

**Statement of
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**House Committee on Oversight and Government Reform
Hearing on "Criminal Aliens Released by the Department of Homeland Security"**

April 28, 2016

Chairman Chaffetz, Ranking member Cummings, and members of the House Committee on Oversight and Government Reform:

Heartland Alliance's National Immigrant Justice Center (NIJC) appreciates the opportunity to submit testimony for the House Committee on Oversight and Government Reform hearing. While we agree with the committee that improvements in our immigration enforcement and detention systems are needed, our interest is in ensuring that any changes are grounded in due process protections, law enforcement best practices, and public safety for all members of the community, citizens and noncitizens alike.

NIJC is a non-governmental organization (NGO) dedicated to safeguarding the due process rights of noncitizens. We are unique among immigrant advocacy groups in that our advocacy and impact litigation are informed by the direct representation we provide to approximately 10,000 clients annually. Through our offices in Chicago, Indiana, and Washington D.C., and in collaboration with our network of 1,500 *pro bono* attorneys, NIJC provides legal counsel to immigrants, refugees, unaccompanied children, and survivors of human trafficking. Our understanding of the immigration enforcement system specifically is grounded in our work representing noncitizens detained in Illinois and other facilities around the country, providing legal orientations at detention facilities in the Midwest, and advocating for victims of violence, including survivors of human trafficking, who have struggled to report crime out of fear that working with law enforcement will trigger deportation and separation from loved ones.

We know from our decades of experience serving immigrant communities that immigration enforcement under the Obama administration has been unprecedented in American history. Entanglement of immigration enforcement and state and local law enforcement makes communities less safe and prevents survivors of serious crime from pursuing police protection. Further, Department of Homeland Security (DHS) methods to coopt state and local law enforcement in immigration enforcement are unconstitutional. NIJC urges the committee not to advance legislation that would force state and local law enforcement to be the enforcers of federal immigration law.

I. The Current Level of Immigration Enforcement is Unprecedented in American History

Under the Obama administration, Congress has funded immigration enforcement at record levels, reaching an all-time high of \$19 billion in fiscal year 2016, eclipsing total spending for all other federal law enforcement agencies combined, including the Federal Bureau of Investigation (FBI); Drug Enforcement Administration; Secret Service; U.S. Marshals Service; and Bureau of Alcohol,

Tobacco, Firearms, and Explosives.¹ In fact, the Obama administration has deported over 2.5 million immigrants since taking office in 2009, more than the previous 19 presidents *combined*.² As a result of excessive enforcement funding and the under-funding of the Executive Office for Immigration Review, the immigration courts are suffering record backlogs³ and immigrants and asylum seekers face court delays as long as five years for the opportunity to present their cases to a judge.⁴ Legislation such as the Strengthen and Fortify Enforcement (SAFE) Act⁵ from 2013 is not the answer to fixing our broken immigration system. The SAFE Act, which would further increase unnecessary immigration arrests, is mean-spirited, wasteful of taxpayer dollars, and would undermine local policing efforts. Rather, the best way to address concerns about having a large undocumented population is to integrate enforcement reforms as part of a comprehensive package that respects immigrant communities and enables undocumented populations to legalize their status, earn citizenship, and fully participate in society without fear.

II. Forcing State and Local Law Enforcement to Act as Immigration Enforcement Makes Communities Less Safe

“It will divert precious police resources away from fighting crime, create rampant distrust of police in immigrant communities, and lead to unlawful racial and ethnic profiling. ... [D]istrust of law enforcement will be created whether or not community members have legal status ... because immigrant families and communities are typically made up of both those with lawful status and those without ...”

- Former Police Chief Eduardo Gonzalez (Tampa, Florida)⁶

All too often, legislative proposals to revisit immigration enforcement strategies rely on increasing collaboration between DHS and local law enforcement agencies, despite the ways in which it undermines the ability of police to ensure public safety. Specifically, by forcibly entangling police with U.S. Immigration and Customs Enforcement (ICE), community trust in law enforcement is breached and limited public safety resources are spent on people who are not public safety priorities.

