

Crossing The Line

*Damaging Immigration
Enforcement Practices by
New Jersey Police Following
Attorney General Law
Enforcement Directive 2007-3*

SETON HALL LAW



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Following Attorney General Law Enforcement Directive 2007-3*

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Executive Summary

In August 2007, New Jersey Attorney General Anne Milgram issued a law enforcement directive (the “Directive”) announcing a new immigration enforcement role for the New Jersey’s local, county and State police. The Directive orders police to question individuals about their immigration status upon arrest for a serious crime. Police are required to refer the individuals to the Immigration and Customs Enforcement agency (“ICE”) if the officers have a “reason to believe” that the individuals may be undocumented immigrants.

But the Directive was silent as to whether police should question a person about her immigration status and refer her to ICE in other contexts such as traffic stops, or encounters on the street. Although the Directive requires police to keep a record of referrals to ICE following arrests for serious crimes, it does not have any systematic reporting requirements in these other contexts, and has no other safeguards against racially-based policing.

The New Jersey Attorney General was previously skeptical of criticism from advocates about the collateral consequences of the Directive, calling for “real evidence that the directive is being abused” rather than mere “speculation.”¹ Over the past nine months, the Seton Hall Center for Social Justice collected testimony from 68 individuals referred to ICE by New Jersey law enforcement officials, when only a minor offense or no offense was charged:

- 65 were Latino
- 49 were questioned about their immigration status and turned over to ICE following a traffic stop, either based a minor infringement such as rolling through a stop sign, or based on no identifiable reason at all (41 as drivers, 8 as passengers)
- 19 were stopped by police on the street and questioned about their immigration status (7 for drinking in public, the others for no apparent reason at all)

Given the lack of accountability by police and hesitancy in immigrant communities to come forward, this data undoubtedly seriously undercounts the actual number of improper police questioning and arrests of the state’s non-criminal Latino drivers, passengers, pedestrians and commuters.

The Directive itself identifies four serious risks related to its implementation, but provides no mechanism to address them. All have been borne out over the past 18 months.

First, the Directive has resulted in widespread, inappropriate *de facto* enforcement of federal civil immigration laws by New Jersey police.

¹ Deborah Hirsch, *New Jersey: Advocate group presses for modification of immigration notification directive*, Courier Post, Nov. 30, 2008.



Second, the safety of New Jersey communities has been threatened by the diversion of critical, limited police resources away from serious crime prevention in favor of detaining and transferring individuals to ICE who have merely committed minor traffic offenses.

Third, the overwhelmingly disproportionate number of Latino people arrested for minor (or no) violations suggests a disturbing trend towards racial profiling by New Jersey police who are questioning people, including U.S. citizens, about their immigration status for no apparent basis other than their driving/riding/walking while Latino.

Finally, widespread police questioning about immigration status and association with immigration enforcement has undermined community safety by seriously damaging critical relationships and trust between immigrant communities and police. As national police chiefs explained, this divide results in “increased crime against immigrants and in the broader community, create[s] a class of silent victims and eliminate[s] the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.”

In short, the Directive has undermined the safety of the community at large which it was intended to promote. This report makes a number of recommendations to remedy the damaging consequences of the Directive, including:

- The directive should be repealed or fundamentally revised.
- The directive should have as its core a central prohibition against police questioning about immigration status.
- If, despite the heavy cost and error rates, the Attorney General would like to maintain an exception to the general rule in the case of individuals arrested for serious crimes, the Directive should only permit questioning *after* such an arrest has been made, and should provide clear guidelines, *and related training*, on the facts that may give rise to a “reason to believe” that a person is an undocumented immigrant.
- To the extent that police inquire into immigration status, the directive should establish systemic reporting requirements and regular review and public disclosure of all such reports, as well as a meaningful enforcement mechanism including a complaint process and disciplinary actions against police who violate the directive.



BACKGROUND

The immigration laws of the United States are defined in the Immigration and Nationality Act, which contains both criminal and civil enforcement provisions. The enforcement of the *civil* provisions, which includes apprehension and removal of undocumented immigrants, has for the past century strictly been viewed as a federal responsibility under the Constitution. The authority for state and local law enforcement officials to enforce immigration law is limited to *criminal* immigration provisions.²

On August 22, 2007 the New Jersey Attorney General issued a directive intended to “establish the manner in which local, county and State law enforcement agencies and officers shall interact with federal immigration agents.”³ The Directive was issued in the wake of a tragic schoolyard shooting in Newark two weeks earlier, in which the main suspect was an undocumented immigrant who had been released on bail following a prior arrest. In an apparent response to public anger over the suspect’s immigration status, the Directive orders State, county and local law enforcement agencies to inquire about an individual’s immigration status when they arrest an individual for a serious violation of State criminal law (defined as any indictable offense or driving while intoxicated). Police are required to report the person to the Immigration and Customs Enforcement agency (“ICE”) if they have a “reason to believe” that the person is an undocumented immigrant. The preamble to the Directive notes that although immigration enforcement is primarily a federal responsibility, in the case of a serious criminal violation, “the individual’s immigration status is relevant to his or her ties to the community, the likelihood that he or she will appear at future court proceedings to answer State law charges, and the interest of the federal government in considering immigration enforcement proceedings against an individual . . . arrested for commission of a serious criminal offense.” The Directive does not prohibit officers from questioning about immigration status and referring individuals to ICE in situations other than serious criminal arrests.

² See, e.g., *Rojas v. City of New Brunswick*, No. 04-3195, 2008 WL 2355535, at *29 (D.N.J. June 4, 2008) (holding that police officers’ “authority to investigate and arrest [individuals] for possible violations of the INA is not preempted by the *criminal provisions* of the INA as long as local officers comply with all arrest requirements imposed by the United States Constitution and the INA” (emphasis added)).

³ Attorney General Law Enforcement Directive, No. 2007-3 (8/22/2007), available at <http://www.nj.gov/oag/newsreleases07/ag-le-directive-2007-3.pdf> (“the Directive”).



CONTENT OF THE DIRECTIVE

THE DIRECTIVE'S TERMS

The Directive consists of four sections. Sections I, II and IV apply to all agencies and officers. Section III applies only to officers performing federal immigration functions pursuant to a contract with ICE under section 287(g) of the Immigration and Nationality Act.⁴ With the exception of jail officers at Hudson County Jail, no officers in New Jersey have been deputized by ICE to perform federal immigration functions under section 287(g). Thus Section III of the Directive currently does not apply to any police officers in the state.

Section I *expands* the immigration enforcement role of all New Jersey law enforcement officers, by requiring all officers to inquire about a person's immigration status after arresting a person for an indictable crime or for driving while intoxicated.⁵ Under this section, an officer must notify ICE if the officer has "reason to believe" that the person may not be lawfully present in the United States and must document the fact of the notification and the basis for the belief. The officer must also tell the prosecuting authority on the case about the notification, and the County Prosecutors are required to report the number of notifications made to ICE each year, for public disclosure. Section II of the Directive prohibits local law enforcement from inquiring into the immigration status of crime victims and witnesses to crimes. Section IV prohibits racially-influenced policing, including an injunction against considering a person's race or ethnicity in concluding that the person may be an undocumented immigrant.

