the remaining portion of this document is to provide sample language for different coverage areas for an ordinance intended to protect immigrants' access to police protection and public services.

Much like the determination of which type of initiative to pursue, the scope of an ordinance will depend upon the particular local situation. The ideal ordinance would cover each area presented here. The areas are listed below, with a brief explanation of the purpose underlying each area. The language in the text boxes beneath represent sample language that may be used as-is in the text of an ordinance. NOTE: The sample language is also presented, on its own (without the text explaining the purpose), in Appendix A.

▪ **Equal access to general and public safety services regardless of citizenship status.**

The purpose is to establish generally that all services for which non-U.S. citizens are eligible must be provided without discriminatory treatment and without threat of immigration enforcement. The exception is for inquiries pertaining to programs that contain explicit eligibility requirements based on an individual's immigration status.

CITY SERVICES

No general city service or public safety service shall be denied on the basis of citizenship. City agents shall not inquire into the immigration status of any individual, nor shall city agents enforce federal civil immigration laws.

Exempting city services that require immigration information for eligibility purposes. City agents shall follow general city, state, and federal guidelines to assess eligibility for services. A city agent shall not inquire about a person's immigration status unless: (1) such person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of city services; or (2) such agent is required by law to inquire about an individual's immigration status.

U.S. citizen children of undocumented parents shall have the same rights to public benefits as all other U.S. citizens. Undocumented parents shall be permitted to apply on behalf of their citizen children for any benefits for which their children are eligible, and such parents shall not be discriminated against or in any way treated differently by city agents.

▪ **Protection for foreign residents who show identification issued by their country of origin to access services.**

This section flows from the last, insofar as it establishes protection for residents who show identification when seeking services. It establishes that identification issued by a foreign country should be accepted and should not subject immigrants to higher scrutiny. Note that this topic as it pertains to undocumented immigrants may be particularly volatile depending on your locality, given the negative attention in many states directed toward immigrants' access to driver's licenses and other identification documents. The exception is for I-9 forms, which are required under federal law to establish work authorization; individuals filling out an I-9 must produce acceptable documents issued by or in the U.S.

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CITY SERVICES [continued]

The presentation of a photo identity document issued by the person's country of origin, such as a foreign driver's license, passport, or matricula consular (consulate-issued document) shall be accepted and shall not subject the individual to a higher level of scrutiny or different treatment than if the person had provided a [insert your state] driver's license. This paragraph does not apply to I-9 forms.

▪ **Limits on local enforcement of immigration laws.**

This section is similar to the first area concerning equal access to city services, except that it specifically emphasizes the enforcement of immigration laws, with particular attention to local police. The exception refers to certain criminal immigration violations (as opposed to mere lack of legal immigration status, which is a civil immigration violation), under the federal statutory provision 8 U.S.C. §1252(c). This provision gives state and local law enforcement officials, "to the extent permitted by relevant State and local law," the authority to arrest and detain individuals who are unlawfully present in the U.S. because they have been convicted of a felony in the U.S. and have been deported and have re-entered the U.S.

LAW ENFORCEMENT

Unless otherwise required by law or court order, city agents shall refrain from the enforcement of federal immigration laws. No city agents, including agents of law enforcement entities, shall use city monies, resources, or personnel solely for the purpose of detecting or apprehending persons whose only violation of law is or may be a civil immigration violation.

Police officers are exempted from the above limitations, with respect to a person whom the officer has reasonable suspicion to believe: (1) has been convicted of a felony criminal law violation; (2) was deported or left the United States after the conviction; and (3) is again present in the United States.

City agents shall not single out individuals for legal scrutiny or enforcement activity based solely on their country of origin, religion, ethnicity or immigration status.

NOTE: There may be other, more restrictive, language limiting the local enforcement of immigration laws. For example, a locality may be able to enact a policy that prevents the local police from enforcing not only *all civil* immigration matters, but *most criminal* immigration matters as well. An alternative policy could also require police to get a warrant before arresting individuals under 8 U.S.C. §1252(c). The enactment of such policies, however, is complicated because their validity depends on court decisions in your area regarding the authority of local authorities to enforce federal immigration law. If you are contemplating pursuing language outside the language presented above, please feel free to contact NILC to discuss these alternative options in more detail.

▪ **Specific protection for immigrant victims and witnesses.**

This is a particularly important section to include both on its own terms and also for advocacy purposes. Specifically, speaking about immigrant crime victims (including immigrant survivors of domestic violence) and witnesses is a very useful way to illustrate why the local enforcement of immigration laws seriously compromises public safety interests for all community residents.

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VICTIM AND WITNESS PROTECTION

It shall be the policy of public safety services departments not to inquire about the immigration status of crime victims, witnesses, or others who call or approach city agents seeking assistance.

A city agent who provides public safety services shall not request specific documents for the sole purpose of determining an individual's civil immigration status. However, if offered by the individual and not specifically requested by the agent, it is permissible to rely on immigration documents only to establish that individual's identity in response to a general request for identification.

▪ Cooperation with federal authorities.

This section directly relates to the previous sections concerning *equal access to city services* and *limits on local enforcement of immigration laws*. The preceding sections establish that city agents cannot ask about immigration status and cannot enforce immigration laws, *i.e.* city agents cannot act as immigration agents. This present section addresses the relationship between city agents and federal officials, including immigration agents from the Department of Homeland Security (DHS), either when city agents have immigration-related information to share (which they should not possess in the first place given the ordinance's prohibition on immigration-related inquiries), or when a federal agency contacts a city agent for information regarding an individual's immigration status.

The issue of how city agents must act in these circumstances is a complicated one, and the answer partially involves an interpretation of a federal statutory provision, 8 U.S.C. §1373. This provision, enacted in 1996 [as Section 642 of IIRIRA, the Illegal Immigration Reform and Immigrant Responsibility Act] relates to communication between federal and local entities and officials regarding a person's immigration status. The provision establishes that "...[A] Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

In this section, the way to most broadly protect immigrants who seek city services is to classify information regarding immigration status as among the sensitive information agencies cannot disclose or disseminate, absent specific circumstances. The sample language below is taken from New York City's Executive Order 41 and the Memorandum issued by Philadelphia's city solicitor, the two cities that have promulgated such a policy. This language was enacted following a decision by a New York federal court, which, citing 8 U.S.C. §1373, struck down a prior NYC order singling out immigration status as information that city agents could not disclose to immigration authorities.³ In its decision, the court suggested that if the policy instead limited the disclosure of confidential information *generally*, such a policy "might seem more integral to the operation of City government," and federal statutory provision prohibiting the maintenance of the confidentiality of immigration status specifically "might seem more intrusive."⁴ The language presented below is precisely this kind of policy—a general limitation on disclosing confidential information. NOTE: What constitutes "confidential information" is explained in the "Definitions" section of the sample ordinance (see *supra* page 3).

³ *City of New York v. Reno*, 179 F.3d 29 (2d Cir. 1999).

⁴ *Id.* at 37.

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CONFIDENTIALITY OF INFORMATION

No city officer or employee shall disclose confidential information, unless:

- (1) Such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
- (2) Such disclosure is required by law; or
- (3) Such disclosure is to another city officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; or
- (4) In the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any city agency; or
- (5) In the case of information relating to immigration status, (a) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, or (b) such disclosure is necessary in furtherance of an investigation.

By enacting this confidentiality language, an ordinance will go further than protecting against immigration inquiries and enforcement; it will protect against the disclosure and dissemination of information, including immigration-related information, if and when city agents have such information.

If your particular local situation will not allow the enactment of language protecting against disclosure and dissemination of information including individuals' immigration status, there is another option. However, this alternative language, unlike the confidentiality language presented above, does *not* significantly add to the protections your ordinance would enact for non-U.S. citizens seeking city services. That said, its inclusion does serve a function, in that it limits cooperation with federal authorities to what is expressly required by federal law. The required cooperation set forth below merely reflects "a prohibition on a prohibition," *i.e.* city agents cannot be barred from cooperating with DHS or other federal agencies. This section still must be understood in the context of the entire ordinance. If city agents do not have information regarding individuals' immigration status in the first place (again, because of the prohibition on inquiring into status or in any other way enforcing immigration laws), then there is no information to send. 8 U.S.C. §1373 does not require city agents to collect immigration information, and city agents cannot provide to federal authorities immigration information they have not collected.

