Statement for the Record

U.S. House of Representatives Committee on Oversight and Government Reform

"Criminal Aliens Released by the Department of Homeland Security"

April 28, 2016

The National Immigration Forum (the Forum) advocates for the value of immigrants and immigration to the nation. Founded in 1982, the Forum plays a leading role in the national debate about immigration, knitting together innovative alliances across diverse faith, labor, law enforcement, veterans and business constituencies in communities across the country. Coming together under the Forum's leadership, these alliances develop and execute legislative and administrative policy positions and advocacy strategies. Leveraging our policy, advocacy and communications expertise, the Forum works for comprehensive immigration reform, sound border security policies, balanced enforcement of immigration laws, and ensuring that new Americans have the opportunities, skills, and status to reach their full potential.

Introduction

The Forum appreciates the opportunity to provide its views on immigration enforcement, the prioritization of criminal aliens, and the need for community policing. Having had the opportunity to work with leading law enforcement voices from the Law Enforcement Immigration Task Force (LEITF), the Forum appreciates the challenges state and local law enforcement agencies face in earning the trust of immigrant communities and balancing competing priorities to ensure community safety. We fully support enforcement approaches that promote safe communities and respect for the rule of law.

Immigration enforcement is a federal responsibility

Federal leadership in immigration enforcement is paramount, consistent with long-standing doctrine that immigration enforcement is primarily a federal responsibility. As the U.S. Supreme Court recently reaffirmed in *Arizona v. U.S.*, 567 U.S. ___ (2012), the federal government possesses "broad, undoubted power over the subject of immigration." At the same time, federalism principles under the U.S. Constitution limit what Congress can do to mandate that state and local law enforcement carry out federal immigration priorities and programs.[1]

[1] *See, e.g., Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).

The U.S. Department of Homeland Security (DHS) has prioritized criminals for deportation, as set forth in DHS Secretary Jeh Johnson's November 2014 policy memorandum.[2], The Forum supports targeting those individuals who pose a danger to our communities for deportation, rather than otherwise law-abiding members of the community. Undocumented criminals convicted of serious crimes should be deported.

Prioritization reflects the reality that federal immigration agencies, including Immigration and Customs Enforcement (ICE), do not have the capacity or resources to remove all undocumented immigrants. By deprioritizing those who pose no threat, federal immigration agencies can allow law enforcement to focus limited resources on serious threats. Under this approach, federal immigration agencies can further intelligence-driven and risk-based policing.

Similarly, the Forum supports the goals of the Priority Enforcement Program (PEP), which it views as a good-faith effort to engage state and local law enforcement on helping DHS meet its prioritization. Given the federal government's limited ability to compel state and local participation in federal immigration enforcement initiatives and priorities, PEP can be a useful program aimed at achieving useful partnerships with state and local law enforcement.

The Forum is opposed to initiatives, such as 2013's Strengthen and Fortify Enforcement (SAFE) Act, H.R. 2278, which was largely reintroduced in 2015 as H.R. 1148, that would roll-back DHS's enforcement guidelines while moving additional immigration enforcement responsibilities to state and local law enforcement. We believe that this approach – shifting an inherently federal responsibility to states and localities – would divert limited resources from public safety and undermine community trust.

State and local law enforcement should focus on community policing strategies to build trust with immigrant communities

The Forum supports well-established community policing strategies, which numerous state and local law enforcement agencies have implemented in recent decades. Such policies recognize that state and local law enforcement need the trust of their communities, including immigrant communities, because that trust allows law enforcement to better understand and protect the communities they police. Successful community policing strategies are tailored to ensure that immigrant victims and witnesses of crimes cooperate with police and that community members share information about criminal or suspicious conduct. Community policing strategies are well-established and effective at fostering trust.

As with federal authorities, state and local law enforcement should spend their limited time and resources focusing on pursuing truly dangerous criminals, not otherwise law-abiding members of the community. By limiting focus to those who pose a danger to public safety and engaging in

[2] Secretary Jeh Charles Johnson, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," Department of Homeland Security Memorandum, November 20, 2014. https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf

trust-building efforts with immigrant communities, state and local law enforcement can earn support and confidence from immigrant communities, making everyone safer.

