

## Chapter 2: Focus on Community Health and Safety: Ensuring Immigrant Access to Public Services without Fear of Deportation

Immigrants have come to New York and written their own American success stories by working hard... by playing by the rules... by weaving themselves into the permanent fabric of city life. They are the lifeblood of this city. Their contributions to our history are beyond measure. And they have always been and will always be welcome here. ...

At its core, Executive Order 41 is a clear and unequivocal invitation to all law-abiding New Yorkers to come forward without fear or apprehension and avail themselves of the services that keep us all healthy, safe, educated, and prosperous. This new executive order is good for our immigrant residents, which means it is good for all New Yorkers.

Comments of New York City Mayor Michael Bloomberg on signing Executive Order 41 on September 17, 2003.

Experience shows that many immigrants will not access essential social services if doing so could result in sharing of information related to immigration status with the BICE (formerly INS)<sup>1</sup> or other federal agencies. This section discusses state and local strategies to improve immigrant access to social services, and to encourage immigrants to cooperate with and seek the assistance of law enforcement.

Advocates around the country have approached this problem in differing ways, such as: through measures protecting confidentiality, through measures limiting the participation of city workers and police in immigration enforcement and through measures opposing federal attempts to require local police to cooperate with immigration law enforcement.

### Confidentiality Provisions in State Administered Benefits and Programs

Eligibility for benefits sometimes hinges on an applicant's "lawful presence." Determining whether an individual is "lawfully present" is a complicated process. Often a person's status is dependent on a familial relationship. Sometimes a person may be eligible to adjust his or her status due to certain circumstances such as status as a victim of domestic violence. The complexities and often private nature of the inquiries necessary in determining a person's immigration status call for clear laws that protect the confidentiality of all applicants.

The complex immigrant eligibility requirements for many state administered benefits call for careful consideration of state procedures used to seek, record, and disseminate immigration information. The

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<sup>1</sup> On March 1, 2003 the functions previously performed by the Immigration and Naturalization Service (INS) of the Department of Justice (DOJ) transitioned into two offices of the Department of Homeland Security (DHS): U.S. Bureau of Citizenship & Immigration Services (BCIS) and Bureau of Immigration and Customs Enforcement (BICE). This document will refer to the "INS" only where that term is used in an original document, such as a city ordinance passed before the reorganization of the agency.

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Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) includes provisions that prohibit states from placing restrictions on the exchange of information with immigration authorities regarding immigration status.<sup>2</sup> Specifically, state agencies are required to report to the INS persons “known to be not lawfully present in the United States.”<sup>3</sup> The Illegal Immigration Reform and Responsibility Act (IIRIRA) restricts agency policies that prohibit “maintenance” of immigration status information, but notably does not preclude adopting policies for not recording immigration information at all.<sup>4</sup> The first step in increasing immigrant access to social services and protecting confidentiality is to understand what information is required or can permissibly be sought by state agencies. Second, advocates must discern how this information is recorded, maintained, and shared with other agencies, particularly with BICE.

**The complexities and often private nature of the inquiries necessary to determine a person's immigration status call for clear laws that protect the confidentiality of all**

### ***Limitations on Inquiry***

Recognizing that unnecessarily intrusive inquiries regarding immigration status and social security numbers can deter immigrants from accessing services, the U.S. Department of Agriculture, the U.S. Department of Human Services, and the Office of Civil Rights of the U.S. Department of Justice have issued policy guidance detailing when states may inquire into immigration status, citizenship, and social security numbers.<sup>5</sup> The guidance clarifies that only the immigration status of the “applicant” is relevant. States may not require an applicant to provide information about the citizenship or immigration status of any non-applicant family or household member. States may not deny an eligible applicant benefits because a non-applicant family or household member has not shared her citizenship or immigration status. The guidance reminds states of their obligation to comply with the Privacy Act and other federal laws when inquiring about social security numbers. Unless disclosure of a social security number is required by law, states are prohibited from denying a right, benefit or privilege provided by the law because of an individual’s refusal to provide a social security number. Although a state may not require disclosure of an individual’s social security number, it may request voluntary disclosure.<sup>6</sup> The state must inform the individual of whether the disclosure is mandatory or voluntary, by what statutory authority the information is requested and what the

<sup>2</sup> Personal Responsibility and Work Opportunity Reconciliation Act § 434, 8 U.S.C.S § 1644 (2002).

<sup>3</sup> *Id.*

<sup>4</sup> Illegal Immigration Reform and Responsibility Act § 642(b)(2), 8 U.S.C.A. § 1373 (2002).