COOPERATION UNDER FEDERAL LAW NOT PROHIBITED

Nothing in this ordinance shall be construed to prohibit any city agent from cooperating with federal immigration authorities, when required under federal law.

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- **Outlining a grievance procedure.**

This section establishes a procedure for filing a complaint when there is an alleged violation of the ordinance. It is an important section to advocate for inclusion in an ordinance, because otherwise the details of this procedure are entirely in the hands of the mayor after the ordinance is enacted. Note that one potential barrier in enacting the below procedure may be opposition to the handling of police complaints by any other entity other than an internal police oversight board.

COMPLAINTS AND DISCIPLINE

Complaints of a violation of this chapter shall be subject to disciplinary action under the City personnel rules, appropriate union contract, civil service commission rules, department work rules, or any other city or department rules and/or regulations.

Complaints of a violation of this ordinance shall be received and investigated by *[City Human Rights Department, Human Rights Commission, Office of Civil Rights, etc., as applicable to your locality]*. The results of the investigation shall be provided to the Complainant in writing and in a timely manner. Complainants and witnesses shall not be asked to provide their immigration status at any point during the complaint process, and no investigation of the immigration status of the complainant and witnesses shall be made by any City agent in the investigation of such a complaint or thereafter.

It shall not be a violation of this chapter to require the completion of I-9 forms or to inquire into or disclose the immigration status of the complainant or witnesses if necessary as part of the investigation of a complaint of a violation of this chapter, or if deemed necessary by the appointing authority in order to administer discipline for such violations.

- **Civil remedy for violation**

This is a particularly difficult section to have included in an ordinance. However, it is definitely worth proposing, because the possibility that a violation will result in money damages is a substantial incentive for compliance.

CIVIL REMEDY FOR VIOLATION

A person who violates this chapter shall be liable in a civil action brought by the aggrieved party in the amount of \$1,000 per violation plus an amount to compensate for any damages incurred as a direct result of the violation and for any expenses incurred by the aggrieved party, including reasonable attorney fees and costs to pursue a successful action under this ordinance, as determined by the court. The court may award exemplary damages in an amount the court determines is necessary to ensure the violator's future compliance with this ordinance.

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▪ **Mandating action after the ordinance is enacted and other language.**

These important provisions should appear at the end of the ordinance. They ensure actual implementation of the ordinance and establish checks on the implementation after enactment. The last two provisions should appear at the very end, and are useful (but not necessary) in the event that the ordinance is challenged in the courts.

Each City public service and safety department shall develop operational procedures consistent with this ordinance in a reasonably timely manner from the date of enactment.

The mayor shall call a meeting with representatives of immigration communities to communicate content of initiative a reasonable period of time after enactment of this chapter. If feasible, the mayor's office should provide translated copies of the ordinance in the native languages of the significant immigrant populations represented in the city.

The mayor shall report on the implementation of this ordinance to the city council in a public hearing one year after the date of enactment.

If a court finds that a portion of the ordinance is invalid for any reason, the remaining parts of the ordinance shall continue in full force and effect.

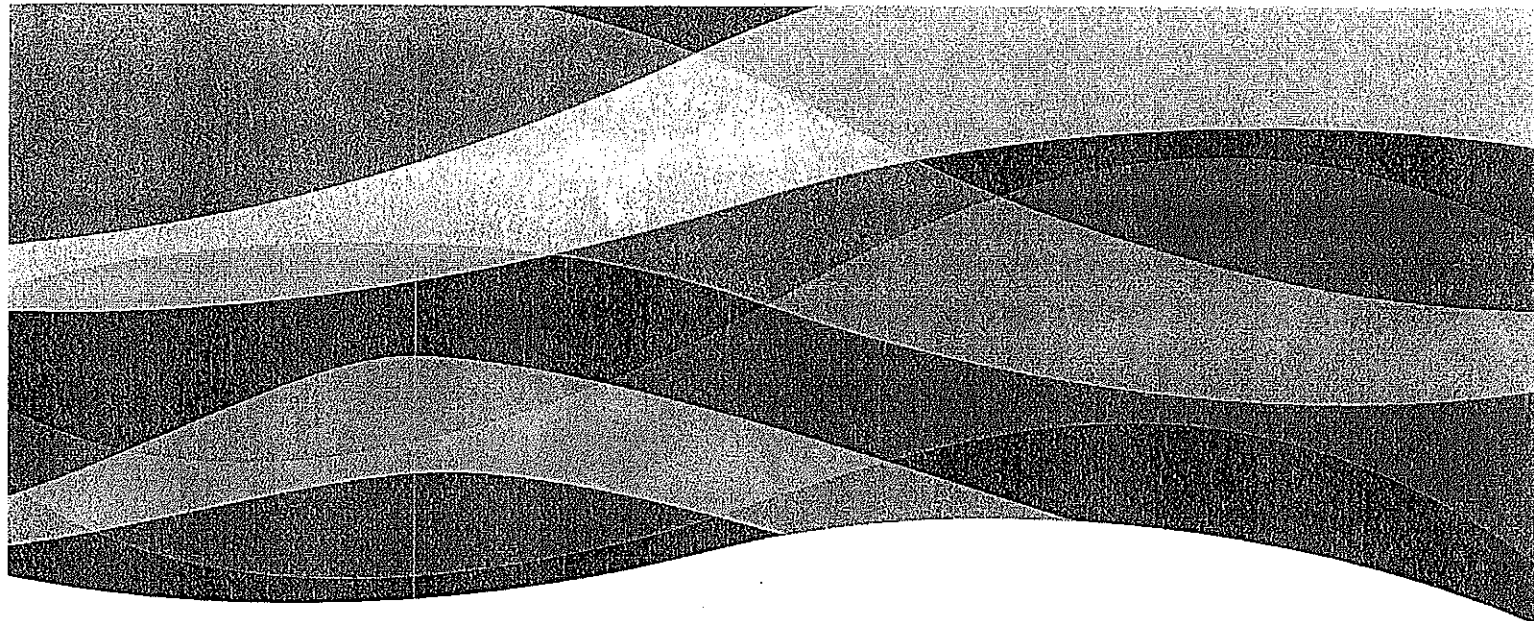
The provisions of the ordinance shall be given a liberal construction to effectuate the purposes for which the ordinance was enacted. The purposes shall be determined by the ordinance's legislative history, which consists of but is not limited to the Preamble and Council hearing testimony.

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Cities and Immigration

Local Policies for Immigrant-Friendly Cities

C O W S

center on wisconsin strategy

Cities and Immigration

Local Policies for Immigrant-Friendly Cities

January, 2008; updated April 2008

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About COWS

The Center on Wisconsin Strategy (COWS) is a nonprofit, nonpartisan "think-and-do-tank" dedicated to improving economic performance and living standards in the state of Wisconsin and nationally. Based at the University of Wisconsin-Madison, COWS works to promote "high road" strategies that support living wages, environmental sustainability, strong communities, and public accountability.

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1

Introduction

Over the last two decades or so, immigration has become a prominent political and policy issue at the federal, state, and local levels. In large part, the rising concern follows from changes in the magnitude and nature of immigration flows. Reactions to these changes have been quite varied, especially at the state and local levels. While the federal government has passed increasingly hostile legislation toward immigrants, the stances of states, counties, and cities have ranged from unsympathetic, unwelcoming, and even antagonistic to very supportive and welcoming.

Our focus here is on helping elected officials, policy-makers, activists, community-based organizations, and others who want to move their cities to the latter end of the spectrum or to keep them there. More precisely, this report aims at helping individuals and organizations advocate for, design, and implement progressive policies toward immigrants at the city level as well as address, with immigrant-friendly, city-level policies, the problems that large inflows of immigrants sometimes generate for the communities receiving them. These goals have become particularly important given the recent failures of comprehensive immigration reform initiatives at the federal level.

Building on policy experiments and experiences from all around the country, and also from the knowledge and ideas of policy experts and activists whom we interviewed or consulted for this report, we offer a menu of local policies aimed at creating immigrant-friendly cities.¹ This menu of policies will be presented in detail in Sections 2-5. In this introductory section we begin by identifying six socio-demographic facts that help explain why immigration issues have become so important. Next, we review the federal, state, and local policy reactions to them and discuss some of the various reasons that make immigration-friendly policies normatively appealing for many people.