Section III *limits* the scope of permissible immigration enforcement activity of future 287(g) officers. Although an agreement under section 287(g) would ordinarily authorize local law enforcement officers to assume the civil immigration enforcement functions of federal immigration officers, the Directive states that 287(g) officers may not exercise federal immigration authority unless they have already arrested an individual for an indictable offense or for driving while intoxicated. That is, it expressly prohibits police questioning about immigration status in any situation other than upon arrest for a serious offense. The Directive also establishes reporting requirements for 287(g) officers who inquire into the immigration status of such individuals.

⁴ See 8 U.S.C. § 1357(g). A police department must apply to ICE for section 287(g) status. This status gives the department's police officers additional powers that they would not otherwise have, including authorization to "perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens." § 1357(g)(1).

⁵ Directive, *supra* note 3.



AREAS NOT ADDRESSED BY THE DIRECTIVE

The Directive is silent as to whether State, county and local law enforcement officers may or may not inquire into the national origin or immigration status of those individuals arrested for non-indictable crimes or stopped in their cars or on the street. For example, it says nothing about whether police may inquire into a person's national origin or immigration status during a routine traffic stop, upon arrest for a minor driving infraction, or for no reason at all. Although the Directive requires that police report all instances in which they contact ICE pursuant to arresting a person for serious criminal offense, the Directive contains no reporting requirements whatsoever if officers inquire about immigration status or contact ICE in relation to people apprehended under any other circumstances.

Paradoxically, this ambiguity stands in sharp contrast with Section III of the Directive, which addresses 287(g) officers – who, unlike ordinary police, would actually be authorized to enforce immigration law – because that Section *expressly prohibits* local police from questioning about nationality or immigration status in any situation other than upon arrest for a serious crime under State law.

In those cases in which the Directive requires local police to question persons believed to be undocumented immigrants, the Directive provides no meaningful guidance that should inform an officer's "reason to believe" the person may be undocumented. The Directive fails to articulate any standards or facts that must be present to render an officer's belief reasonable. The Directive's failure to provide guidance for ascertaining a person's immigration status -- a complex task that involves an understanding of visa rules, immigration documentation and eligibility for relief from removal -- leaves open the door to police use of factors such as ethnicity and language skills as a proxy for immigration status.



EMPIRICAL DATA: *DE FACTO* IMMIGRATION ENFORCEMENT

MEDIA REPORTS AND EMPIRICAL DATA FROM ICE

Media reports and data from ICE reveal that police are questioning New Jersey residents about their immigration status and reporting them to ICE in circumstances other than upon arrest for serious crimes, particularly in the context of traffic stops. They confirm the exceptionally high rate of error in immigration judgments by police, including a high incidence of reporting of individuals who are U.S. citizens or permanent residents.

For example in April 2008, the New York Times reported numerous examples of immigrants asked by police about their immigration status and reported to ICE, for no identifiable reason.⁶ Among the instances described was “[a] green-card holder from Guatemala [who] said he was asked about his immigration status . . . when he went to pick up his nephew from the West Deptford, N.J., police station.” Similarly, the article describes an undocumented immigrant from Mexico who was arrested “when the car in which he was a passenger was pulled over for rolling through a stop sign in South Harrison Township, N.J.” According to the New York Times, “the officer checked [the driver’s] license, which is normal procedure, but then went a step further, asking his passenger for identification. The passenger . . . handed the officer a Mexican consular identification and was arrested.” It also described another incident in which a passenger was asked for identification: “[w]hen he gave the officer a Guatemalan identity card, he was arrested and referred to immigration authorities.”

Just seven months after the Directive was issued, advocates had already observed that people had been “unfairly swept up in the dragnet because of overzealous enforcement or confusion over how [the Directive] was supposed to be implemented, creating a chilling effect on some immigrants’ relationships with the police.”⁷

Data from ICE confirms the exceptionally high level of inaccuracy in New Jersey police officers’ “belief” regarding individuals’ immigration status. ICE reported that of the 10,000 New Jersey police referrals between September 2007 and March 2008, only 1,417 people were charged with immigration violations. In fact, Scott Weber, the field office director for the ICE’s Newark office, said that during the first six months of the Directive, roughly one in three people reported to ICE by New Jersey police may have been U.S.

⁶ Kareem Fahim, *Immigration Referrals by Police Draw Scrutiny*, N.Y. Times, Mar. 23, 2008, available at <http://www.nytimes.com/2008/03/23/nyregion/23immig.html>.

⁷ *Id.*



citizens or permanent residents.⁸ This strongly suggests the use of race or ethnic appearance in determining whom to question and whom to report, and is especially troubling in light of the fact that more than half of New Jersey's 1.7 million foreign-born residents are U.S. citizens, almost half of the state's immigrant population (45 per cent) are Latino.⁹

⁸ Inaccuracies in immigration records have also been a concern highlighted by the United States General Accountability Office and the Department of Justice Office of the Inspector General. See National Immigration Law Center, INS Data: The Track Record, available at

<http://www.nilc.org/immlawpolicy/misc/INS%20data%20accuracy.pdf>.

⁹ U.S. Census Bureau, American Fact Finder (2005-2007 American Community Survey) available at <http://factfinder.census.gov>.



EMPIRICAL DATA COLLECTED BY THE CENTER

Over the past nine months, the Center for Social Justice has worked with advocates and attorneys across the state to gather empirical data on instances in which individuals have been placed in immigration detention as a result of police questioning about their immigration status. The Center focused on incidents in which police inquired about immigration status and reported a person to ICE where only a minor offense or no offense was charged. That is, situations for which the Directive gives no guidance and has no reporting requirements. However because police are not required to keep records of these incidents, there is no way to systematically track them. Therefore it is highly likely that the small data sample here represents merely the tip of the iceberg on this issue in New Jersey.

The Center documented 68 instances in which New Jersey police officers questioned individuals about their immigration status in circumstances beyond those directly authorized by the Directive. These people were detained by local police and subsequently turned over to ICE. This data is based on interviews conducted by the Center as well as interviews by other immigration advocates and attorneys that were relayed to the Center.

Almost every one of the people arrested was Latino: out of the 68 total instances documented, 65 people were of Latino origin and the remaining three were from Spain, Haiti, and Kazakhstan. Almost two thirds of the people were questioned about their immigration status and turned over to ICE following a traffic stop.