A. Entanglement Prevents Survivors of Serious Crime from Pursuing Police Protection

¹ See Department of Justice, “Summary of Budget Authority by Appropriation,” <https://www.justice.gov/jmd/file/821931/download>; Department of Homeland Security, *FY 2017 Budget in Brief*, p. 10, https://www.dhs.gov/sites/default/files/publications/FY2017_BIB-MASTER.pdf.

² Tim Rogers, “Obama has deported more immigrants than any other president; Now he’s running up the score,” Jan. 7, 2016, <http://fusion.net/story/252637/obama-has-deported-more-immigrants-than-any-other-president-now-hes-running-up-the-score/>.

³ Daniel Costa, “Overloaded Immigration Courts,” Economic Policy Institute, Jul. 24, 2014, <http://www.epi.org/publication/immigration-court-caseload-skyrocketing>.

⁴ Seth Robbins, “Immigrants Waiting Years For Judges to Hear Cases,” *Associated Press*, Feb. 2015, <http://www.houstonchronicle.com/news/houston-texas/houston/article/Immigrants-waiting-years-for-judges-to-hear-cases-6055715.php>

⁵ H.R. 2278, Bill to amend the Immigration and Nationality Act to Improve Immigration Law Enforcement within the Interior of the United States, and For Other Purposes, 113th Cong., 1st Session, <http://www.gpo.gov/fdsys/pkg/BILLS-113hr2278ih/pdf/BILLS-113hr2278ih.pdf>.

⁶ National Immigration Law Center, “Law Enforcement Leaders Oppose Federal Mandate to Engage in Immigration Enforcement,” July 2013, <http://democrats-judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/LEA1307.pdf>

State and local police entanglement with immigration enforcement sows distrust of law enforcement among immigrant communities. NIJC's experience from advocating for victims of crime is consistent with findings from a 2013 University of Illinois study that found that 70 percent of undocumented immigrants surveyed were less likely to contact the police if they were victims of crimes because they feared triggering deportation proceedings.⁷ NIJC client Rafael (pseudonym) is one of many who did not report a crime to the police out of fear of deportation:

Rafael is a gay Mexican man who has lived in the United States for more than 15 years. A few years ago, Rafael was drugged and raped, and as a result contracted HIV. He never reported the crime out of fear of deportation. His rapist—a U.S. citizen—threatened to have him deported if he went to the police.

Rafael's experience illustrates what many law enforcement agencies already acknowledge: the police cannot fight crime without the trust of the communities they serve. When police engage in immigration enforcement, Latinos—regardless of their legal status—are less trusting of law enforcement and are significantly less likely to report crimes or cooperate in police investigations. Forty four percent of Latinos surveyed are less likely to contact police if they are victims of a crime out of fear that the police would inquire about their immigration status or that of people they know.⁸

Trusting the police is particularly problematic for immigrant victims of domestic abuse and human trafficking, such NIJC client Margarita (pseudonym), who may choose to endure additional harm rather than risk alerting police to their or another's immigration status:⁹

Margarita's U.S. citizen fiancé, Will (pseudonym), lured her to the United States with false promises to support and care for her and her two children. As soon as she arrived, Will forced her and her children to work as cleaners at his business without pay, and forced her to have sex with him. At the time, her eldest child was only nine years old. Margarita was not allowed to leave the house or eat without asking permission. He told her that if she went to the police, she would be deported. Eventually, Will allowed her to work outside of his business, but he forced her to give him all of her wages. Through the help of friends, Margarita and her children were able to leave Will after more than a year of abuse. A local shelter referred her to NIJC, where an attorney explained that the police and immigration authorities are separate entities. Shortly after, Margarita went to the police station to report the crimes she had suffered and NIJC helped her successfully apply for a T visa. Margarita and her children are now safe and rebuilding their lives.

Frequently, undocumented individuals in abusive relationships like NIJC's client Elena (pseudonym) hesitate to contact the police out of fear that they will be detained and deported, separating them from their children—a fear that abusers often rely upon and use against them.

⁷ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013, http://immigrantjustice.org/sites/immigrantjustice.org/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF p. i.