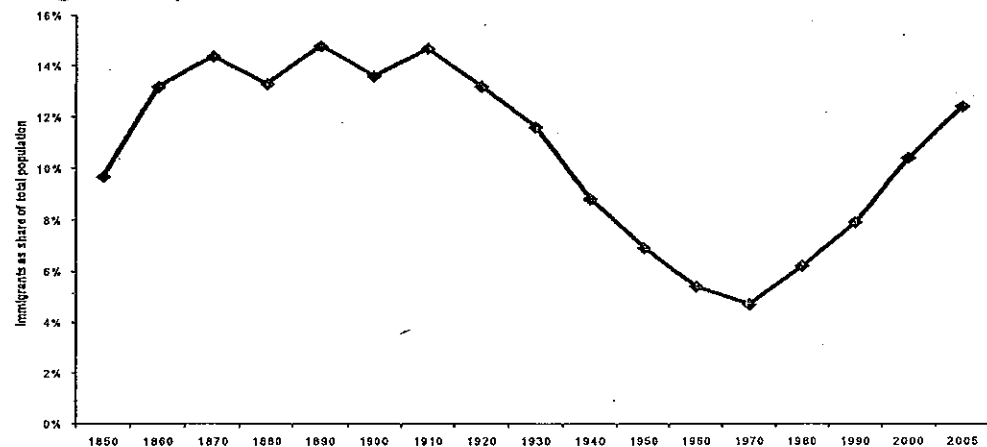
¹ For the list of people interviewed, see our acknowledgments.

1.1 A new socio-demographic reality

A number of socio-demographic changes help explain why immigration has become such a contentious and central political issue. First, in absolute terms, the three decades between 1970 and 2000 each saw larger net inflows of new foreign immigrants than any previous decade in U.S. history. Between 1990 and 2000 alone, about 13.7 million new immigrants entered the United States; this is the largest contingent to ever come to the country during a given decade (Sum, Fogg et al. 2002:27).

Second, since 1970 immigration to the United States has grown rapidly in relative terms. As shown in Figure 1, the share of foreign born in the population has risen continually, from a historically low 4.7 percent in 1970 to 12.4 percent in 2005.² Moreover, the acceleration of immigration flows has driven the share of foreign born in traditional immigration destinations to notable highs — e.g., 58 percent in Miami, 40 percent in Los Angeles, and 37 percent in New York City in 2005. In that year immigrants accounted for at least 20 percent of the population in 15 metropolitan areas, and at least 25 percent in eight.³

Figure 1
Immigrant Population of the United States, 1850-2005



Source: U.S. Census Bureau - Censuses 1850-2000 and American Community Survey 2005

Third, unlike in the past, when most immigrants were concentrated in a few states (California, Florida, Illinois, New Jersey, New York, and Texas), today we find significant concentrations of immigrants all over the country (see Figure 2). This growth in the share of foreign born in states that previously were not important immigrant destinations has been explosive. Between 1990 and 2005 the growth rate was at least 90 percent in 23 such states. Arkansas, Georgia, Nebraska, North Carolina, South Carolina, and Tennessee all saw growth rates of at least 200 percent during that period.⁴

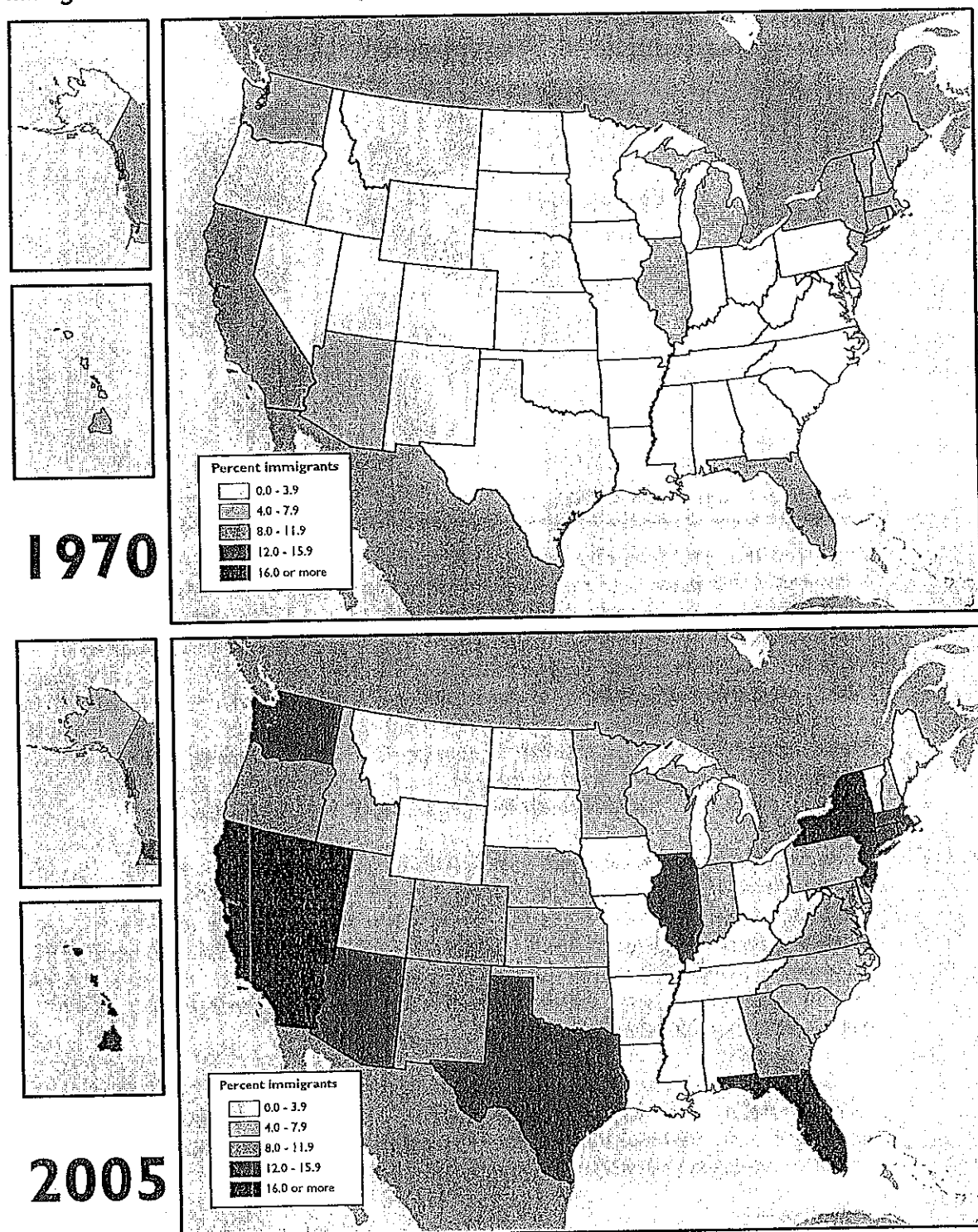
² Note, however, that the share of immigrants in the United States is not unprecedentedly high. As Figure 1 shows, the current level is slightly lower than in 1870-1910.

³ Data for 1970 are from Census 1970; those for 2005 are from the American Community Survey.

⁴ Authors' calculations. Data for 1990 are from Census 1990; those for 2005 are from the American Community Survey.