<sup>5</sup> Olivia Golden, Assistant Secretary Administration for Children and Families, Nancy-Ann Min DeParle, Administrator Health Care Financing Administration, Shirley R. Watkins, Under Secretary Food, Nutrition, and Consumer Services, Thomas Perez, Director Office for Civil Rights, *Policy Guidance Regarding Inquiries Into Citizenship, Immigration Status and Social Security Numbers in state applications for Medicaid, State Children’s Health Insurance Program (SCHIP), Temporary Assistance to Needy Families (TANF) and Food Stamp Benefits* (last modified Sept. 21, 2000) available at <http://www.hhs.gov/ocr/immigration/triagency.html>.

<sup>6</sup> Privacy Act of 1974, Sec. 7 of Pub.L. 93-579.

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information will be used for.<sup>7</sup> It is important to remember that eligibility requirements for benefit programs vary greatly. Thus, permissible inquiries vary with each program.

### ***Limitations on Reporting***

The Social Security Administration, the U.S. Departments of Health and Human Services, Labor, and Housing and Urban Development clarified PRWORA's reporting requirements in a joint notice in the Federal Register.<sup>8</sup> The PRWORA established reporting requirements to the following federal programs: the Temporary Assistance for Needy Families program or Welfare-to-Work programs under Title VI(A) of the Social Security Act; Supplemental Security Income (SSI); or the Public and Assisted Housing Program provided under the United States Housing Act of 1937, or Section 6 or Section 8 housing assistance programs.<sup>9</sup> According to the multi-agency notice, the reporting requirements only apply when an agency has officially determined the applicant's immigration status based on formal finding of fact or conclusion of law that is made by the agency as part of a determination of the applicant's eligibility for one of the aforementioned benefits. A formal determination or conclusion of law that the individual is unlawfully present must be supported by a determination by immigration authorities or the Executive Office for Immigration Review. The reporting requirements do not apply if an agency discovers an individual's immigration status outside of the context of an application for one of the specified benefits.

### **Model Confidentiality Provisions**

The following are provisions that should be included in state and local confidentiality laws. Each point is followed by model language:

- **Inquire into immigration status, citizenship, and social security numbers only when required by federal laws and regulations.**

"No agency, officer, or employee shall inquire about the immigration status of any individual applying for or receiving any service of benefit, on behalf of oneself or another, unless immigration status information is specifically required by federal or state law as a condition of receipt of such service or benefit.

- a. Where immigration status information is a condition of receipt of the service or benefit, the agency, officer, or employee shall make only those inquiries necessary to determine whether an applicant or recipient is an immigrant qualified for such service or benefit. Because not all undocumented immigrants are eligible for services and

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<sup>7</sup> *Id.*, at § 7(b).

<sup>8</sup> Responsibility of Certain Entities to Notify the Immigration and Naturalization Service of Any Alien Who the Entity "Knows" Is Not Lawfully Present in the United States, 65 Fed. Reg. 58,301(Sep. 28, 2000). See also, National Immigration Law Center, *New Rule Explains Limits of INS Reporting Requirements Under the 1996 Welfare Law*, IMMIGRANTS' RIGHTS UPDATE, (Oct. 19, 2000) available at <<http://www.nilc.org/immspbs/vr/verifreptg004.html>>

<sup>9</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996 § 404(b),(d); 42 U.S.C. A. §§ 611(a), 1423(y) (2002).

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benefits, it is not necessary to ask whether a person is lawfully present in this country, but only whether he or she has the requisite status for benefits or services.

- b. This section shall apply to any application, questionnaire, interview sheet, or other form used in relation to benefits or services provided by the City.”<sup>10</sup>

- **Minimize the recording of unnecessary immigration related information.**

“No agency, officer, or employee shall record information regarding the immigration status of an applicant for or recipient of any service or benefit unless required by federal or state law. Where federal or state law requires the recording of immigration status information, only that information specifically required shall be recorded.”<sup>11</sup>

- **Prohibit sharing of confidential information regarding a person’s immigration status with federal agencies except where mandated by federal law.**

No city personnel shall “request information about or disseminate information regarding, the immigration status of any individual except as required by federal or state statute or regulation.”

## Existing Local Confidentiality Laws

San Francisco, CA and Takoma Park, MD<sup>12</sup> have had ordinances protecting confidential immigration status information for a number of years. In 2003, Portland, ME<sup>13</sup>, Minneapolis, MN<sup>14</sup> and Seattle, WA<sup>15</sup> all adopted ordinances prohibiting police and other city employees from making inquiries into immigration status except under limited circumstances. San Francisco’s Administrative Code provides for the most comprehensive confidentiality protections for immigrants. Below is a summary of the protections and guidelines provided for in the San Francisco Administrative Code. (The relevant sections of the San Francisco Administrative Code are available on the NELP website)

### **San Francisco Administrative Code**

The most comprehensive and protective city policy regarding protection of immigration status, the San Francisco Administrative Code provides for the following:<sup>16</sup>

- Declares the city and county of San Francisco a City of Refuge.<sup>17</sup>

<sup>10</sup> ACLU Immigrants’ Rights Project, *Model City Policy to Protect Client Confidentiality*, 1997. Reprinted in the Appendix.