Traffic Stops

Forty-one individuals who were reported to ICE by New Jersey police stated that they were only cited for traffic related offenses while driving in counties including Ocean, Cumberland, Camden, Mercer, Essex, Monmouth and Burlington. None of these incidents involved driving while intoxicated, and none included charges for producing a false driver's licenses or other false documents. Thirteen people explained that they were cited for minor moving violations, including car lights out, speeding, and other minor infractions. Eighteen stated they were cited for driving without a license. Five were detained after being pulled over for no apparent reason. Four additional people were detained in conjunction with unpaid parking and traffic tickets. One person stated that he was asked for identification at a police check point and subsequently detained.

- Jose¹⁰ stated that he was pulled over by police in Camden on his way to work.¹¹ He reported that the officer commented that his car had out-of-state plates from Pennsylvania but otherwise gave no reason for making the stop. Jose believes he was obeying all traffic laws and stated that he believed racial profiling motivated the stop. According to Jose, after the police officer asked for his driver's license, which he could not produce, he was arrested for driving without a license and turned over to ICE.
- Juan reported that police told him he was pulled over for "bad driving," but he was only cited for driving without a license. He stated that he was held for four months in Bridgeton by local law enforcement before being transferred to ICE custody.
- Carlos reported that he was pulled over in Hamilton. According to Carlos, although he gave the police an international driver's license, he was detained and later turned over to ICE.
- Sofia explained that she was stopped at a "car checkpoint" in Elizabeth with her boyfriend. She said that she showed her Argentine driver's license but was detained. Then, Sofia says she was brought before a judge who told her there were no charges against her, but she was nevertheless turned over to ICE.
- Xavier reported being detained when he went to court concerning a charge for driving without a license and was then jailed for three months before being turned over to ICE.
- Marco reported that he was turned over to ICE after being pulled over for not wearing a seatbelt.

¹⁰ All names have been changed to protect the privacy of the individuals concerned.

¹¹ All interview notes are on file with the Center.



Passengers in Cars

Eight people stated they were reported to ICE by New Jersey police after being asked about their immigration status when they were passengers in cars stopped by police. None of these passengers reported being charged with any crime. For example, Diego reported that he was going for his lunch break when the car he was riding in was stopped by police. Diego reported that everyone in the car was asked for identification, and then he was detained and turned over to ICE.

Stops on the Street

In addition to inquiring at traffic stops, New Jersey law enforcement officers are also stopping people on the street and questioning them about their immigration status. Nineteen such incidents were reported, mostly in Union City but also in Lakeville, Flemington, Lawrenceville, Ocean County, Camden County, and Sussex County. A few immigrants described being charged with minor offenses such as public drinking, but most people stated that no citation was issued and they thought they were stopped for no apparent reason.

Of the 19 individuals, seven reported being cited for public drinking or intoxication. Five of those were reported from Ocean County. Luis, Jesus, and Antonio stated that they were together in Lakewood when police stopped them and arrested all three, detaining them for two days before turning them over to ICE. Alejandro also described being cited for public drinking in Toms River and held for thirteen days before being turned over to ICE.

The remaining 12 pedestrians were not given any citation, and most did not know why they were stopped. For example:

- Miguel reported that he was riding a bicycle when police stopped him for no apparent reason in Flemington. Upon presenting his Honduran identification card, Miguel stated that he was immediately detained by local police for several days and subsequently turned over to ICE.
- Jorge described that he was riding his bike in Ocean County while simultaneously trailing along his uncle's bike. He stated that he was stopped by police and accused of stealing the bike he was trailing. Upon the police officer's request for identification, Jorge said he produced his foreign identification and was subsequently arrested and reported to ICE.
- Javier reported that he was at the train station in Camden when officers asked to see his ticket. After he failed to present a train ticket, Javier stated he was arrested and held for seven days before he was turned over to ICE.



- Ricardo said that he was detained by police while he was working as a landscaper in Sussex County.
- Eduardo explained that he was on his way home from work with a friend when police stopped them and subsequently detained him.
- Mario reported that he was stopped on the street by police and was asked for identification. He did not have identification with him and offered to get it from his home. Mario stated that the police followed him to his house and then detained him.

Questioning of Victims and Witnesses

In addition to the 68 individuals questioned in situations other than serious criminal charges, numerous other people reported being questioned as victims or witnesses, in direct violation of the Directive. On November 26, 2007, the Attorney General issued a report¹² on the results of an investigation into conduct by Deputy Chief Samuel DeMaio of the Newark Police Department, following a September 6, 2007 incident in which a photographer for the *Brazilian Voice* discovered a dead body in the Ironbound neighborhood.¹³ During the crime scene investigation, DeMaio inquired as to the immigration status of several *Brazilian Voice* employees – including the photographer who discovered the body and the newspaper’s editor, Roberto Lima. Witnesses interviewed by the Attorney General’s office reported that DeMaio asked questions regarding the immigration status of these individuals, including asking the photographer whether he had a “Green Card.” Two witnesses reported that DeMaio asked even more pointed questions, including whether the photographer was “illegal.” The Attorney General’s investigation concluded that DeMaio violated the Directive. The Newark Police Department was advised to take disciplinary action against DeMaio, as well as provide its officers with additional training on the Directive.

The Center has received numerous additional reports of people questioned as victims or witnesses. All were Latino. For example,

- Camila explained to the Center that she had called police to her Plainfield home to protect her from a life-threatening domestic violence situation, but when police arrived at her home, they questioned her about her immigration status and threatened to call ICE.
- Valentina, who has a U.S. citizen child, stated that she was detained when she called police for assistance after a car accident.

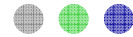
¹² Letter from the Director of the New Jersey Attorney General’s Office to Newark Police Department Director Garry McCarthy re Investigation of Newark Police Deputy Chief Samuel DeMaio, Nov. 26, 2007 (<http://www.nj.gov/oag/newsreleases07/mccarthy-ltr-11.26.07.pdf>).

¹³ Seton Hall Center for Social Justice represents the editor of the *Brazilian Voice*, Roberto Lima, in litigation against the Newark Police Department arising out of the incident.



- Santiago explained that he was also involved in a car accident and was detained by police when they arrived to investigate.
- Eduardo stated that he was also in a car accident. He said that when police arrived to investigate, he was questioned on his immigration status. Police brought him to the hospital and then detained him.
- Lucas described how he had gone to a local police station to report that his passport had been lost. While he was there, Lucas explained that the police found some unpaid tickets and detained him for 16 days in Mt. Holly before transferring him to ICE custody.
- Mateo stated that he had been assaulted on the street by two men. Mateo explained that the police were called after the incident and he was detained for two days before being transferred to ICE custody because he could not produce any identification.¹⁴
- Juan stated that police officers came to his house to speak with him as part of an investigation on his neighbor. He said that police detained him after asking his immigration status.

¹⁴ New Jersey law does not require production of identification or any identifying information to police officers who stop a person on the street.



POLICY CONCERNS

CONCERNS FORESHADOWED IN THE DIRECTIVE'S PREAMBLE

The Directive itself foreshadows four serious concerns related to its implementation, but provides no mechanism for addressing any of them. The Center's data reveals that each one of these concerns has regrettably been realized.