Figure 2

Immigrants as a Share of the Population by State, 1970-2005

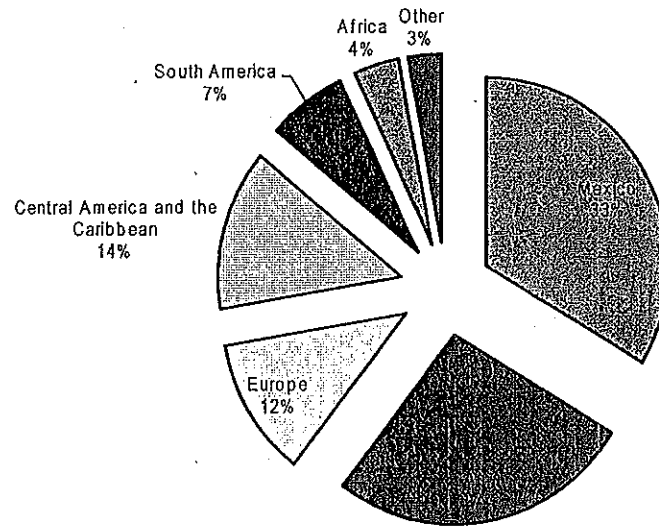


In 1970 there were only 16 states with at least four percent of immigrants, seven with at least eight percent, and only one (New York) with more than eight percent. However, by 2005 there were 35 states in which the share of foreign born was at least four percent, 20 in which it was at least eight percent, 14 in which it was at least 12 percent, and four in which it was at least 16 percent (including California and New York, with more than 21 percent of immigrants each).

Source: U.S. Census Bureau - Censuses 1980-2000 and American Community Survey 2005

Figure 3

Geographic Origin of Immigrants Who Entered the Country Between January 1990 and March 2000



Source: U.S. Census Bureau - 2000 Census

A fourth factor that has contributed to making immigration a central issue is that today's immigrant population is extraordinarily diverse. An indicator of this diversity is the varied origin of those who entered the country between 1990 and 2000, shown in Figure 3. The ethnic and cultural (including linguistic) diversity associated with this geographic diversity is significant. Today almost 20 percent of the U.S. population speaks a language other than English at home, while close to 9 percent do not speak English very well. Of course, these average figures hide marked disparities across states, counties, and cities. For example, in Los Angeles, a traditional immigration destination, 60 percent speak a language other than English at home, while in Las Vegas and Atlanta, both of which are new destination cities, the corresponding figures are 30 and 11 percent.⁵

A fifth reason for the importance of immigration in the public arena is the high participation of immigrants in the labor force. Between 1990 and 2001, more than 50 percent of the growth in the country's labor force was due to the arrival of new immigrants (Sum, Fogg et al. 2002). In 2005 immigrants represented 12.1 percent of the population but 14.7 percent of the civilian labor force. In some states their share of the labor force was considerably higher—34.5 percent in California, 24.5 in New York, 23.9 in New Jersey, 22.9 percent in Florida, and 22.5 in Nevada.⁶

A final reason has to do with immigrants' legal status. One recent study (Passel 2006) estimated that in March 2006 around 30 percent of foreign-born residents were unauthorized, or between 11.5 and 12 million. This is compared to only 3 million unauthorized residents in 1980.⁷ The same study reported that in March 2005

5 Data from the 2005 American Community Survey. Percentages for those speaking a language other than English at home are among residents 5 years old and over.

6 Information provided by the Migration Policy Institute. (See <http://www.migrationinformation.org> > GlobalData > U.S. Historical Trends > Share of the Foreign Born in U.S. Labor Force. This figure has a link to the data.) The underlying source is the March 2006 Supplement of the Current Population Survey. The slight difference between the share of foreign born reported here (12.1 percent) and the share reported in Figure 1 (12.4 percent) is due to the use of different data sources.

7 Today's proportion of undocumented immigrants is most likely the highest since 1965. Before 1965 there were no numerical limitations to the annual number of immigrants from the Western Hemisphere who could enter the country.

unauthorized immigrants accounted for almost 5 percent of the civilian labor force and that four out of five unauthorized immigrants were Latin American.

1.2 Federal, state, and local reactions

The federal government has largely reacted to this new socio-demographic reality by imposing greater constraints to the entry of immigrants and by narrowing their political and economic rights. The first move in this direction was the Immigration Reform and Control Act of 1986 (IRCA), which responded to concerns about the “growing number, illegality, poverty, and Third World origins” of new immigrants by criminalizing the act of knowingly hiring unauthorized immigrants, and by establishing financial and other penalties for those knowingly employing aliens not authorized to work in the country (Wells 2004:1308).⁸

Ten years later, at a time when immigrants were being blamed for “taking jobs from legitimate residents, depleting social welfare coffers, increasing crime, causing political turmoil, and engendering state fiscal shortfalls and the sustained downturn of the economy,” Congress passed three additional immigrant-restrictive bills (Wells 2004:1309). The first was the Antiterrorism and Effective Death Penalty Act, which greatly reduced the rights of individuals suspected of criminal activity or terrorism, and which put in place an alien terrorist removal court that accelerated the process of removing criminal aliens. The second was the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which restricted unauthorized immigrants’ access to essential public services. The last was the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which expanded the range of offenses for which immigrants could be deported and increased penalties for violations, curtailed immigrants’ due-process rights, further reduced immigrants’ access to public services, and increased resources for the control of illegal immigration at the U.S.-Mexico border.

Due to higher wages generated by low unemployment rates of the late 1990s, the Bush administration considered a softening of immigration policies in 2001. However, the Sept. 11, 2001, attacks and the 2001-2002 recession led to “new immigrant-constraining policies, administrative practices, and court decisions” (Wells 2004:1309).⁹ They also led to the proposal of a number of bills aimed at further limiting immigrants’ rights and at fully involving states and local government in the enforcement of civil immigration law, including the Clear Law Enforcement for Criminal Alien Removal Act (H.R. 3137), or CLEAR Act, and the Border Protection, Antiterrorism, and Illegal Immigration Control Act (H.R. 4437), which was passed by the House of Representatives in 2005.¹⁰

Because of pressure from both ends of the political spectrum for a total system overhaul, during the last two years several bills for “comprehensive immigration reform” have been discussed, beginning with the Secure America and Orderly Immigration Act (S. 1033, referred to as the “McCain-Kennedy Bill”) (cf. Terrazas 2007). This eventually

8 The IRCA, however, also provided a one-year amnesty program for certain immigrants who had worked in the United States since January 1982, ultimately legalizing nearly 3 million immigrants.

9 One of the most important of these court decisions is the March 2002 U.S. Supreme Court decision in *Hoffman Plastic Compounds v. National Labor Relations Board*, which held that an undocumented worker who is illegally fired for his or her union activity is not eligible for back pay. Following this decision, employers have begun to argue that undocumented workers are not protected by labor and employment laws; lower state and federal courts have varied on whether this decision applies in contexts other than the original back pay issue (Sugimori N.d.).

10 Other such bills were the Homeland Security Enhancement Act (S. 1362); the Illegal Immigration Enforcement and Empowerment Act (S. 1823); the Unsafe Streets and Government Unfettered Authority Act (H.R. 6095); and the Anti Right to Association and Government Unaccountability Act (H.R. 6094). The latter two passed the House. The Comprehensive Immigration Reform Act (S. 2611), passed by the Senate in 2006, was more ambiguous in its content (see the analysis in National Immigration Law Center 2006).

led to the proposal of the Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007, better known as the Comprehensive Immigration Reform Act of 2007. Among other purposes, this legislation aimed at providing a pathway to legal status for most undocumented immigrants who had been in the country since before January 2007.¹¹ The bill contained a long list of controversial measures, but its legalization component was the most hotly debated, drawing criticism from both pro-immigrant rights groups, who contended that the requirements for obtaining permanent residency were onerous, unrealistic, and unjust, and conservatives, who viewed the reform as a widespread amnesty for individuals who had violated U.S. law. The bill was defeated on the Senate floor on June 28, 2007. According to Rep. Zoe Lofgren (D-CA), chair of the House Judiciary Subcommittee on Immigration, Citizenship, Refugees, and Border Security, the vote effectively ended efforts for comprehensive immigration reform in the 110th Congress (Terrazas 2007).

On Aug. 10, 2007, the Bush administration announced its intention to implement, without action by Congress, a package of immigration measures that includes increased resources for border enforcement and increased civil fines for employers who knowingly hire undocumented workers. Although it is still unclear exactly what form the measures may take, one critic suggests that "the administration . . . appears poised to move forward with this new get-tough and solve-nothing agenda" (National Immigration Law Center 2007d).

In sum, at the federal level the reaction to the new socio-demographic reality has been to pass laws increasingly restrictive of immigrants' rights, while attempts at comprehensive reform have failed. Below the federal level, however, reactions to immigration have been very heterogeneous. States, counties, and cities have expressed varied sentiments regarding both immigrants and the federal policies toward them.