<sup>11</sup> *Id.*

<sup>12</sup> Available at <[http://www.cityoftakomapark.org/clerk/documents/ordinance1985\\_63.pdf](http://www.cityoftakomapark.org/clerk/documents/ordinance1985_63.pdf)>. Reaffirmed by city resolution in 2002, <<http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=11283&c=207>>

<sup>13</sup> Available at <<http://www.ci.portland.me.us/Chapter002.pdf>>

<sup>14</sup> Available at <<http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12291&c=207>>

<sup>15</sup> Available at <<http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=11860&c=207>>

<sup>16</sup> San.Fran. CA, Admin.Code § 12H.1 (1989).

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- Prohibits the use of any city funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the city and county of San Francisco. Exceptions are made where federal or state statutes, regulations or court decisions which require the city or county to provide such assistance.<sup>18</sup>
- Prohibits city and county officials from assisting or cooperating with any INS investigation, detention, or arrest procedures, relating to alleged civil provisions of the federal immigration law.<sup>19</sup>
- Prohibits inquiries into immigration status, disseminating information regarding immigration status or conditioning the provision of services or benefits of the city and county upon immigration status, except as required by federal or state laws, court decisions of city and county public assistance criteria.<sup>20</sup>
- Prohibits questions regarding immigration status on any application, questionnaire or interview form used in relation to services or benefits provided by the city and county unless required by federal or state statute, regulation or court decision.<sup>21</sup>
- Allows for identification and reporting of individuals suspected of violating the civil provisions of the immigration laws if they are in custody after being booked for the alleged commission of a felony.<sup>22</sup>
- Prohibits an officer, employee, or law enforcement agency of the city or county from stopping, questioning, arresting, or detaining an individual solely because of her national origin or immigration status.<sup>23</sup>
- Prohibits an officer, employee, or law enforcement agency of the city or county from discriminating among individuals on the basis of their ability to speak English or perceived or actual national origin in deciding whether to report an individual to the INS.<sup>24</sup>
- Requires this law to be distributed to all departments, agencies, and commissions in the city and county of San Francisco.<sup>25</sup>
- Requires each city and county employee to receive written directions for implementation of this chapter.<sup>26</sup>
- Enables the City Human Rights Commission to review compliance with this law.<sup>27</sup>

## Highlighted Campaigns

### Seattle, Washington

On January 28<sup>th</sup>, 2003 the Seattle City Council passed an Ordinance codifying procedures for all City employees, including law enforcement officers, with respect to making inquiries into the immigration status

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<sup>17</sup> San.Fran. CA, Admin.Code § 12H.2 (1989).

<sup>18</sup> San.Fran. CA, Admin.Code § 12H.2(a) (1989).

<sup>20</sup> San.Fran. CA, Admin.Code § 12H.2(c) (1989).

<sup>21</sup> San.Fran. CA, Admin.Code § 12H.2(d) (1989).

<sup>22</sup> San.Fran. CA, Admin.Code § 12H.2-1 (1989).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> San.Fran. CA, Admin.Code § 12H.4 (1989).

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of persons seeking services. The ordinance provides that no city officer or employee should inquire into a person's immigration status of any individual or apprehend individuals for violation of immigration laws. It would apply to city police and to city agencies administering public benefits. Police in Washington State, including the Seattle police chief, are opposed to enforcing immigration law.<sup>28</sup>

### **New York City**

On September 17, 2003, Mayor Michael Bloomberg signed Executive Order 41, which, building on Executive Order 34, signed in May, 2003, created a city-wide confidentiality policy protecting immigrants from arbitrary or unnecessary collection and reporting of immigration status information when seeking city services or interacting with police. For the first time ever, New York City has a policy that places restrictions both on asking about and sharing information regarding immigration status.

EO41 contains "don't ask" provisions that specifically prohibit police and other law enforcement officers from asking about the immigration status of crime victims, witnesses, or other persons seeking assistance from the police and states that police officers shall not inquire about a person's immigration status, unless police are investigating illegal activity other than undocumented status. EO41 also prohibits all other city workers from asking about immigration status unless it is necessary to provide service or they are required by law to do so.

EO41 also contains "don't tell" provisions that prohibit city workers, including, but not only, the police, from sharing or disclosing confidential information they have obtained, with certain exceptions. Confidential information includes any information relating to immigration status, sexual orientation, status as a victim of domestic violence or sexual assault, status as a crime witness, receipt of public assistance, and income tax records.

The signing of this Executive Order was a major step in a years-long campaign by a number of advocacy, community and labor groups to ensure that all New Yorkers would be able to cooperate with law enforcement and access city services without fear of having their immigration status revealed.