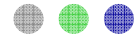
The Preamble to the Directive acknowledges that:

1. Immigration enforcement should not be a state responsibility;

“[E]nforcement of immigration laws is primarily a federal responsibility”

2. Police resources should be spent on criminal law enforcement and community protection – allocation of resources to enforcement of civil immigration provisions detracts from this vital function;

“The overriding mission of law enforcement officers in this State is to enforce the State's criminal laws and to protect the community that they serve”



3. Police questioning about national origin and immigration status may result in a new form of systemic racial profiling, which the State of New Jersey has taken great efforts to ameliorate in all areas of policing;

“To further the priorities of strong relationships between law enforcement and all members of the community, as well as other fundamental principles of equal protection and civil rights, New Jersey has taken a leadership position in eliminating racially-influenced policing or racial profiling . . . Consistent with public policy, statute, and Attorney General Directive, law enforcement agencies must refrain from any law enforcement strategies that risk undermining – or which create the impression of undermining – the prohibitions on racially-influenced policing”

4. Protection of the community and criminal law enforcement “requires the cooperation of, and positive relationships with, all members of the community,” including immigrant communities.

“Public safety suffers if individuals believe that they cannot come forward to report a crime or cooperate with law enforcement”



CONCERNS RAISED BY POLICE, ADVOCATES AND SERVICE PROVIDERS ABOUT LOCAL LAW ENFORCEMENT OF FEDERAL IMMIGRATION LAWS

Concerns about the Directive have been consistently voiced by experts, advocates and service providers to immigrant communities across the state, including the New Jersey Immigration Policy Network,¹⁵ the American Friends Service Committee,¹⁶ and the American Civil Liberties Union of New Jersey.¹⁷ Numerous New Jersey police departments also joined the chorus of concern over the Directive, describing it as “a recipe for racial profiling.”¹⁸

The groups’ concerns echo those foreshadowed in the Directive itself, primarily focusing on the Directive’s potential invitation to systemic racial profiling and policing based on nationality and ethnic appearance, and the deterioration of trust between immigrant communities and police. This lack of trust undermines the willingness of immigrant communities to cooperate with and assist police in their criminal enforcement functions, particularly in the context of community policing, and causes immigrants to avoid seeking police assistance and protection. This concern is especially significant in New Jersey, which has the third highest immigrant population in the country (one in five people in the state – 1.7 million New Jersey residents – were born outside the United States).¹⁹

Similar concerns have been raised across the country, generally in the context of police questioning about immigration status and engagement in immigration determinations in connection with 287(g) agreements. Based on the same concerns raised in the Directive and echoed by groups in New Jersey, advocates, government agencies, and police officers across the country have opposed the involvement of local law enforcement in questioning or enforcement related to immigration laws.²⁰ Concern over the deleterious

¹⁵ The New Jersey Immigration Policy Network, *The Need to Reconsider Attorney General Law Enforcement Directive No. 2007-3*, Oct. 2008, available at

<http://demo.njipn.com/images//theneedtoconside%2340ec91.pdf>.

¹⁶ Public letter to Attorney General Milgram from American Friends Service Committee and a coalition of other groups that work with immigrant communities in New Jersey, including American Civil Liberties Union of New Jersey, Asian American Legal Defense and Education Fund, International Institute of New Jersey, Ironbound Community Corporation, Jubilee, New Jersey Coalition Against Sexual Assault, New Jersey Coalition for Battered Women, New Jersey Immigration Policy Network and Seton Hall Law School Worker Rights Clinic, September 19, 2007.

¹⁷ American Civil Liberties Union of New Jersey, *ACLU-NJ Urges AG to Revisit Flawed Directive*, available at <http://www.aclu-nj.org/issues/immigrantrights/aclunjurgesagto revisitflaw.htm>.

¹⁸ Karim Fahim and David W. Chen, *Police Voice Concerns Over a Directive on Immigrants*, N.Y. Times, Aug. 24, 2007, available at <http://www.nytimes.com/2007/08/24/nyregion/24immig.html>.

¹⁹ U.S. Census Bureau, *American Community Surveys (2006 and 2007)*, available at <http://www.census.gov/acs/www/index.html>.

²⁰ United States Government Accountability Office: Report to Congressional Requesters, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal*



implications of the program for the relationships between police and immigrant communities have grown so strong that the entire 287(g) program is currently under review by the Secretary of the Department of Homeland Security, Janet Napolitano.²¹

Undermining Police Capacity for Community Protection

Several reports examine the ways in which police questioning about immigration status and association with immigration enforcement more broadly may undermine relationships between immigrant communities and police.²² They note the critical role that these relationships play in the ability of police to effectively ensure community safety, particularly in communities with significant immigrant populations. For example, a 2006 report by the organization representing chiefs of police of the largest metropolitan police departments explained that a divide between local police and immigrants would result in “increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.”²³

Immigration Laws, Jan. 2009 (“GAO”), at 6, available at <http://www.gao.gov/new.items/d09109.pdf>; Aarti Shahani and Judith Greene, *Local Democracy on Ice: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement*, Justice Strategies Report 2009 (“Justice Strategies”), available at <http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice.pdf>; The International Association of Chiefs of Police, *Police Chiefs Guide to Immigration Issues*, July 2007 Project Response (“Police Chiefs”), available at <http://www.theiacp.org/LinkClick.aspx?fileticket=14v1WV%2FZ40A%3D&tabid=226>; ACLU and Immigration & Human Rights Policy Clinic at University of North Carolina, Chapel Hill, *The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina*, Feb. 2009 (“UNC”), available at <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>; Appleseed Network, *Forcing Our Blues into Gray Areas: Local Police and Federal immigration Enforcement*, May 2008 (“Appleseed”), available at http://www.appleseednetwork.org/Portals/0/Reports/Forcing_Our_Blues_Into_Gray_Areas2008.pdf.

²¹ See e.g., Daniel González, *Chairman of the U.S. House Judiciary Calls for Investigation of Arpaio*, Arizona Republic as reported in Hispanic News, Feb. 14, 2009, available at http://hispanic.cc/chairman_of_the_u.s._house_judiciary_committee_calls_for_investigation_of_arpaio.htm.

²² The media has also covered this issue across the country. See, e.g., Katie Fairbank, *Immigration Agents Close By in Crackdown on Criminals Some Say Operation Crossed Line of Public Safety, Personal Rights*, Dallas Morning News, Feb. 9, 2007, at 1A (describing recent operation in Texas in which Hispanic drivers were stopped by local police for no apparent reason and then referred to ICE agents nearby); Katy Reckdahl, *Illegals Face Arrest if Found Driving; Lawyers Fight State Law Affecting Latinos*, Times-Picayune (New Orleans), Feb. 4, 2007 at 1 (reporting that a judge recently dismissed the arrest of a Hispanic man, ruling that the arrest by a New Orleans Police Department officer was “the result of a selective enforcement policy profiling, targeting and arresting Latino drivers.”); Hector Tobar, *An Ugly Stain on a City’s Bright and Shining Plan; Raids: In a Roundup of Illegal Immigrants, Chandler, Ariz., Snared Many U.S. Citizens Who ‘Looked Mexican,’* L.A. Times, Dec. 28, 1998, at A1.