⁸ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013, http://immigrantjustice.org/sites/immigrantjustice.org/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

⁹ Factsheet: "The 'SAFE' Act Would Make Immigrant Survivors of Domestic Violence Less Safe," <http://immigrantjustice.org/sites/immigrantjustice.org/files/REVISED%20DV%20Opposition%20to%20SAFE%20Act%20-%2011222013.pdf>.

*Elena and her five children were brought to the United States from Mexico by their lawful permanent resident (LPR) husband/father, Jorge. Jorge abused the family almost daily. He forced his young daughters, at the time 12 and 14 years old, to work in his restaurant and sexually abused one of his daughters. He warned his family not to tell anyone about the abuse and threatened to take the entire family back to Mexico, where “cops don’t care about women,” and to kill them. In addition, he threatened to have the police deport his wife and children. **One of the daughters finally called the police after the family suffered from at least 10 years of horrific abuse. They have all received protection under the Violence Against Women Act (VAWA), a form of relief for victims who have faced domestic violence at the hands of abusive LPR or U.S. citizen spouses. Securing VAWA protection allowed Elena and her children to finally break free from Jorge’s abuse.***

Many law enforcement officials recognize that these situations are common and oppose the imposition of immigration enforcement into their work, including the Major Cities Chiefs Association¹⁰ and the President’s Task Force on 21st Century Policing, which recommends that “whenever possible, state and local law enforcement should not be involved in immigration enforcement.”¹¹ In Illinois, Lake County Sheriff Mark Curran has stated that “The neighborhoods are going to be safe when citizens are involved and act as the eyes and ears of the community. And that doesn’t work in communities that have large... immigrant populations where there’s great fear from law enforcement.”¹²

B. Permitting State and Local Law Enforcement Agencies to Enforce Immigration Law is Unconstitutional and Wasteful

Policies and legislation that essentially deputize every state and local law enforcement officer to enforce immigration law are extremely problematic, as immigration law is complex and local police are not sufficiently trained to determine whether individuals are lawfully present in the United States or may be removed. The time and expense required to appropriately train state and local police to identify violations of immigration law diverts law enforcement agencies away from their core responsibilities of enforcing criminal laws and ensuring public safety.

When local law enforcement agencies are forced to divert personnel and financial resources to immigration enforcement, it prevents them from focusing on their primary job of upholding public safety and addressing violent, dangerous crime. Despite changes to DHS’s enforcement priorities, individuals with no prior criminal record or with low-level and non-violent misdemeanors continue to be targeted for enforcement. In April 2015, two-thirds of ICE immigration detainer requests to

¹⁰ Major Cities Chiefs Association, “Police Chiefs from Nation’s Major Cities Object to Legislative Proposals Requiring Local Police to Enforce Federal Immigration Law,” Sept. 2013, <http://immigrantjustice.org/sites/immigrantjustice.org/files/Major%20City%20Chiefs%20SAFE%20Act%20press%20release%202013.pdf>.

¹¹ President’s Task Force on 21st Century Policing, *Interim Report of the President’s Task Force on 21st Century Policing*, Mar. 2015, http://www.cops.usdoj.gov/pdf/taskforce/interim_tf_report.pdf, p. 17

¹² Statement of Sheriff Mark Curran during a telephonic press conference sponsored by CAMBIO, June 17, 2013, https://immigrantjustice.org/sites/immigrantjustice.org/files/2013_06_17%20Mark%20Curran%20Statement%20Oppose%20SAFE%20Act.pdf. See other statements from law enforcement leadership across the country at: National Immigration Law Center, “Law Enforcement Leaders Oppose Federal Mandate to Engage in Immigration Enforcement,” July 2013, <http://democrats-judiciary.house.gov/sites/democrats-judiciary.house.gov/files/documents/LEA1307.pdf>

local law enforcement agencies were for individuals with no criminal conviction of any type.¹³ The Police Executive Research Forum has documented concerns of local law enforcement officials across the country who believe that mandating or incentivizing local immigration enforcement takes away from their discretion to set priorities and threatens law enforcement agencies' relationship with the community.¹⁴ In addition, the conservative Goldwater Institute has argued that the poor crime-solving clearance rate by the Maricopa County, Arizona, Sheriff's Department stemmed in part from the diversion of resources toward immigration enforcement.¹⁵ Further, when state and local law enforcement agencies act as immigration agents, it results in an under-funded mandate and saddles localities with additional financial burdens related to paying for more jail space, additional staff time, and costs incurred to defend against lawsuits.¹⁶ These policies seek to compel local law enforcement officials to act as immigration officers in blatant violation of the 10th Amendment to the U.S. Constitution.¹⁷