Since the 1980s, New York City workers followed a previous Executive Order, EO124, which prohibited city officers and employees from providing information "respecting any alien to federal immigration authorities" unless it is required by law, written permission has been obtained from the individual, or criminal activity is suspected.<sup>29</sup> Seeking to continue enforcement of Executive Order No. 124, the Giuliani administration challenged the IIRIRA and PRWORA provisions prohibiting state and local officials from restricting the exchange of information with the INS.<sup>30</sup>

The City lost its facial challenge in both the district court and the 2<sup>nd</sup> Circuit Court of Appeals in 1999, though the Executive Order was not invalidated. However, its status was called into question following the

<sup>28</sup> Full text of the Seattle ordinance available at <<http://www.nelp.org>>

<sup>29</sup> 43 RCNY § 3-02 (2001).

<sup>30</sup> *The City of New York and Rudolph Giuliani v. The United States and Janet Reno*, 179 F.3d 29 at 37 (1999); 1999 U.S. App. LEXIS 10940.

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lawsuits, and advocates including the Legal Aid Society, the New York Immigration Coalition, NELP, the Arab American Family Support Center, Council of Pakistan Organization, the Council on American-Islamic Relations, SEIU 32B-J, and UNITE sought to ensure that confidential information continued to be clearly protected.

On December 4, 2002, City Councilmember Monserrate, along with over 25 other sponsors, introduced Bill Intro. No. 326, which, if enacted would prohibit disclosure of confidential information to anyone except another city officer or employee acting in the scope of her official duties. This bill gained overwhelming support in the City Council. Before it was passed, however, Mayor Bloomberg rescinded EO124 and replaced it with EO34, which provided limitations on the ability of city workers other than police to make enquiries about immigration status and no prohibitions on sharing of information. This was met with outcry from community, advocacy and labor groups who ultimately entered into discussions with the Mayor's office about how to improve the confidentiality policy. The result was EO41.

There is still work to do: For example, at this time it is unclear what kinds of investigations of illegal activity will subject people to questions about immigration status. Advocates are negotiating with the City and the Police Department to interpret this exception as narrowly as possible.

### **Ensuring Immigrants' Access to Law Enforcement by Restricting State and Local Law Enforcement of Civil Immigration Laws**

Since 1996, the federal agency charged with immigration law enforcement has increased its cooperation with local police and other law enforcement agencies, both formally and informally. Turning local police into immigration agents is a dangerous trend that deters immigrants from accessing or cooperating with the police for fear of immigration consequences. When immigrants are afraid to file claims with administrative agencies, call the police, or go to court, immigrants can not benefit from the protections of law enforcement.

The Immigration and Nationality Act (INA) and the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) authorize state and local police to enforce the criminal provisions of federal immigration laws. Recently at issue is the power of state and local law enforcement to make arrests or otherwise enforce the civil provisions of the immigration laws.

**Turning local police into the INS is a dangerous trend that deters immigrants from accessing or cooperating with the police for fear of immigration consequences.**

### **Current Understanding of State and Local Enforcement of Immigration Law**

In 2002, it was leaked to the press that the federal Department of Justice had concluded that state and local police have the inherent authority to enforce civil violations of the immigration law.<sup>31</sup> The somewhat more limited position of the Bush White House was that state and local police have the authority to arrest and detain persons who are in violation of civil immigration laws and whose names have been placed in the

<sup>31</sup> Eric Schmitt, *Ruling Clears Way to Use State Police in Immigration Duty*, N.Y. TIMES, (April 4, 2002), at A19.

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National Crime Information Center (NCIC).<sup>32</sup> The NCIC is a national database maintained by the Federal Bureau of Investigations and used by federal, state, and local law enforcement officers to identify those labeled as “high-risk aliens.”

Historically, the Department of Justice’s position had been that state and local police lack any inherent authority to make arrests for civil infractions of the immigration laws.<sup>33</sup> This supports the principle that civil immigration enforcement can only occur under circumstances expressly provided for by Congress.<sup>34</sup> This principle flows from the longstanding and near absolute power of the federal government over immigration matters.

State authority to enforce *criminal* immigration violations rests in explicit provisions in both the INA and in the AEDPA. In contrast, Congress has not granted states a similarly broad power to enforce civil immigration violations. The most relevant sections of the INA are §§103(a)(8) and 237(g).<sup>35</sup> Both sections afford state and local authorities limited power to enforce the civil provisions of the immigration laws in specifically delineated situations, while always under the direction and supervision of the Department of Justice.