LEITF co-chair Tom Manger, Chief of Police in Montgomery County, Maryland, testified before the Senate Judiciary Committee on the importance of creating such trust, "To do our job we must have the trust and respect of the communities we serve. We fail if the public fears their police and will not come forward when we need them. . . . Cooperation is not forthcoming from persons who see their police as immigration agents. When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike."[3]

This sentiment has been echoed by other leading law enforcement voices. LEITF member Richard Biehl, Chief of Police in Dayton, Ohio, stated in July 2015 testimony before the U.S. House of Representatives Judiciary Committee Subcommittee on Immigration and Border Security, "For law enforcement agencies to be effective in their public safety mission they need community support. This support is based upon trust – trust that is earned when public and law enforcement officials act fairly and treat people with dignity."[4] Chief Biehl went on to explain, "Our cities are safer when there is a sense of trust with our communities, including our immigrant communities. If families view law enforcement as a threat . . . no one benefits. Fearful communities are not cooperative communities."[5]

In a 2015 op-ed, Dallas County Sheriff Lupe Valdez, another member of LEITF, explained the need for community policing, "I don't want the community's first interaction with our officers to be a time of fear. . . . A lot of undocumented individuals came from areas where they can't trust the police. . . . Good law enforcement cannot be carried out this way. Everyone should know that they can report a crime, provide intel on crimes, be a witness, and most of all, not be in fear of the police if they are a victim of a crime."[6]

The Forum supports these well-established community policing principles, allowing state and local law enforcement to establish trust with immigrant communities and improve public safety for everybody.

State and local law enforcement cooperate with federal immigration officials

Most localities, including jurisdictions referred to as "sanctuary jurisdictions," cooperate extensively with federal immigration officials, including honoring criminal detainers

[3] Testimony of Tom Manger, Chief of Police, Montgomery County (MD) Police Department, Hearing on "Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims," Before the Senate Judiciary Committee, July 21, 2015, at p. 2. https://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf

[4] Testimony of Richard Biehl, Chief of Police, Dayton (OH) Police Department, Hearing on "Sanctuary Cities: a Threat to Public Safety," Before the House Committee on the Judiciary, Subcommittee on Immigration and Border Security, July 23, 2015, at p. 2. https://judiciary.house.gov/wp-content/uploads/2016/02/Biehl-Testimony.pdf

[5] *Id.*

[6] Sheriff Lupe Valdez, "Broken immigration system needs repair," The Hill, April 3, 2015. http://thehill.com/blogs/congress-blog/civil-rights/237801-broken-immigration-system-needs-repair

accompanied by a warrant or court order, participating in federal task forces and initiatives and providing notification of impending releases of convicted criminals who are undocumented. There are no "law-free zones" for immigration, even in such so-called sanctuary jurisdictions. Federal immigration laws are valid throughout the United States, including in "sanctuary" jurisdictions. Even where a particular city or law enforcement agency declines to honor an U.S. Immigration and Customs Enforcement (ICE) immigration detainer or limits involvement with federal immigration authorities, officers and agents from Customs and Border Protection and ICE can and do enforce federal immigration laws.

However, law enforcement needs are specific to each community, and local control has been a beneficial approach for law enforcement for decades. The thousands of state and local law enforcement agencies across the United States each have different priorities, challenges and concerns. A rural county sheriff's department's needs will differ from a big city police department's. A state police agency's priorities will differ from a university police department's. Different communities may face different public safety concerns. Decisions are best left to the individual state and local law enforcement agencies, which are best positioned to gauge what they need in order to build community trust and foster cooperation between law enforcement and the community.

The Forum has expressed concerns about proposals to cut important law enforcement grants or otherwise reduce funding for law enforcement agencies in connection with efforts to address so-called sanctuary cities. Such an approach is counterproductive and does nothing to advance a constructive debate over immigration reform or foster effective cooperation between federal, state and local law enforcement. We are opposed to federal efforts to establish a one-size-fits-all immigration enforcement model that would shift significant immigration enforcement responsibilities to state and local law enforcement agencies.

On the contrary, to the extent that state and local law enforcement play a role in immigration enforcement, the federal government must provide adequate funding in line with these responsibilities. In a time of limited resources and tight budgets, state and local law enforcement cannot afford to carry out unfunded and underfunded federal mandates. If the federal government is looking to partner with state and local law enforcement on immigration initiatives, it has a responsibility to work cooperatively with state and local law enforcement agencies and adequately fund such initiatives.

Conclusion

The Forum continues to support a model of immigration enforcement led by the federal government. It believes that DHS's efforts to prioritize enforcement against undocumented criminals over otherwise law-abiding undocumented immigrants is a common-sense step to make communities safer.

Through working with a broad cross-section of police chiefs and sheriffs in LEITF, the Forum has an appreciation of the need for state and local law enforcement to promote public trust in immigrant communities, and is opposed to efforts to shift additional immigration enforcement

responsibilities to state and local law enforcement. Rather, the federal government, along with states and localities, should seek to continue working cooperatively on enforcement matters. The Forum believes that PEP, is a significant effort to promote such cooperation, allowing states and localities to continue successful community policing practices that make their communities safer.

While federal, state, and local law enforcement can takes steps in these areas to promote public safety, the Forum believes that broad immigration reform is absolutely essential to safe communities. By assuaging the climate of fear that exists in many immigrant communities, immigration reform will build bridges between immigrant communities and law enforcement, supporting public safety.