Some states and counties have decided to formally participate in the enforcement of immigration law's civil provisions. Although the enforcement of these provisions has always been a federal responsibility (charged, since March 2003, to Immigration and Customs Enforcement, or ICE), IIRIRA made it possible for state and local governments to play an active role as well. By December 2006, two state and six county agencies had chosen to play such a role by partnering with ICE to perform immigration law enforcement functions, while another 30 agencies were moving in that direction (U.S. Immigration and Customs Enforcement 2006).

IIRIRA also forbade state and local governments from barring their officers from sharing information with the federal immigration agency. Related provisions that would require local agencies to assist in enforcing immigration law, or that would prohibit municipalities from enacting or maintaining ordinances preventing local agencies from engaging in the enforcement of immigration law, were introduced in 2006 in a number of states (National Employment Law Project 2006), but so far none has passed.

Even without any formal agreement with the federal government, state and local law enforcement agencies have often participated in raids and information-gathering activities conducted by federal officials or even delivered potential violators to them, while officials from city or state agencies have often tipped off federal agents about the presence of potential violators.

Apart from this collaboration with the federal government, hostile reactions to

¹¹ The Comprehensive Immigration Reform Act of 2007 would have created a "Z visa" for all individuals living in the United States illegally before January 2007. After eight years, individuals with a Z visa would have been eligible to apply for a permanent resident card (green card).

immigrants are seen in bills, recently proposed in 13 states, that would impose fines or other penalties to employers who hire undocumented immigrants, and bills, proposed in five, that would exclude injured undocumented workers from coverage under workers' compensation law (National Employment Law Project 2006). Likewise, some cities have proposed and some have passed ordinances expressing anti-immigrant sentiments, such as fining employers who hire undocumented immigrants; prohibiting companies from getting business permits if they employed or helped illegal immigrants within the past five years; making English the city government's official language; denying housing to undocumented people; and banning immigrants' access to city-provided social services.¹²

However, in many other cases state and local elected officials have embraced immigrants and have worked with them in ways that are humane, inclusive, and conducive to the harmonious development of their communities. We will have much more to say in the next sections about the policies implemented by these governments, but here is a quick overview to give the reader a sense of their scope.

First, three states (Alaska, Maine, and Oregon), a few counties, and several dozen cities (or the corresponding police departments) prohibit their resources and institutions from being used to enforce civil immigration law and make it as difficult as possible for agency officials to share information on people's immigration status with the federal government, either by legislative act or by issuing executive orders.¹³

Second, several mayors from high-migration cities have strenuously lobbied Congress against the CLEAR Act; the Border Protection, Antiterrorism, and Illegal Immigration Control Act; and similar proposed legislation. And many counties and cities have expressed, through resolutions, their opposition to national legislation that would require or compel local governments to participate in the enforcement of civil immigration law, and their support of comprehensive immigration reform.¹⁴

Lastly, many states, counties and cities have implemented policies that help newly arrived immigrants to get settled in their new communities; reduce their risk of being exploited by unscrupulous employers; give them access to social services; promote social integration; and generate an overall climate of trust, respect, and welcoming.

1.3 Reasons for immigrant-friendly policies at the local level

The reasons immigrant-friendly stances and policies are appealing are many and varied. First, there are reasons related to legal tradition. These include the case-law-based notion that "all individuals who are territorially present in the country have equal personhood and deserve equal rights;" the Yick Wo tradition (for the line of juridical thought based on the Supreme Court ruling in *Yick Wo v. Hopkins*), "which holds that the treatment of aliens in the interior should be essentially equivalent to that accorded citizens;" the powers that the Constitution gives states and their subdivisions "to provide police protection and ensure the health, safety, and well-being of their

¹² The Puerto Rican Legal Defense and Education Fund compiles a list of cities that have considered or passed this type of ordinance (see www.prdef.org). There were 57 cities in this list after an early December 2006 update, of which 13 had effectively passed such ordinances (including two cases in which their application had been blocked by temporary restraining orders). Some of the best-known cases in this list are those of Avon Park, FL; Hazelton, PA; Kennewick, WA; Palm Bay, FL; Riverside, NJ; San Bernardino, CA; and Valley Park, MO.

¹³ Indeed, according to the National Immigration Law Center, by July 2004 at least 42 cities and two counties had done this (see www.nilc.org > Immigration Law and Policy > Major Issues > Local Law Enforcement Issues > Table: Laws, Resolutions and Policies Instituted Across the U.S. Limiting Enforcement of Immigration Laws by Local Authorities).

¹⁴ For partial lists, see reference in previous footnotes, and www.cirnow.org > City and County Pro-Immigrant Resolutions.

residents;" and the 14th amendment's guarantee that "no state shall . . . deny any person within its jurisprudence the equal protection of the laws" (Wells 2004:1313-1314).

There are also ideological-historical reasons. Giving ample opportunities to anyone willing to work hard and to participate in the social and civic life of his or her community is considered one of the achievements of the United States and a major element of its identity. It has been argued that because almost every U.S. citizen can trace her or his origin to other countries, it would be morally wrong not to ensure that today's immigrants have the same opportunities those coming before them had.

Questions of moral responsibility are also at stake. For two decades the federal government carefully avoided enforcing with any rigor the law that makes it illegal to hire undocumented immigrants, in large part to cater to business interests who benefited from low-paid workers. It has been argued that the federal government has implicitly welcomed immigrants into the workforce, and therefore that it would now be morally wrong not to help them stay and flourish in the country.

Humanitarian reasons play a role as well. Many people are simply appalled by the conditions in which a good share of new immigrants live, horrified by the poverty wages and the despotic and unhealthy working conditions of their jobs, indignant at the discriminatory treatment they sometimes receive, and moved by the sacrifices they often make in order to attain a better life for themselves and for their families. These facts alone may justify immigrant-friendly stances and policies.

Reasons related to our common notion of how the U.S. political system should operate may also be relevant. Immigrant-naturalized citizens and citizens who share immigrants' dominant ethnicities constitute today an important share of the electorate. In 2000 there were 30 million voting-age citizens, or 15 percent of the electorate, who were either immigrant-naturalized citizens or citizens-by-birth of Latino, Asian, or Pacific Islander origin (Center for Community Change 2004). In high-migration areas this share is, of course, much higher, and so these individuals constitute "pro-immigrant" voting blocs whose preferences political candidates should not—and probably cannot—ignore.

There are, finally, pragmatic reasons. First, collaboration with the enforcement of civil immigration law taxes police resources and impairs their capacity to ensure the public safety of their communities. Moreover, it has proved difficult for law-enforcement agencies to provide such collaboration without violating the civil rights of law-abiding residents.

Second, undocumented immigrants, in particular those that have been in the country for some time, often have spouses, partners, or children who are citizens or legal residents, and they almost always have many other relatives and friends who are citizens or legal residents. Thus, it is virtually impossible to crack down on the undocumented without inflicting great suffering on many people who are not violating the law and without throwing broad segments of the communities where undocumented immigrants live into disarray.

Third, some state and many local economies depend on immigrant workers, both documented and undocumented, to function, and this may make immigrant-friendly policies that help retain existing and attract new immigrant workers appealing. As state and local government revenues depend on the health of the state and local economies, implementing immigration-friendly policies may simply be a *sine qua non* for state and local governments in high-migration areas.

1.4 A menu of local policies for immigrant-friendly cities

As immigrants spread beyond traditional city hubs, many cities that would like to adopt welcoming policies towards them find themselves in unfamiliar territory. Similarly, cities with longstanding immigrant populations, many of which have already implemented immigrant-friendly policies, would like to do more as well as make their policies more relevant and effective in the context of an increasingly hostile national climate towards immigrants.

We offer in the following sections a detailed menu of progressive policies for cities interested in dealing in humane and effective ways with the country's new socio-demographic reality in the 21st century. The policies described are local in nature; aim at using the always-scarce material resources and political energy of cities in an efficient manner; in most cases are meant to benefit natives, directly or indirectly, as much as immigrants; and have the ultimate goal of contributing to the development of cities of shared prosperity.