Finally, these types of policies would place the principal Supreme Court holdings in *Arizona v. United States*¹⁸ in serious doubt and reignite—or even encourage—new rounds of state-level immigration laws. These policies seek to institutionalize Fourth Amendment violations by permitting local law enforcement agencies to detain individuals on immigration detainers or “holds” for lengthy periods without any judicial determination of probable cause,¹⁹ violating decades of established constitutional jurisprudence.²⁰ In many parts of the United States, this type of policing has been coupled with pervasive racial profiling. An Arizona judge recently ruled against these police practices in *Cortes v. Lakosky*,²¹ a lawsuit against Pinal County Sheriff Paul Babeu, two sheriff's deputies, and Pinal County on behalf of an Arizona woman who spent five days in Border Patrol custody following a traffic stop. The lawsuit argued that the sheriff violated the woman's Fourth Amendment right to be free from unreasonable searches and seizures by subjecting her to prolonged detention solely based on a suspicion that she was an undocumented immigrant. In fact, Ms. Cortes is a survivor of domestic violence who is authorized to live and work in the United States with a U visa for immigrant victims of crime.

¹³ Transactional Records Access Clearinghouse, “Further Decrease in ICE Detainer Use Still Not Targeting Serious Criminals,” Aug. 28, 2015, <http://trac.syr.edu/immigration/reports/402>.

¹⁴ Police Executive Research Forum, *Local Police Perspectives on State Immigration Policies*, July 2014, [http://www.policeforum.org/assets/docs/Free Online Documents/Immigration/local%2520police%2520perspectives%2520on%2520state%2520immigration%2520policies.pdf](http://www.policeforum.org/assets/docs/Free%20Online%20Documents/Immigration/local%2520police%2520perspectives%2520on%2520state%2520immigration%2520policies.pdf).

¹⁵ Clint Bolick, Goldwater Institute, *Mission Unaccomplished: Misplaced Priorities of the Maricopa Sheriff's Department*, Policy Report No. 229, 2 December 2008, 9.

¹⁶ American Immigration Council, “Checklist for Estimating the Costs of SB 1070-Style Legislation,” Nov. 2011, <http://www.immigrationpolicy.org/just-facts/checklist-estimating-costs-sb-1070-style-legislation>.

¹⁷ *Printz v. United States*, 521 U.S. 898 (1997); *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014) (holding that immigration detainer cannot be mandatory on local law enforcement without violating the Tenth Amendment); *Moreno v. Napolitano*, 2014 WL 4911938 (N.D. Ill. Sept. 30, 2014) (denying class certification on Tenth Amendment claim because immigration detainer can only be interpreted as voluntary based on constitutional avoidance principles).

¹⁸ *Arizona v. United States*, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012).

¹⁹ SAFE Act, Sec. 113(b).

²⁰ See *Gerstein v. Pugh*, 420 U.S. 103 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

²¹ *Cortes v. Lakosky*, No. 14-02132 (9th Cir., filed 09/25/2014).

III. Conclusion

Legislative attempts to coopt state and local police into engaging in immigration enforcement are costly and misguided. Congress should not prevent state and local law enforcement agencies from using their expertise to decide how best to police the communities they serve. We strongly urge lawmakers to oppose any legislation that will force state and local law enforcement agencies to act as immigration enforcement agents. The best way to promote public safety is for Congress to provide a legal path for undocumented immigrants in our communities to come out of the shadows, live without fear of deportation, and be able to place their trust in the law enforcement agencies that serve them.