Rules implementing INA §103(a)(8) went into effect on August 23, 2002. The authority of state and local law enforcement to exercise federal immigration power under INA §103(a)(8) is proscribed by “contingency agreements” between the Commissioner of the INS and state or local law enforcement officials.<sup>36</sup> The contingency agreements authorize state and local officials to exercise immigration authority under specific conditions within geographically defined boundaries.<sup>37</sup>

Contingency agreements do not authorize the state or local officers to perform immigration functions until the Attorney General declares that a “mass influx of aliens” is imminent or occurring, and specifically authorizes such performance.<sup>38</sup> Among the many things the agreements provide for is a prohibition on state and local officers from performing any functions of the INS pursuant to this rule without undergoing trainings in immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues.<sup>39</sup>

<sup>32</sup> Letter from Alberto Gonzales, Counsel to the President of the United States, to the Migration Policy Institute (Jun. 24, 2002) available at <<http://www.migrationpolicy.org/files/whitehouse.pdf>>

<sup>33</sup> Memorandum opinion from Theresa Wynn Roseborough, Deputy Assistant Attorney General, Office of Legal Counsel, for the U.S. Atty., for the S.D. Cal. (Feb. 5, 1996) 1996 WL 33101191 (O.L.C.).

<sup>34</sup> See generally Migration Policy Institute, *Authority of State and Local Officers to Arrest Aliens Suspected of Civil Infractions of Immigration Law* (arguing against broad inherent authority of state and local officers to exercise federal immigration authority) available at <<http://www.migrationpolicy.org/files/authority.pdf>>

<sup>35</sup> Immigration and Nationality Act §.103(a)(8), 8 U.S.C. § 1103(2002).

<sup>36</sup> 28 C.F.R. § 65.83(d)(2002).

<sup>37</sup> 28 C.F.R. § 65.83(d)(1)(4)(2002).

<sup>38</sup> 28 C.F.R. § 65.84.(a)(1)(2002).

<sup>39</sup> 28 C.F.R. § 65.84(a)(3)(iv)(2002).

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IIRIRA added INA § 287(g), which provides for written agreements between the Attorney General and a state to “perform a function of an immigration officer.”<sup>40</sup> The section goes on to outline the criteria under which state and local officers may enforce immigration laws.<sup>41</sup> These include written certification of training and knowledge of immigration law and a written agreement with the Attorney General about the specific duties to be performed by the local officers and the duration of the authority of local officers to perform these duties.<sup>42</sup>

Claiming that state and local law enforcement officers have the inherent authority to enforce federal immigration laws wholly contradicts the long-standing principle that immigration matters are a federal concern. By providing specific circumstances for state and local exercise of federal immigration powers in this section, like § 103(a)(8), Congress legislates with the presumption that state and local law enforcement officers may exercise immigration powers only within the scope of limited circumstances defined by the statute. To take the position that state and local law enforcement possess inherent authority to enforce immigration matters would render sections of the INA detailing the conditions for state and local enforcement of immigration laws meaningless.

## State Attorney General Opinions

Attorneys General in various states have issued opinions that state and local law enforcement officers are not authorized (or have limited authorization) to enforce civil violations of the immigration law.

### Kansas

It is the Kansas Attorney General’s position that the state laws empower a “law enforcement officer” in Kansas to make arrests for the laws of the state or the ordinances of any municipality. Thus, a law enforcement officer in Kansas “does not have the power of arrest for violation of federal immigration laws.”<sup>43</sup>

### Nevada

The Nevada Attorney General issued an opinion specifying that Nevada State police are empowered to arrest persons suspected of “violating federal criminal laws.”<sup>44</sup> The opinion advises that this power should be “cautiously exercised” in the context of civil immigration law violations. Specifically, a state or local officer may not detain or arrest a person solely on the basis that the individual may be a “deportable alien.”

### New York

The New York Attorney General issued an opinion asserting that state and local officers may not make arrests based on civil infractions of the INA.<sup>45</sup>

<sup>40</sup> *Immigration and Nationality Act* § 287(g), 8 U.S.C. § 1357(g)(1)(2002).

<sup>41</sup> 8 U.S.C. § 1357(g)(2)(2002).

<sup>42</sup> 8 U.S.C. § 1357(g)(3)(2002).

<sup>43</sup> Kan. Atty. Gen. Op. No. 79-149 (1978).

<sup>44</sup> 1983 Nev. Op. Atty. Gen. 79.

<sup>45</sup> 2000 Op. Atty Gen. N.Y. (Inf.) 1001.