Some very general principles underlying the menu of policies are the following. First, all other things being the same, universal policies are preferred over particularistic or categorical policies. Second, all other things being the same, policies that are potentially appealing to broadly based political coalitions are preferred to policies that are not. Third, policies involve working with and empowering existing community-based organizations that immigrants already know, trust, and respect whenever possible. Last, policies address as much as possible legitimate concerns about the effects of new immigrants on other residents' quality of life.

The report examines policies in four key policy areas:

- The enforcement of immigration law's civil provisions
- Employment
- Health care
- Other basic services

This report does not address other important policy areas, key among them education (including English as a second language) and housing. These two areas are undoubtedly central to any comprehensive approach to improving immigrant integration for the benefit of immigrants and the communities in which they reside. However, given the expansive nature of these topics, we do not cover them here.

Throughout this report we refer to many city ordinances and resolutions, to proposed legislation, and to numerous other texts. Many of these documents can be consulted online at www.cows.org/citiesandimmigration.

2

The Enforcement of Immigration Law's Civil Provisions

2.1 Background

Under the dominant and, until recently, uncontroversial interpretation of current federal law, agencies at the state and local level lack statutory or constitutional authority to enforce immigration law's civil provisions, with the exception of those that have entered into a formal agreement with the Department of Homeland Security (Seghetti, Viña et al. 2005).¹⁵ Even more important, state and local agencies and officials are not legally required to collaborate with Homeland Security's Immigration and Customs Enforcement (ICE) in finding or arresting unauthorized immigrants, or even to report to ICE information about a person's unauthorized presence in the country, unless that person has committed a crime. Nevertheless, city agencies and officials often play an important *de facto* role in the enforcement of the civil provisions of immigration law. This not only leads to community mistrust, racial profiling, and civil rights violations, but it also jeopardizes the achievement of city agencies' primary goals (e.g., the papers in King 2006; Waslin 2003).

Public safety is the most often cited example. If police officers ask questions about immigration status to those they suspect to be in the country without documentation but are not suspected of any crime, or if the police collaborate in any way with ICE in the enforcement of immigration law's civil provisions, unauthorized immigrants will not report to the police crimes they suffer or witness, nor in general will they cooperate with the police. Moreover, legal immigrants and citizens of the same ethnicity as that of unauthorized residents also tend to distrust the police and therefore limit their interactions with them—both to avoid being interrogated about their own legal status and because of fears associated to their family and friendship bonds with unauthorized immigrants. Of course, all this makes providing for the general safety of city residents much more difficult, in particular in cities with many immigrants (e.g., Khashu 2006).

Public safety is not the only goal jeopardized by city collaboration with ICE. For fear of having to reveal their immigration status, immigrants may avoid using city services or calling city agencies, including public schools, fire departments, and emergency ambulance services.

Due to its deleterious effects on cities' ability to provide for the health, safety, and well-being of their residents, and due to other reasons already discussed in the introduction, many cities have opposed collaborating with the enforcement of civil immigration law, either by passing ordinances or resolutions, or by issuing executive

¹⁵ Before 2002 there was broad agreement that local police did not have general authority to enforce civil immigration laws. However, on June 5, 2002, U.S. Attorney General John Ashcroft announced that, based on a new legal opinion, state and local police had "inherent authority" to enforce federal civil immigration laws (National Immigration Law Center 2004:2-3).

orders, general or special orders, or policy procedures or directives.¹⁶

Los Angeles was the first city to officially withdraw cooperation. In 1979 the police chief issued the now-famous Special Order 40, which remains in force. SO 40 establishes that “officers shall not initiate police action with the objective of discovering the alien status of a person” and “shall not arrest nor book persons for” illegal entry. The city of Takoma Park, MD, in 1985, and the cities of Chicago, San Francisco, and New York, in 1989, went much further and passed ordinances or issued executive orders prohibiting city employees from gathering, keeping, or sharing with ICE’s precursor, the Immigration and Naturalization Service (INS), information on the immigration status of their residents, and establishing that neither city personnel and facilities, nor any other city resources, would be employed in the enforcement of civil immigration law.

Bans on sharing information with the federal government, however, were outlawed in 1996. Section 642(a) of IIRIRA established the following:

“Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

Because of this provision, most of the cities that expressly limited cooperation with immigration authorities now have established that local resources or institutions cannot be used to enforce civil immigration law, that they will not arrest people for violations of civil immigration law, or that the police will refrain from enforcing civil immigration law—or have passed other provisions with similar content.¹⁷

More recently, cities have found ways of dealing with the issue of information sharing while still complying with IIRIRA. Several cities have forbidden city agencies and officials from collecting information about immigration status, unless required by law.¹⁸ Cities that have since 2002 passed ordinances or issued executive orders, policy directives, etc., to this effect include Seattle; Portland, ME; Minneapolis; New York; Durham, NC; Philadelphia; and St. Paul, MN.¹⁹ This is legal. Section 642(a) of IIRIRA establishes that cities cannot prohibit agencies or officials from exchanging information about people’s citizenship or immigration status with the federal government, but it does not require them to collect such information and says nothing about prohibiting its collection.

Two cities have gone further. New York and Philadelphia both have prohibited not only the collection of information about immigration status when it is not required by law but also the disclosure of any information on that matter that city agencies or officials may possess. To this end they have embedded this prohibition in broad privacy or confidentiality provisions (via an executive order in New York, and via a city resolution,

¹⁶ In the early 1980s, several cities passed mostly symbolic “sanctuary resolutions” stating their disagreement with the U.S. policy vis-à-vis Central American refugees. More recently, the term “sanctuary” has been used to refer to cities opposing local participation in the enforcement of civil immigration law. To avoid confusion, we do not use these expressions in this report.

¹⁷ Cities passing or issuing this type of ordinance, executive order, etc. include the following: In 1997: Salem, OR, and Austin, TX. In 1998: Cicero, IL, and Katy, TX. In 1999: Chandler, AZ, and Santa Fe, NM. In 2001: Albuquerque, NM. In 2002: Cambridge, MA; Detroit; Gaston, OR; and Madison, WI. In 2003: Anchorage, AK; Fairbanks, AK; Sitka, AK; Fresno, CA; Boise, ID; Evanston, IL; Baltimore; Brewster, MA; Orleans, MA; Ann Arbor, MI; Syracuse, NY; Ashland, OR; Portland, OR; and Talent, OR. In 2004: Durango, CO. (Data on cities adopting this policy and those discussed in the next two paragraphs are from the National Immigration Law Center; see reference in footnote 13.)

¹⁸ Access to some federally funded social programs mandates the collection of this information.

¹⁹ Takoma Park, MD; San Francisco; Chicago; and New York had done the same in the 1980s, as part of their broad limited cooperation policies.

a Police Department Memorandum, and a City Solicitor Memorandum in Philadelphia), which ban the disclosure of information about a broad range of confidential issues, including immigration status. So far, neither of these broad confidentiality provisions, nor a similar executive order issued by Maine's governor in 2004, has been challenged in court.

IIRIRA and federal legislation proposed in recent years aim not only at making it more difficult for local governments to prohibit or impede cooperation with ICE but also at fully involving local governments in the enforcement of civil immigration law. Section 287(g)(1) of IIRIRA made it possible for any sub-national government, including cities, to formally cooperate with the enforcement of civil immigration law:

“Notwithstanding section 1342 of title 31, United States Code, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.”

To enter into an agreement to perform the enforcement functions just described, a state or local agency must sign a “memo of understanding” with the Department of Homeland Security; after that, ICE trains and certifies state and local officers to conduct investigations and arrests (Carafano and Keith 2006).

Recently proposed legislation (e.g., the CLEAR Act and the Homeland Security Enhancement Act) go further than IIRIRA in pushing cities into immigration law enforcement. This legislation includes provisions that would:

- Establish that states have inherent authority to enforce immigration law.
- Require that the federal government either take custody of aliens arrested by state or local law enforcement officials and suspected of being in the country without authorization within a few days of their arrest, or reimburse the corresponding state or local governments for their expenses in detaining and transporting the aliens to federal custody.
- Require that all aliens who violate immigration law—even those that have simply overstayed their visas—be entered into the FBI-run National Crime Information Center database, which would greatly increase the ability of state and local police to arrest them.
- Encourage state and local governments to provide information and other types of assistance to the Department of Homeland Security in the enforcement of civil immigration law by reimbursing or otherwise compensating them for their costs.
- Compel state and local governments to change laws or policies that prohibit their police from cooperating with the enforcement of civil immigration law by otherwise cutting off funds these governments currently receive to offset the costs associated with the incarceration of illegal aliens who commit crimes.