²³ Craig E. Ferrell, Jr. et al., *M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Law by Local Police, Major Cities Chiefs Position Paper*, June 2006. See also Gene Voegtlin, *Enforcing Immigration Law: The Role of State, Tribal, and Local Law Enforcement*, International Association of Chiefs of Police (IACP) Position Paper, December 12, 2004 (stating that many police departments are concerned that



“Law enforcement leaders are also concerned about the impact of local law enforcement of immigration laws on already strained state and local resources, the high possibility of error given the complexity of immigration law, a possible increase in police misconduct, the possibility of racial profiling and other civil lawsuits, and increased victimization and exploitation of immigrants.”

Former Newark Police Chief Hubert Williams

In July 2007, the International Association of Chiefs of Police issued a report similarly addressing concerns surrounding immigration enforcement by local police.²⁴ The report specifically called the relationship with immigrant communities “[o]ne of the central benchmarks of a well-commanded police department.”²⁵ To build that relationship, the community must “believe in the officers’ good motives.”²⁶ The report notes that many immigrants come from countries where police officers are corrupt and untrustworthy, which makes the building of a positive relationship with the immigrant community especially difficult.²⁷ The report also notes that “[i]mmigrant women would be less likely to report abuse than nonimmigrant women due to . . . varying perceptions of law enforcement response, and a fear of deportation.”²⁸ Crime victims may be “afraid of authorities” or “may not recognize law enforcement will help them regardless of immigrant status.”²⁹

In testimony before Congress earlier this month, former Newark Police Chief Hubert Williams echoed these sentiments:

The reluctance of local police to enforce federal immigration law grows out of the difficulty of balancing federal and local interests in ways that do not diminish the ability of the police to maintain their core mission of maintaining public safety, which depends heavily on public trust. In communities where people fear the police, very little information is shared with officers, undermining the police capacity for crime control and quality service delivery. As a result, these areas become breeding grounds for drug trafficking, human smuggling, terrorist activity, and other serious crimes. As a police chief in one of our focus groups asked, “How do you police a community that will not talk to you?”³⁰

local enforcement of immigration law “would likely have a chilling effect on both legal and illegal aliens reporting criminal activity or assisting police in criminal investigations”).

²⁴ Police Chiefs, *supra* note 20.

²⁵ *Id.* at 21.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 28.

²⁹ *Id.*

³⁰ *The Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws: Hearing before Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law*



At the same Congressional hearing, George Gascón, police chief in Mesa, Arizona, testified similarly:

Often allegations of race-based enforcement practices are driving a wedge between the police and the impacted communities. Community policing efforts are being derailed where immigrants who fear that the police will help to deport them rely less on the local authorities and instead give thugs control of their neighborhoods.

...

Is it nearly impossible to gain the required trust to make community policing a reality in places where the community fears the police will help deport them, or deport a neighbor, friend or relative.³¹

Earlier this month, the Pew Research Center issued a report confirming the current strained relationship between Latino communities and police nationwide.³² In its national survey, it found that less than half of Hispanics say they are confident that police officers will treat Hispanics fairly (45%), compared with 74% of whites and 37% of blacks who say they have confidence that their ethnic or racial group will be treated equally.

In May 2008, the Appleseed Network, a group of non-profit and public interest justice centers, issued a report on local police participation in immigration enforcement generally.³³ The report considers the policy implications of police participation in immigration enforcement and comprehensively analyses federal statutes and case law.³⁴ The report highlights the importance of police building a relationship of trust and confidence with the immigrant communities that they serve.³⁵ It observes that questioning about immigration status is detrimental to that relationship because immigrants “will hesitate to come forward to report a crime or other relevant information.”³⁶ Additionally, the report argues that when police spend time enforcing immigration law, their attention is taken away from their main duty of “providing order and protection” to the community at large.³⁷

and Subcommittee on the Constitution, Civil Rights, and Civil Liberties, 110th Cong. (2009) (testimony by Hubert Williams, President, Police Foundation).

³¹ *The Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws: Hearing before Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and Subcommittee on the Constitution, Civil Rights, and Civil Liberties*, 110th Cong. (2009) (testimony by George Gascón, Police Chief, Mesa, Arizona).

³² Mark Hugo Lopez and Gretchen Livingston, *Hispanics and the Criminal Justice System: Low Confidence, High Exposure*, Pew Hispanic Center, April 7, 2009.

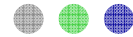
³³ Appleseed, *supra* note 20 (The report addressed all police activities enforcing immigration law and not solely 287(g) authorization.).

³⁴ *Id.* at 7-11, 13-35.

³⁵ *Id.* at 10

³⁶ *Id.* (citing Philip Kretsedemas, *Ironic Title for Murky Legislation*, Miami Herald, Oct. 2, 2003, at A1).

³⁷ *Id.* at 9.



Two recent reports examine the empirical impact of police involvement in immigration enforcement through the 287(g) program on police relations with immigrant communities. The University of North Carolina Law School issued a report in February 2009, in association with the American Civil Liberties Union, that examines the impact of police enforcement of immigration law on relationships with immigrant communities in North Carolina.³⁸ The report used an interdisciplinary research group to gather empirical data and secondary materials.³⁹ It observes that when police officers inquire about a person's immigration status, they instill fear in immigrant communities that the immigrants will be "punished" or subjected to immigration investigation and deportation for calling attention to themselves.⁴⁰ Immigrants are less likely to come forward with information "even when heinous crimes are committed against them or their families."⁴¹

As in New Jersey, the report found that police enforcing immigration law largely did so in the context of traffic stops. For example, it noted that in Tennessee, arrest rates for Hispanic defendants driving without a license more than doubled after the implementation of the 287(g) program.⁴² Similarly, two North Carolina counties reported data showing that "the overwhelming number of individuals who are stopped by §287(g) officers are arrested for traffic offenses."⁴³ During the month of May 2008, of the total number of immigrants arrested by 287(g) police officers in Gaston County, 83% were charged with traffic violations.

Justice Strategies, a nonpartisan, nonprofit research organization for criminal justice and immigration law, also issued a report in February 2009 addressing 287(g) issues.⁴⁴ The report is based primarily on interviews with elected leaders, court officials, security experts, reform advocates, and activists.⁴⁵ It notes the concerns of a community group in Morristown, which had worked for years to build a good relationship with the local police department.⁴⁶ When the city considered applying for 287(g) status, the community group simply asked, "After so many years of working together, how could they do this to us?"⁴⁷ The town's consideration of police engagement in immigration enforcement was met with a letter of concern from the Colombian embassy and strong community opposition.⁴⁸ Even Mayor Cresitello saw the potential destruction of the city's relationship with the immigrant community and stated, "there's no question that people would be frightened."⁴⁹ The

³⁸ UNC, *supra* note 20.