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## States Attempting to Enforce Immigration Laws

### Colorado

In April of 2002, the Colorado General Assembly passed the Illegal Alien Enforcement Act (HB02-1448), which would have allowed local police to enforce federal civil immigration laws.<sup>46</sup> The measure fared worse in the state Senate: less than a month after it was introduced, the Senate Committee on the Judiciary postponed it indefinitely.<sup>47</sup>

### Florida

Florida became the first state to enter into a Memorandum of Understanding with the Department of Justice to deputize local police officers as INS agents. Pursuant to this agreement, on July 9, 2002, 35 state law enforcement officers began training to enforce civil as well as criminal immigration laws.<sup>48</sup>

### Alabama

The Department of Homeland Security took over the Department of Justice's role and negotiated a Memorandum of Understanding with Alabama, authorizing local law enforcement officers to enforce civil violations of the immigration law in October 2003.<sup>49</sup>

### Proposed Federal Legislation: The CLEAR Act

Citing the confusion surrounding state and local police authority to enforce civil immigration laws, Congressional representative Charles Norwood (R-GA) introduced the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, (H.R. 2671) in July 2003.<sup>50</sup> Among other things, this bill would require state and local police to enforce federal civil immigration laws.

## Model Language to Prohibit State and Local Enforcement of Immigration Laws

Comprehensive model language would include the points outlined in the Model Confidentiality Provisions in addition to a clear prohibition on the use of state and local resources for immigration enforcement.

<sup>46</sup> Michael A. De Yoanna, *Colorado Immigrant Enforcement Bill Passes*, UNIVERSITY WIRE (May 2, 2002).

<sup>47</sup> Illegal Alien Enforcement Act, CO H.B. 1448, 63rd Gen. Assembly (2002). See also, Michael A. De Yoanna, *Colorado Immigrant Enforcement Bill Passes*, UNIVERSITY WIRE (May 2, 2002); Deborah Kong, *Immigrants Fear New Proposal That Would Allow Local Police to Enforce Federal Immigration Laws*, ASSOCIATED PRESS (May 23, 2002).

<sup>48</sup> Mireidy Fernandez, *FDLE Cross-Training 35 Police Officers to Also Serve as INS Agents*, NAPLES DAILY NEWS (Jul. 23, 2002).

<sup>49</sup> See, *Alabama Troopers Now Enforcing Federal Immigration Laws*, MSNBC NEWS, Oct. 3, 2003, available at, <<http://www.msnbc.com/local/wpml/D-8486EB56-EA82-4E5E-A1B7-6C643C0E2E43.asp>>

<sup>50</sup> Extensive background information and talking points regarding the CLEAR Act are available from the National Immigration Forum, at <<http://www.immigrationforum.org/currentissues/clear.htm>>

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### ***Ensure that state and local resources and personnel are not used for immigration enforcement***

No city personnel or resources “shall be used to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City unless such assistance is required by federal or state statute, regulation or court decision.”<sup>51</sup>

## **State Laws Limiting Use of Local Resources to Enforce Immigration Law**

### **Oregon**

Oregon law prohibits the use of state and local law enforcement funds or personnel to detect or apprehend persons simply because they are in the country in violation of federal immigration laws. However, the statute allows verification of immigration status if the person is arrested for any criminal offense.<sup>52</sup>

### **Alaska**

The Legislature of the state of Alaska passed a nearly unanimous resolution opposing measures of the federal Patriot Act that would violate the rights and liberties guaranteed equally under the state and federal constitutions and providing that State agencies and instrumentalities may not use state resources or institutions for the enforcement of federal immigration laws, which are the responsibility of the federal government.<sup>53</sup>

## **State Anti-Racial Profiling Provisions**

### **Utah**

The debate over local police enforcement of immigration laws has been a topic of heated debate in Utah since at least 1998. In 1998, the Salt Lake City Council rejected a proposal to deputize local police to enforce immigration laws. Subsequently in April of 2002, Utah enacted legislation “designed to prohibit unconstitutional racial profiling.”<sup>54</sup>

## **Rejecting Enforcement of Immigration Laws on the Local Level**

### ***Local Ordinances***

#### **San Francisco, CA**

The San Francisco Administrative Code, discussed above, prohibits city or county departments, agencies, and employees from using city resources to enforce federal immigration laws.<sup>55</sup> The Code also specifically prohibits cooperating with the INS to enforce alleged violations of civil provisions of the immigration laws.<sup>56</sup>

<sup>51</sup> San.Fran. CA, Admin. Code §12H.2.1 et seq. (1989).

<sup>52</sup> OR. REV. STAT. § 181.850 (2001).

<sup>53</sup> The ACLU has published a list of local measures in opposition to the USA PATRIOT Act, available at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12707&c=207>.

<sup>54</sup> Shawn Foster, *S.L. Latinos Swayed Councilman; He Voted Against INS Plan After Foes Packed Meeting*, SALT LAKE TRIBUNE (Sept. 9, 1998).

<sup>55</sup> San. Fran. Admin. Code § 12H.2 (1989).

<sup>56</sup> San. Fran. Admin. Code § 12H.2(a) (1989).