- Give state and local police officers the same level of immunity from personal liability for enforcing immigration laws that federal officers enjoy.
- Require DHS to train state and local police in the enforcement of immigration law.

Cities have reacted negatively to these proposals. Not one city has signed a memo of understanding since that became possible in 1996 (U.S. Immigration and Customs Enforcement 2006), while many have passed resolutions and actively lobbied against these initiatives.²⁰ Perhaps no mayor has been so active in this area as New York Mayor Michael Bloomberg. In testimony before the Senate Judiciary Committee on July 5, 2006, he contended that believing border patrols alone will stop undocumented immigrants is “either naive and shortsighted, or cynical and duplicitous.” Bloomberg has argued that for decades “the Federal government has tacitly welcomed [undocumented immigrants] into the workforce,” and that both New York’s and the nation’s economy would be a shell of themselves without them. And he has advocated for the legalization of undocumented immigrants already in the United States.²¹ Dozens of police agencies and several police associations have also voiced their opposition to the proposed federal legislation.²²

2.2 Policies

Taking stock, four strategies exist for cities that oppose collaboration with immigration law authorities and, more generally, the direction in which proposed new legislation would take immigration policy:

- Prohibiting the participation of city officials in, and the use of city resources for, the enforcement of civil immigration law unless required by federal or state statute or court. (*A fortiori*, this means that city agencies cannot enter into a formal agreement with DHS.)
- Prohibiting the collection of information on immigration status, or instructing officials not to do so.
- Prohibiting the sharing of information with ICE by embedding this prohibition in broad privacy or confidentiality ordinances, executive orders, etc.
- Passing position-taking resolutions and lobbying against the CLEAR Act and similar legislation, and for comprehensive immigration reform.

Various legal instruments have been used to put these strategies into action. Scope, language, and justification vary greatly across the many ordinances, resolutions, executive orders, policy procedures, etc., that cities have passed or issued. Most importantly, over time, there has been a marked improvement in the sophistication and quality of the legal instruments used to implement these strategies.

The National Immigration Law Center (NILC) has recently proposed sample language for provisions implementing the first three strategies, incorporating the lessons learned

²⁰ See footnote 14 for partial lists of cities passing resolutions against the proposed legislation.

²¹ See text of Bloomberg’s testimony at www.nyc.gov/portal/site/nycgov > News and Press Releases > 2006 Events > July 2006.

²² For police agencies and police associations opposed to the local enforcement of civil immigration law, see www.immigrationforum.org > The Debate > Enforcement – Local Police > Resources. See, in particular, the link “Proposals to Expand the Immigration Authority of State and Local Police: Dangerous Public Policy According to Law Enforcement, Governments, Opinion Leaders, and Communities.”

from previous law-making on this topic. This language can be directly used in ordinances or easily adapted for other legal instruments (executive orders, police policies, legal opinions or memoranda, etc.). The following sub-sections present the key provisions proposed by the NILC. Those interested in the full sample language, which includes language for sections on purpose and policy statement, definitions, complaints and discipline, and civil remedy for violation, as well as the detailed legal rationale for each provision, should consult the NILC's document directly, which is available online.²³ After presenting this sample language, we briefly discuss the nature of position-taking resolutions and refer the reader to some useful examples.

2.2.1 Non-participation in the enforcement of civil immigration law

The language proposed by the NILC:

- Unless otherwise required by law or court order, city agents shall refrain from the enforcement of federal immigration laws. No city agents, including agents of law enforcement entities, shall use city monies, resources, or personnel solely for the purpose of detecting or apprehending persons whose only violation of law is or may be a civil immigration violation.
- Police officers are exempted from the above limitations, with respect to a person whom the officer has reasonable suspicion to believe: (1) has been convicted of a felony criminal law violation; (2) was deported or left the United States after the conviction; and (3) is again present in the United States.
- City agents shall not single out individuals for legal scrutiny or enforcement activity based solely on their country of origin, religion, ethnicity, or immigration status.

2.2.2 Not collecting information on immigration status unless required by law

The key language suggested by the NILC:

City services

- No general city service or public safety service shall be denied on the basis of citizenship. City agents shall not inquire into the immigration status of any individual, nor shall city agents enforce federal civil immigration laws.
- Exempting city services that require immigration information for eligibility purposes. City agents shall follow general city, state, and federal guidelines to assess eligibility for services. A city agent shall not inquire about a person's immigration status unless: (1) such person's immigration status is necessary for the determination of program, service, or benefit eligibility or the provision of city services; or (2) such agent is required by law to inquire about an individual's immigration status.

Victim and witness protection

- It shall be the policy of public safety services departments not to inquire about the immigration status of crime victims, witnesses, or others who call or approach city agents seeking assistance.

²³ See www.cows.org/citiesandimmigration. The documents prepared by the National Immigration Law Center are also available at www.nils.org > Immigration Law and Policy > Major Issues > Local Law Enforcement Issues. See Sample Language for Policies Limiting the Enforcement of Immigration Laws by Local Authorities and the Appendix to this document.

- A city agent who provides public safety services shall not request specific documents for the sole purpose of determining an individual's civil immigration status. However, if offered by the individual and not specifically requested by the agent, it is permissible to rely on immigration documents only to establish that individual's identity in response to a general request for identification.

2.2.3 Establishing broad privacy or confidentiality protections

The language proposed by the NILC stipulates that confidential information comprises information related to sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, immigration status, and tax records, and includes the following provision:

No city officer or employee shall disclose confidential information, unless:

- (1) Such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
- (2) Such disclosure is required by law; or
- (3) Such disclosure is to another city officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; or
- (4) In the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any city agency; or
- (5) In the case of information relating to immigration status, (a) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, or (b) such disclosure is necessary in furtherance of an investigation.

2.2.4 Position-taking resolutions against proposed federal legislation, and for comprehensive immigration reform

Resolutions of this type vary in motivation and content. In terms of motivation, supporters may aim at exerting pressure on legislators and other elected officials at the state and federal levels; at countering anti-immigrant frames, movements, and proposals at the local level; or at reassuring local immigrant residents that the city is on their side. Also, because these non-binding position-taking ordinances are, by design, interventions in the discursive realm, their specific content is closely associated with the ebb and flow of political events. Moreover, due to their position-taking nature, the preambles to these resolutions, which are quite city- and time-specific, are always as important as the resolution statement itself. Interested readers should look at the language in the resolutions. The resolutions passed by or proposed in the following cities are available on-line at www.cows.org/citiesandimmigration.

- Boston, on March 8, 2006.
- Borough of Princeton, NJ, on Nov. 9, 2004.
- Cleveland, on Feb. 27, 2006.
- San Rafael, CA, on Sept. 23, 2003.
- Seattle, on March 13, 2006.
- Sonoma, CA, on July 5, 2006.
- Watsonville, CA, on April 24, 2004.

3

Employment and Self Employment

3.1 Background

Immigrants fill many jobs in the United States: Nearly one of every seven people in the civilian labor force in 2005 was an immigrant. Immigrants' share in the low-wage workforce is even higher. In 2002, there were 8.6 million low-wage immigrant workers—one out of every five U.S. low-wage workers—and almost half of all immigrant workers were low-wage (Capps, Fix et al. 2003).

Foreign-born workers are employed in a broad range of occupations, but in 2002 39 percent of all foreign-born and over half of those born in Mexico or Central America worked as operators, fabricators, and laborers, or in service occupations, compared to only one-quarter of native workers. Workers born in Mexico or Central America also exhibit a distinctive pattern of industrial participation, with a much smaller share of them in professional and related services than native and other immigrant workers, and a larger share in agriculture, forestry and fisheries, construction, retail trade, and personal services in private households (Migration Policy Institute 2004).