³⁹ *Id.* at 16.

⁴⁰ *Id.* at 33.

⁴¹ *Id.* at 33-34 (citing Craig E. Ferrell Jr., "Immigration Enforcement, Is it a Local Issue?," 71 *The Police Chief* 2, Feb. 2004, available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=224&issue_id=22004).

⁴² *Id.* at 24.

⁴³ *Id.*

⁴⁴ Justice Strategies, *supra* note 20.

⁴⁵ *Id.* at 1.

⁴⁶ *Id.* at 55.

⁴⁷ *Id.*

⁴⁸ *Id.* at 56-57.

⁴⁹ *Id.* at 60-61.



Center’s data reveals a very blurry line between official 287(g) status and current reporting of immigrants to ICE by New Jersey police as a result of traffic stops and other minor offenses.

The personal testimony of Antonio Ramirez, a naturalized U.S. citizen and community advocate, before Congress this month, captures the content of the fear and racial profiling experienced by immigrant communities in which police are authorized to question people about their immigration status, in situations identical to those reported in New Jersey:

[A] Latino man I know was pulled over . . . [and] was told by the police officer that it was because the little tree air freshener hanging from his rearview mirror was illegally blocking his view of the road. I have heard that this has happened to several other Latino drivers in Frederick, but I have never heard of it happening to non-Latinos.

“Latino citizens and immigrants in Frederick feel like we are walking around with huge targets on our backs. We get stopped by the police . . . for all kinds of reasons – or no reason at all...”

I know two Latino men who were pulled over in separate incidents – one in October, and one in November – both because the police officers told them they were driving too slowly. I have heard of at least two other people – both Latino – who have been pulled over for the same thing. Only one of the four was given a ticket for driving too slowly.

I have also heard of Latino citizens getting pulled over for things that they swear that they did not do, like not coming to a complete stop or not staying in one lane. They are convinced that the only reason that they were stopped was because the officer saw a brown face behind the wheel and assumed it was

an “illegal” driving. Latinos have also told me that when the police do stop them, they ask everyone in the car for passports or other identification cards, no matter the reason why the car was stopped.

...

These actions by the police in Frederick have made even Latino *citizens* change the way we live our lives to avoid being harassed. We avoid driving on certain roads that we know the police stake out. We avoid driving at all late at night, when it is too easy for police to pick out the Latino drivers and make up a reason to pull us over.

...

As a result, Latinos and immigrants do not report crimes anymore. I know one woman who is the victim of domestic violence who will not report it . . .

I know a mother who is too afraid to call the police about the drug dealer who lives in her neighborhood, even though he has tried to give drugs to her children. She confronted the drug dealer, and demanded that he stop, but he just laughed at her . . . mainly because he knows that she will not call the police.



...

I also know a Latino man who . . . was approached by a man who demanded that he give him all his money or else the thief would call the police and tell them that the Latino man was selling drugs. Instead of risking problems with immigration, he gave up his money. I have heard of several other Latinos being threatened like this, but none of them have reported it to police.⁵⁰

Numerous other studies have underscored the devastating effect that police questioning about immigration status and referral to ICE can have on community policing. Effective community policing particularly depends on fostering relationships of trust between immigrant groups and law enforcement agencies. This is already a formidable task given that studies show immigrants tend to underreport crimes – either as victims or witnesses – because they fear that interaction with police officers may lead to negative immigration consequences. For example, two U.S. Department of Justice studies revealed that immigrant groups often cite fear of deportation as a “major barrier” to building trust and partnerships with police⁵¹ and that two thirds of district attorneys and chiefs of police from the 50 largest cities believed that recent immigrants underreport crimes.⁵²

Towns across the State of New Jersey have made tremendous efforts to improve relationships between police and immigrant communities. Recognizing the impact of immigration questioning by police in undermining this precarious relationship of trust, towns and cities including Bridgeton, Camden, Ft. Lee, Hightstown, Jersey City, North Bergen, Passaic, Trenton, Union City, West New York and Newark have all asked their police officers not to inquire about immigration status unless investigating criminal activity. As New York City Mayor Michael Bloomberg aptly asked, “Do we really want people who could have information about criminals—including potential terrorists—to be afraid to go to the police?”⁵³

⁵⁰ *The Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws: Hearing before Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and Subcommittee on the Constitution, Civil Rights, and Civil Liberties*, 110th Cong. (2009) (testimony by Antonia Ramirez, Community Advocate Frederick County, M.D.).

⁵¹ See Anita Khashu, et al., *Building Strong Police-Immigrant Community Relations: Lessons from a New York City Project*, U.S. Dep’t of Justice, Community Oriented Policing Services (COPS) Report (Aug. 2005) at 3.

⁵² Robert C. Davis et al., *Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors*, 12 Crim. Just. Pol’y Rev. 183, 187 (2001).

⁵³ Testimony of New York City Mayor Michael Bloomberg before the Senate Judiciary Committee, July 5, 2006, quoted in National Immigration Forum, *Proposals to Expand Immigration Authority of State and Local Police Dangerous Public Policy According to Law Enforcement, Government, Opinion Leaders, and Communities*, September 18, 2006.



Racial Profiling

Several reports have recorded systemic racial profiling when local police are authorized to question individuals about their immigration status. For example, the report from the University of North Carolina in association with the ACLU observes that “law enforcement officers seem to be targeting drivers of a particular race or national origin and stopping them for traffic violations” in communities where police are authorized under 287(g).⁵⁴ The report concludes that allowing law enforcement to inquire into immigration status and enforce immigration laws “encourages, or at the very least tolerates, racial profiling and baseless stereotyping, resulting in the harassment of local residents and the isolation of an increasingly marginalized community.”⁵⁵ This further undermines the relationship between police and immigrant communities because immigrants may “experience a deep sense of injustice, often resulting in distrust and cynicism towards state and local institutions.”⁵⁶ The report specifically questions the use of racial profiling in one county where 83% of the immigrants arrested under 287(g) authority were charged only with traffic violations.⁵⁷ The New Jersey data raises identical concerns -- 60% of individuals detained and referred to ICE were charged only with traffic violations. The additional procedural step by New Jersey police of referring individuals to ICE rather than making direct immigration arrests in no way distinguishes the implications of this data from studies based on 287(g) programs.