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### **Albuquerque, NM**

Section 3-1-11(b)(4) of the Albuquerque Code of Resolutions provides that “no municipal resources shall be used to identify individuals’ immigration status or apprehend persons on the sole basis of immigration status, unless otherwise required by law to do so.”<sup>57</sup>

### **Local Resolutions**

Around the country, communities are taking a stand against cooperation with immigration authorities. City and county councils in San Francisco, California; Santa Fe, New Mexico; Austin and Dallas, Texas; Chicago, Illinois and other areas have passed local resolutions declaring an “INS Raid Free Zone,” “City of Refuge,” or area of non-cooperation with the immigration service. While such resolutions do not offer the level of detail or accountability of a law or administrative regulation, they can be effective organizing tools to raise awareness of the need for public agencies and elected officials to affirm their commitment to increased immigrant access to social services. These resolutions clarify the relationship between immigration authorities and local authorities by stating that city or county programs and personnel will not be used for the purpose of enforcing immigration laws. They also bar discrimination based on immigration status or national origin and establish task forces to monitor immigrant rights.

### **Marion County, OR**

Marion County has adopted administrative policies and procedures regarding the relationship between the county and immigration authorities. The policy states that the INS has the authority to enforce the immigration laws and that county programs are not operated for the “sole or primary purpose of enforcing federal immigration laws.”<sup>58</sup> The policy also provides that county law enforcement entities will not use resources or personnel to “detect or apprehend persons solely for violations of immigration laws.”

### **City of Salem, OR**

Salem has also adopted policy guidelines and procedures clarifying the relationship between the city and immigration authorities. The Salem provisions mirror the Oregon State policy.<sup>59</sup>

### **Police Department Orders**

A number of police departments around the country have adopted orders preventing local police from enforcing civil violations of the immigration law. These include the police or sheriff’s departments of Fresno and Sonoma County, CA; the District of Columbia; Cicero, IL; Marion County, OR; Philadelphia, PA; and Houston, TX.

Numerous representatives of local police departments have also criticized the idea of participating in the enforcement of federal immigration laws, including the President of the Dallas Police Association, the Chief of the Houston Police Department, the Los Angeles Police Department, the Chief of Police in Newark, California, the

<sup>57</sup> Albuquerque Code of Res. § 3-1-11(b)(4). Full text of the resolution is available at <<http://www.nelp.org>>

<sup>58</sup> Marion County Administrative Policies and Procedures as adopted by the Board of Commissioners. Full text available at <<http://www.nelp.org>>

<sup>59</sup> Role of City of Salem in relation to the Immigration and Naturalization Service. Full text available at <<http://www.nelp.org>>

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Assistant Chief of Police in El Paso, Texas, police officials in several cities in New Jersey, Sheriff George Epp of Colorado, and chiefs of police in cities throughout Colorado.<sup>60</sup>

### **Chandler, AZ**

In the aftermath of “Operation Restoration,” a collaboration between local police and Border Patrol agents that resulted in rampant civil rights violations, Governor Jane Hull remains opposed to local enforcement of immigration laws. An investigation into “Operation Restoration” by the State Attorney General’s office concluded “without a doubt that residents of Chandler, Arizona were stopped, detained, and interrogated by officers...purely because of the color of their skin.” Furthermore, the roundups “greatly harmed the trust relationship between the Chandler Police and many of the city’s residents.”<sup>61</sup> In 1999, the Chandler City Council unanimously approved a \$400,000 settlement of a lawsuit stemming from the police role in the roundups.<sup>62</sup> The Chandler Police Department adopted a policy that prohibits arrest when the only violation is infraction of immigration law and prohibits immigration notification of undocumented persons who are material witnesses of crime are seeking medical treatment, or are involved in family disturbances, minor traffic offenses, or minor misdemeanors

### **San Diego, CA**

The San Diego Police Department has a General Order<sup>63</sup> that police are not to look for violations of immigration law and prohibits immigration involvement with undocumented persons when they are material witnesses of crime, have family disturbances or minor traffic offenses or seek medical treatment. David Cohen, San Diego Police spokesman said, “We’ve spent decades establishing trust...with our very diverse immigrant communities. If there is an immigration emergency tied to a criminal activity, of course we’ll assist...But if it is simply an immigration violation we will not be involved.”<sup>64</sup>

## **Local Opposition to the CLEAR Act and Sections of the USA PATRIOT Act**

Recently various entities, from police departments to city and county councils have come out in opposition to the CLEAR Act and its potential impact on the local level.