Undocumented immigrants, most of whom are from Mexico and other Latin American countries, constituted an estimated 4.9 percent of the labor force in 2005. They made up a large share of all workers in several occupational categories: farming (24 percent), cleaning (17 percent), construction (14 percent), and food preparation (12 percent). Within these occupational categories, they were an even larger share of all workers in some very specific occupations: insulation workers (36 percent), roofers and drywall installers (29 percent), and butchers and other food processing workers (27 percent). Twenty percent of undocumented workers held jobs in the construction industry, while 17 percent had jobs in the leisure and hospitality industry; in contrast, fewer than 8 percent of natives held a job in each of these industries during this time (Passel 2006).

Immigrants not only have a much higher probability of holding low-wage jobs, but they also are very likely to be the subjects of employment and labor law violations, including wage and hour, health and safety, and workers' compensation violations; retaliation and violation of the right to organize; independent contractor misclassification; employer tax violations; and discrimination on the basis of country of origin (Bernhardt, McGrath and DeFilippis 2007). In 2002, 2 million immigrants were paid less than the minimum wage (Capps, Fix et al. 2003).

Immigrants are overrepresented among the self-employed. Immigrants have been more likely to be self-employed than natives in every Census from 1880 to 1990 (Beeler and Murray 2007). An important group of self-employed immigrants are street vendors, who tend to confront all kinds of difficulties making a living.

The bad quality of immigrants' employment has important effects on immigrant families' welfare. In 2001, 12 percent of working immigrant families were poor, and fully 42 percent were low-income. Moreover, children of immigrants were far

MINUTES OF THE IMMIGRATION TASK FORCE
OF THE DANE COUNTY BOARD OF SUPERVISORS
Meeting of June 2, 2010

The Immigration Task Force of the Dane County Board of Supervisors met in Room 309 of the City-County Building, in Madison, Wisconsin, on Wednesday, June 2, 2010 at 6:30 p.m.

PRESENT: Hesselbein, Bidar-Sielaff, Yudice, Natera, Mahoney, Hampton, Bauer

EXCUSED:

ABSENT: Hawkins

OTHERS PRESENT: MacKenzie

1. Call to Order. Meeting called to order at 6:40 p.m.
2. Approval of Minutes. Natera moved, seconded by Bidar-Sielaff, to recommend approval of the minutes of May 13, 2010. *Motion carried, 6-0. *(Mahoney arrives shortly thereafter)*
3. Discussion and Review of Public Comments on Proposed Recommendations.
The tally of public speakers provided to the committee indicates there were 124 *speakers*. Rather, there were 124 *registrants*, 49 of whom spoke at the public hearing on May 13, 2010. The tally will be corrected.
4. Discussion and Approval of Committee's Report and Recommendations. At the conclusion of the committee's discussion, changes were made to the draft of the report and a vote was taken on each recommendation.

Recommendation on Issue 1:	Unanimous agreement.
Recommendation on Issue 2:	Option 1, Majority agreed, 5-2. (Hampton, Mahoney)
Recommendation on Issue 3:	Unanimous agreement.
Recommendation on Issue 4:	Unanimous agreement.
Recommendation on Issue 5:	Unanimous agreement.
Recommendation on Issue 6:	Majority agreed, 6-1. (Natera)
Recommendation on Issue 7:	Unanimous agreement.
Recommendation on Issue 8:	Unanimous agreement.
Recommendation on Issue 9:	Unanimous agreement.
Recommendation on Issue 10:	Unanimous agreement.
Recommendation on Issue 11:	Unanimous agreement.

5. Discussion on Next Steps to Finalize and Present Committee Report. Chair Yudice will work with the Corporation Counsel's office to finalize the report. The committee's work is concluded. The report will be presented to Chair McDonell.
6. Adjournment. Hesselbein moved, seconded by Natera, to adjourn. *Motion carried, 7-0.

PUBLIC SPEAKERS AT THE ITF MEETING OF MAY 13TH, 2010

Name	Support Option # 1	Support Option # 2	Support Option # 3	Overall Support	Overall Oppose	Other
Claudia Carrona	√					
Beth Huang	√					
Fred Svensson				√		
Maria Abuela				√		
Sarah Lind	√					
Ray Brawford						√ (no indication)
Kristen Petroshing	√					
Alison Brooks	√					
William Rowe				√		
Mario Garcia Sierra	√					
Luis Castillejos	√					
Ignacio Cruz	√					
Veronica Lazo				√		
Rene Kissell	√					
Cindy Breunig				√		(oppose Sheriff's ICE policy)
Marisol Gonzalez	√					
Maxwell Love	√					
Kyle Szarzynski				√		
Dave Dunger					√	
Kashia Moua				√		
Adin Palau				√		
Cindy Crane	√					
Maria Teresa Mino	√					
Jorge Carrera				√		
Manuel Fuentes	√					
Salvador Carranza				√		
Beth Masin						√ (no indication)
John Hartung					√	
Bill Clingan				√		
Josefina C. Ortiz	√					
Nancy Rodriguez				√		
Fabiola Hamdan	√					
Kent Craig				√		
Pedro Albitea	√	√				
Leila Pine	√					
Sol Kelley Jones	√					
Oscar Mireles				√		
Blanca Tierino	√					
Donna Veatch	√					
Teresa Tellez-Girou	√					
Frank Wessley, Jr.					√	
Arnold Harris					√	

Name	Support Option # 1	Support Option # 2	Support Option # 3	Overall Support	Overall Oppose	Other
Sunshine Jones	√					
P. Oyatile	√					
Patricia Tellez-Girou	√					
Isadore Knox				√		
Jan Sternbach				√		
Yvonne Geerts	√					
Morgan Young				√		
Maria Eckles	√					
Patrick Hickey				√		
Alex Gillis				√		
David Blaska					√	
Daniel Cox				√		
Maria Teresa Mino						√ (no indication)
Josefina Coriche				√		
Steve Sloan					√	
Pablo L.				√		
Sandra Rybachek	√					
Alicia A.				√		
Filomena Ramos				√		
Gloria Hernandez				√		
Sughey S.				√		
Maria del Rosano				√		
Maria El-Elvira				√		
Ma Luisa R. R.				√		
Maria Ordonez				√		
Angelica Mercado				√		
Florisel da				√		
Guadalupe Esquivel				√		
Angeles Esquivel				√		
Marlen Carapia				√		
Rocio Rodriguez				√		
Mario S.				√		
Jesus Vargas				√		
A. Armento Perez				√		
Juventina Ramos				√		
Bricia Calzada				√		
Jaime Gonzales				√		
Claudia Castillo				√		
Margarita Gonzalez				√		
Carol Bracewell	√					
Patricia Arnold	√					
Laura Berger	√					
Joann Keller	√					
Stefanio Sani	√					
Michael Johnson				√		
Antonio Zamora	√					

Name	Support Option # 1	Support Option # 2	Support Option # 3	Overall Support	Overall Oppose	Other
David Crowcroft	√					
Sara Knutson	√					
Nathan Beck	√					
Lori Nelson	√					
Mora Arce	√					
Cecilia Gillhouse				√		
Sara Winter				√		
Maya Oyarbide-Sanchez				√		
Erika Ramirez	√					
Adam Breihan				√		
Isabel Montes	√					
Angelina Montes	√					
Lourdes Valdez	√					
Blanca Garcia	√					
Carmen Rumbaut				√		
Y. Vang	√					
Veronica Lazo				√		
Jean Rene Watchon				√		
Beth Huang	√					
Diego Campoverde				√		
Elpidia Luna	√					
Evelin Rodriguez	√					
Claudia C.Z.	√					
Ignacio Luero	√					
Kendrick A.C.	√					
Brandon A.C.	√					
Samuel Miranda				√		
Jeantte Martin	√					
Clarissa Pearson	√					
Lillian Post	√					
Kashia Moua			√			
Saul Castillo	√					
Juan Carlos Reyes	√					
Lorena Hernandez	√					
Rocio Molina	√					
Stacy Harbaugh				√		

TOTAL NUMBER OF SPEAKERS:

TOTAL NUMBER IN SUPPORT:

Of those in support –

Total number that specified option # 1:

Total number that specified option # 2:

Total number that specified option # 3:

TOTAL NUMBER OPPOSED:

OTHER: (NO INDICATION):

124

115

59

1

1

6

3

*Registered
— Support*

49 spoke