The U.S. Government Accountability Office - the audit, evaluation, and investigative arm of Congress - issued a report in January 2009 on state and local enforcement of federal immigration law.⁵⁸ The report analyzed the 287(g) program and its application in local communities by reviewing memorandums of agreement between ICE and participating local agencies, previous GAO reports, and interviewing officials from ICE and participating agencies on 287(g) implementation and results.⁵⁹ The report notes the more than half of the agencies that they reviewed voiced concerns that racial profiling was at play.⁶⁰ The report questions the discrepancy between agencies in their use of 287(g) authority—that “individual agency participation results ranged from about 13,000 arrests in one location, to no arrests in two locations.”⁶¹ The New York Times reported a similar disparity in use of the Directive in New Jersey.⁶² For example, in March 2008, Bridgeton had referred 36 cases to ICE while Newark had referred none.⁶³ The GAO report notes that four of the 29 agencies questioned stated that “they used 287(g) authorities to process for removal those aliens the officers stopped for minor violations” even though 287(g)’s goal is to target serious

⁵⁴ UNC, *supra* note 20, at 28-31.

⁵⁵ *Id.* at 29.

⁵⁶ *Id.* at 31.

⁵⁷ *Id.* (citing American Civil Liberties Union of North Carolina, Letter to the Members of the Joint Legislative Crime Control and Juvenile Justice Oversight Committee, Mar. 11, 2008).

⁵⁸ GAO, *supra* note 20.

⁵⁹ *Id.* at i.

⁶⁰ *Id.* at 6.

⁶¹ *Id.* at 5.

⁶² Kareem Fahim, *Immigration Referrals by Police Draw Scrutiny*, N.Y. Times, Mar. 23, 2008.

⁶³ *Id.*



criminal activity.⁶⁴ The New Jersey data mirrors this trend, despite the Directive’s stated focus on serious criminals.

Especially relevant to the Directive, the International Association of Police Chiefs report expresses concern regarding the lack of guidance given to police concerning the standard and acceptable grounds on which officers must base the belief required to arrest a person for an immigration violation.⁶⁵ This leaves wide open the door for racial profiling despite the stated injunction against using ethnicity as a basis for suspecting unlawful immigration status.

The Appleseed Network’s report also notes the inherent risk of racial profiling when “police are instructed to identify persons whom they have reason to believe have violated immigration laws.”⁶⁶ This kind of instruction encourages targeting specific ethnic groups who are known to be immigrating in large numbers.⁶⁷ Additionally, the report notes how this inevitable racial profiling may also result in citizens and legal residents being apprehended based on their ethnic appearance.⁶⁸ The report reiterates that any racial profiling that does occur will further damage the relationship with immigrant communities.⁶⁹

“Racial profiling that results from immigration enforcement will affect citizens and legal residents.”

Appleseed Network

Finally, the Justice Strategies report describes a class action lawsuit filed by victims of alleged racial profiling in Maricopa County, Arizona, against law enforcement officers who were acting under 287(g).⁷⁰ The class action alleged that immigration raids pursuant to 287(g) authority violated the Equal Protection Clause by “utilizing rampant racial profiling.”⁷¹ Also, the report notes that Morristown decided not to apply for 287(g) power partly because of the potential lawsuits it would face, which came to the town’s attention when a community group “dropped a stack of papers, ten inches thick, on the conference room desk . . . [which] outlined potential lawsuits.”⁷²

⁶⁴ *Id.* at 11, 10. One sheriff even described his view of the 287(g) authority to include “go[ing] to people’s homes and question[ing] individuals regarding their immigration status even if the individual is not suspected of criminal activity.” *Id.* at 11-12.

⁶⁵ Police Chiefs, *supra* note 20, at 39.

⁶⁶ Appleseed, *supra* note 20, at 11.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Justice Strategies, *supra* note 20, at 40.

⁷¹ *Id.* (citing De Jesus Ortega Melendez v. Arpaio, No. CV-07-2513-PHX-MHM (D. Ariz. July 16, 2008) and Arizona ACLU, “Sheriff Arpaio Sued Over Racial profiling of Latinos in Maricopa County,” press release, Phoenix, Arizona Civil Liberties Union, July, 16 2008). Case is still proceeding.

⁷² *Id.* at 58.



Lawsuits against police departments may increase as a result of allegations of racial profiling and also as the consequence of police error due to lack of training regarding immigration laws.⁷³ Immigration law is complex and technical, and has repeatedly been described by courts as “labyrinthine.”⁷⁴ For this reason, immigration agents undergo a rigorous, comprehensive training program that orients them to the complexities of federal immigration law and enforcement. Untrained police officers are more likely to engage in improper racial profiling, by relying on characteristics such as skin color or a foreign-sounding accent in deciding whether to question a person about his or her immigration status. That is, when in doubt, an officer may be more likely to presume that certain nationalities – such as Latinos – should be arrested.⁷⁵ As Professor David Harris noted in his recent testimony before Congress, the lack of training of police officers in the intricacies of immigration law leads to the inevitable result of racial profiling as officers flounder for clues on how to determine whether an immigration violation has occurred.⁷⁶ This concern regarding the lack of training was echoed in the Police Chiefs report⁷⁷ and the Appleseed report,⁷⁸ and in a 2004 Congressional Research Service report which noted that “a high risk for civil rights violations may occur if state and local police do not obtain the requisite knowledge, training, and experience in dealing with the enforcement of immigration laws.”⁷⁹ When asked about Law Enforcement Directive 2007-3, several police officials said they had rolled out the Directive with little instruction and in many cases officers were asked to simply initial a book that said they had read it.⁸⁰

⁷³ Appleseed, *supra* note 20, at 9 & n.16 (describing the complexity and ever-changing nature of immigration law and specifically noting that “the likelihood of police error is high”).

⁷⁴ See, e.g., *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003) (describing modern immigration law as “labyrinthine” and “a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion”); *Lok v. INS*, 548 F.2d 37, 38 (2d Cir. 1977) (noting “the striking resemblance between [immigration] laws . . . and King Minos’s labyrinth in ancient Crete”).

⁷⁵ The United Nations Human Rights Committee, the formal body that monitors countries’ compliance with the International Covenant on Civil and Political Rights, a treaty which the United States has signed and ratified, addressed U.S. immigration policies and cautioned that “only agents who have received adequate training on immigration issues [should] enforce immigration laws.” The Committee suggested that the U.S. government’s failure to address this concern would result in a violation of its treaty obligations. *Concluding Observations of the Human Rights Committee, United States of America, CCPR/C/USA/CO/3/REV.1* (18 Dec. 2006) at ¶ 27, available at <http://www.ushrnetwork.org/page217.cfm>.

⁷⁶ *The Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws: Hearing before Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and Subcommittee on the Constitution, Civil Rights, and Civil Liberties*, 110th Cong. (2009) (testimony by David Harris, Professor of Law, Univ. of Pittsburgh).

⁷⁷ Police Chiefs, *supra* note 20, at 10, 11, 13, 14, 39-40, 43-44.

⁷⁸ Appleseed, *supra* note 20, at 9.

⁷⁹ Lisa M. Seghetti et al., *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, Congressional Research Service Report for Congress, Mar. 11, 2004, at 234.

⁸⁰ Kareem Fahim, *Immigration Referrals by Police Draw Scrutiny*, N.Y. Times, Mar. 23, 2008, available at <http://www.nytimes.com/2008/03/23/nyregion/23immig.html>.