<sup>60</sup> Edward Hegstrom, *Houston Police Department Shuns Taking Role in Tracking Immigrants: Officers Say They Need Foreigners’ Trust*, THE HOUSTON CHRONICLE (May 15, 2002); Edward Hegstrom, *HPD Shuns Taking Role in Tracking Immigrants: Officers Say They Need Foreigners’ Trust*, THE HOUSTON CHRONICLE, (May 15, 2002); Michael A. De Yoanna, *Colorado Immigrant Enforcement Bill Passes*, UNIVERSITY WIRE (May 2, 2002); *Border patrol and local police working together*, CHRISTIAN SCIENCE MONITOR (May 2, 2002); Eric Schmitt, *Administration Split on Local Role in Terror Fight*, NEW YORK TIMES (Apr. 29, 2002); Elizabeth Llorente, *Policing Immigration*, THE RECORD (Apr. 22, 2002); Michael Riley, *Immigration Bill Has Police Uneasy*, DENVER POST (Apr. 22, 2002); Patrick J. McDonnell, *Police Want No Part in Enforcing Immigration Law*, LOS ANGELES TIMES (Apr. 5, 2002); Michelle Mittelstadt and Alfredo Corchado, *U.S. May Let State, Local Authorities Enforce Federal Immigration Laws*, THE DALLAS MORNING NEWS (Apr. 4, 2002).

<sup>61</sup> Karen Brandon, *U.S. Weighs Local Role on Immigration*, CHICAGO TRIBUNE (Apr. 14, 2002).

<sup>62</sup> American Immigration Lawyers Association, *DOJ Opinion on State and Local Police Enforcing Immigration Laws Bodes Ill for Law Enforcement Communities* (Apr. 9, 2002) available at <<http://www.aila.org>>

<sup>63</sup> Available at <<http://www.sdbillofrights.org/>>.

<sup>64</sup> Kris Axtman, *Police Can Now Be Drafted to Enforce Immigration Law*, THE CHRISTIAN SCIENCE MONITOR (Aug. 19, 2002).

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### **Local Resolutions**

Resolutions opposing parts of the USA PATRIOT Act and the CLEAR Act have been passed in 208 communities in 35 states including three state-wide resolutions. The ACLU maintains a list of those communities at <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=11294&c=207>.

### **Police Department Statements**

Police and Sheriff's Departments in Des Moines, IA; El Paso, TX; Santa Cruz County, AZ; Lenexa, KS; Los Angeles County, CA; Newark, CA; North Miami Beach, FL; South Tucson, AZ; and Yuma County AZ, have made statements opposing the CLEAR Act. State Police Associations, such as the California Police Chiefs Association, the El Paso Municipal Police Officers' Association, the Miami-Dade Chiefs Association and the Florida Police Benevolent Association have made similar statements.

## **Talking Points Against State and Local Enforcement of Immigration Laws**

Talking points from the National Immigration Forum and the American Immigration Lawyers Association are summarized below.<sup>65</sup>

- Immigration enforcement by local police officers undermines trust between immigrant communities and the police. Many police departments have spent years nurturing the trust of immigrant communities. Adopting policies that enable local police to act as de facto immigration agents seriously erodes community-police relations.
- Immigration laws and determinations of a person's immigration status are extremely complex and constantly changing. There are many ways for people to be lawfully present in the United States, and the INS issues numerous different documents that verify a person's legal presence. Proper understanding and enforcement of these laws requires intensive training. Without structured guidance, local law enforcement officials add nothing meaningful to immigration enforcement efforts.
- Asking local law enforcement agencies to enforce federal immigration law will drain these agencies of scarce dollars and limited resources and lead to problems in enforcement. In many communities, scarce law enforcement resources already result in dangerously slow 911-response times and limited efforts to investigate certain crimes. Diverting local resources to perform federal immigration duties is a disservice to the local community.
- Past attempts by local law enforcement agencies to enforce immigration law have led to false arrests or detention of people who look or sound foreign but are legally in the country and civil rights violations. (See above section on Arizona.)
- Local officials from across the country have come out in opposition to turning their police into INS agents. These officials include but are not limited to mayors in New York, Los Angeles, San Francisco, and

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<sup>65</sup> American Immigration Lawyers Association, *DOJ Opinion on State and Local Police Enforcing Immigration Laws Bodes Ill for Law Enforcement and Communities* (April 9, 2002) available at <http://www.aila.org>.

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Chicago. Police departments from San Diego, Los Angeles, and San Francisco, CA and Houston and San Antonio, TX have all taken firm stances against local enforcement of immigration laws.

- Legal authority the Department of Justice reportedly cites to support the opinion for state and local authorities enforcing immigration law is questionable at best.

### **What Can Advocates Do?**

- √ Find out your state's human services' office and local police department's position regarding confidentiality protections for immigrants. Learn about agency and police practices pertaining to: inquiries about immigration status, maintenance of records relating to immigration status, and sharing immigration information with other state and federal agencies.
- √ Advocate for state, municipal, and administrative agency policies that protect the confidentiality of immigrants.
- √ Work for adoption of a formal policy of non-cooperation with the INS by your City Council, Governor, human services office, and your police force.
- √ Push for statements from law enforcement officials speaking out against using local police resources for immigration enforcement.

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