CONCLUSION

The New Jersey Attorney General was previously skeptical of criticism from advocates about the collateral consequences of the Directive, calling for “real evidence that the directive is being abused” rather than mere “speculation.”⁸¹ The data presented in this report leaves no doubt that the Directive has had widespread collateral consequences for New Jersey’s Latino immigrant community – who make up one in ten of the state’s residents. The data suggests that the Directive has resulted in wide sweeps and arrests of the state’s Latino drivers, passengers, pedestrians and commuters, including thousands of U.S. citizens and permanent residents, none of whom committed any crime, let alone a serious crime.

The four concerns about local law enforcement of federal immigration law which the Directive foreshadowed have all come to fruition in just 18 months since the Directive was issued. First, the Directive has resulted in widespread *de facto* enforcement of federal civil immigration laws by New Jersey police. The Attorney General has previously argued that police questioning about immigration status and referral to ICE is not the same thing as immigration enforcement.⁸² But in the eyes of immigrant communities whose members are regularly arrested by police and turned over to immigration authorities solely on the basis of police “belief” about their immigration status, the distinction is technical and irrelevant. As former Newark Police Chief Hubert Williams aptly put it in his testimony before Congress earlier this month, “when local police execute the powers of immigration enforcement officers—as is the case when they check for green cards at roadblocks, or stop people for motor vehicle violations and request documentation or information associated with immigration status—they execute an immigration enforcement function in contacts with the general public.”⁸³

Second, police are expending significant resources on detaining and transferring to ICE individuals who have no criminal record. The 68 individuals whose stories the Center was able to obtain are no doubt the tip of a deep iceberg of non-criminal immigration arrests by police across the state. The safety of New Jersey communities has inevitably been undermined by the diversion of critical limited police resources away from the “overriding mission of law enforcement officers in this State . . . to enforce the State’s

⁸¹ Deborah Hirsch, *New Jersey: Advocate group presses for modification of immigration notification directive*, Courier Post, Nov. 30, 2008.

⁸² *Id.*

⁸³ *The Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws: Hearing before Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and Subcommittee on the Constitution, Civil Rights, and Civil Liberties*, 110th Cong. (2009) (testimony by Hubert Williams, President, Police Foundation).



criminal laws and to protect the community that they serve.”⁸⁴ The valuable police resources spent on civil immigration enforcement and detention are especially wasteful in light of the false positives that police generated: only one sixth of the 10,000 people that police reported to ICE in the first six months of the Directive were actually charged with an immigration violation, and one in three people was likely a permanent resident or U.S. citizen.

Third, the fact that almost every one of the 68 people in the Center’s data sample was Latino strongly suggests that the Directive has undermined New Jersey’s leadership position in eliminating racially-influenced policing and racial profiling. Despite the Directive’s bald prohibition of “any law enforcement strategies that risk undermining – or which create the impression of undermining – the prohibitions on racially-influenced policing” the data collected here suggests a disturbing trend towards police questioning and subsequent referral to ICE for driving/riding/walking while Latino. Although the data in this study is anecdotal and an imperfect statistical sample, it is the only data available due to the complete lack of accountability and lack of any reporting requirement concerning police immigration questioning and reporting to ICE outside the context of an arrest for a serious crime.

Finally, there can be little doubt that widespread police questioning about immigration status and association with immigration enforcement has seriously undermined the ability of New Jersey police to obtain “the cooperation of, and positive relationships with, all members of the community”⁸⁵ that according to the International Association of Chiefs of Police, is “[o]ne of the central benchmarks of a well-commanded police department.”⁸⁶ According to the Association, to build that relationship, the community must “believe in the officers’ good motives.”⁸⁷ Clearly, that belief is anathema to the reasonable fear that a Latino person now has that a New Jersey police officer may at any moment question her about her immigration status, detain her, and report her to ICE. As the chiefs of police of the largest metropolitan police departments in the United States explained, this divide between local police and immigrants results in “increased crime against immigrants and in the broader community, create[s] a class of silent victims and eliminate[s] the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.”⁸⁸ In short, it has undermined the safety of the community at large which the Directive was intended to promote.

⁸⁴ Directive, *supra* note 3.

⁸⁵ *Id.*

⁸⁶ Police Chiefs, *supra* note 20, at 21.

⁸⁷ *Id.*

⁸⁸ Craig E. Ferrell, Jr. et al., *M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Law by Local Police, Major Cities Chiefs Position Paper*, June 2006. See also Gene Voegtlin, *Enforcing Immigration Law: The Role of State, Tribal, and Local Law Enforcement*, International Association of Chiefs of Police (IACP) Position Paper, December 12, 2004 (stating that many police departments are concerned that local enforcement of immigration law “would likely have a chilling effect on both legal and illegal aliens reporting criminal activity or assisting police in criminal investigations”).



RECOMMENDATIONS

1. Section I of Law Enforcement Directive 2007-3 should be repealed.
2. If the Directive is not repealed, it should be heavily amended and supplemented, according to the recommendations below.
3. An amended directive should contain a general rule prohibiting police from questioning a person about their immigration status.
4. If, despite the heavy cost and error rates, the Attorney General would like to maintain an exception to the general rule in the case of individuals arrested for serious crimes, the directive should contain new provisions mirroring current Section III of the Directive which limits questioning about immigration status to the narrow circumstances under which police have already arrested a person for a serious state crime. However the amended directive should clarify key omissions from the current language of the Directive, including:
 - A. Carefully define that questioning may only occur after such an arrest has been made, and should never form the basis for an arrest; and
 - B. Clear guidelines, *and related training*, on the acceptable bases and requisite facts that may give rise to a “belief” that a person is an undocumented immigrant. This must include basic immigration training, taking into account the inaccuracy of civil immigration violations listed in databases such as the National Crime Information Center.⁸⁹
 - C. Express language strictly prohibiting questioning of witnesses, victims, or persons stopped in connection with non-indictable offenses and traffic offenses.
5. To the extent that police may inquire into immigration status, the directive should establish:
 - A. Detailed reporting requirements for *all* instances in which police question a person about their immigration status, including database checks, and *all* instances in which police report a person to ICE;

⁸⁹ See Police Chiefs, *supra* note 20, at 38-39 (“An entry into NCIC does not guarantee the state or local officer has actual authority to take the person into custody. In addition, an officer’s reliance upon a NCIC entry will not ‘cover’ an illegal arrest on a civil violation if the officer has no civil arrest authority.”).



- B. Regular review and public disclosure of all such reports, to enable outside groups to be able to detect potential instances or trends towards racially-influenced policing;
- C. A meaningful enforcement mechanism including a complaint process and disciplinary actions against police who violate the directive; and
- D. Retain the current prohibition against racial profiling, including the injunction against considering a person's race or ethnicity as a factor in drawing an inference or conclusion that the person may be an undocumented immigrant.