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NOTES

DIVIDED WE STAND, UNITED WE FALL: A PUBLIC POLICY ANALYSIS OF SANCTUARY CITIES' ROLE IN THE "ILLEGAL IMMIGRATION" DEBATE

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INTRODUCTION

"Give me your tired, your poor/Your huddled masses yearning to breathe free/The wretched refuse of your teeming shore/Send these, the homeless, tempest-tost to me . . ."¹ This inscription located on the Statue of Liberty² is recognized as a symbol of freedom and hope for those immigrants arriving in the United States, the initial step taken to create a better life for themselves and their families in a nation recognized for its democratic freedom, personal liberties, and economic opportunities. However, once considered a nation of immigrants, America and the principles governing American society today are becoming increasingly anti-immigration in nature.³ National security concerns have dimmed the welcoming glow of Lady Liberty's torch, as policymakers take steps to erect a 700-mile wall along the U.S.-Mexico border and armed "vigilante-like Minutemen" stand guard to prevent individuals from crossing into the United States unlawfully.⁴

The power to regulate immigration is traditionally recognized as a power of the federal government.⁵ However, in the 9/11 Commission's report following

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1. EMMA LAZARUS, *The New Colossus* (1883), reprinted in EMMA LAZARUS: SELECTED POEMS 58, 58 (John Hollander ed., 2005).

2. See The Statue of Liberty-Ellis Island Foundation, http://www.statueofliberty.org/Statue_of_Liberty.html (last visited Feb. 7, 2009).

3. See Bill Wolpin, *Hide and Seek*, AM. CITY & COUNTY, Apr. 2007, at 6, 6. In 2006, 570 pieces of legislation were introduced in state legislatures that would limit undocumented migrants' "access to jobs, education or healthcare." *Id.*

4. Nancy Foner, Op-Ed, *Immigrants at Home*, N.Y. TIMES, Nov. 26, 2006, § 14, at 11.

5. See STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 103-06 (4th ed. 2005) (referencing several possible sources of federal immigration power, including the

the terrorist attacks of September 11, 2001, the federal government summoned state and local authorities to aid in the enforcement of federal immigration law.⁶ Many state and local governments willingly accepted this call.⁷ Nonetheless, many other localities chose the opposite approach, adopting what are known as “sanctuary” or “non-cooperation” policies.⁸ Through local resolutions, departmental policies, executive orders, or city ordinances, these sanctuary cities generally “forbid local law enforcement personnel to ask about immigration status or report illegal aliens to federal authorities, except in the case of serious criminal offense.”⁹ This polarization among cities in the United States only intensifies the national immigration debate.

Rather than discussing whether state and local governments *can* (or cannot, in the case of sanctuary cities) enforce immigration law as a constitutional matter,¹⁰ this Note examines whether local governments *should*, from a public

Commerce Clause, the Migration or Importation Clause, and the Naturalization Clause of the United States Constitution).

6. NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 390 (2004). (“There is a growing role for state and local law enforcement agencies [for the enforcement of immigration law]. They need more training and work with federal agencies so that they can cooperate more effectively with those federal authorities in identifying terrorist suspects.”).

7. Wolpin, *supra* note 3, at 6 (noting that in 2006, a total of “84 immigrant-related measures were signed into law in 27 states, twice the number passed one year earlier”). For a comprehensive database of state legislation related to immigration, see Migration Policy Institute, State Responses to Immigration: A Database of All State Legislation, http://www.migrationinformation.org/databus/statelaws_home.cfm (last visited Feb. 20, 2009).

8. Laurel R. Boatright, Note, “Clear Eye for the State Guy”: Clarifying Authority and Trusting Federalism to Increase Nonfederal Assistance with Immigration Enforcement, 84 TEX. L. REV. 1633, 1635 (2006).

9. Amanda B. Carpenter, *Sanctuary Cities Protect Illegals, Threaten National Security*, HUMAN EVENTS, May 14, 2007, at 3.

10. For a constitutionally based discussion of sanctuary cities and the enforcement of federal immigration law by local and state government, see Boatright, *supra* note 8, at 1650-55; see generally Jorge L. Carro, *Municipal and State Sanctuary Declarations: Innocuous Symbolism or Improper Dictates?*, 16 PEPP. L. REV. 297, 316-24 (1989) (discussing possible “legal ramifications of these official imprimaturs of the sanctuary movement” including federal preemption and First Amendment implications); Kris W. Kobach, *The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests*, 69 ALB. L. REV. 179 (2006); Matthew Parlow, *A Localist's Case for Decentralizing Immigration Policy*, 84 DENV. U. L. REV. 1061, 1067-69 (2007) (discussing an apparent circuit split that exists as to whether state and local governments have the authority to enforce federal immigration laws); Huyen Pham, *The Constitutional Right Not to Cooperate? Local Sovereignty and the Federal Immigration Power*, 74 U. CIN. L. REV. 1373 (2006); Cecilia Renn, *State and Local Enforcement of the Criminal Immigration Statutes and the Preemption Doctrine*, 41 U. MIAMI L. REV. 999 (1987); Daniel Booth, Note, *Federalism on ICE: State and Local Enforcement of Federal Immigration Law*, 29 HARV. J.L. & PUB. POL'Y 1063 (2006).

policy perspective, be involved in the enforcement of federal immigration law.

Part I discusses the underlying issues that form the roots of the United States' struggles with immigration, including the overwhelming presence of undocumented migrants, the effect that this presence has on the budgets of state and local governments, and the broken state of current federal immigration policy. Part II briefly discusses the existing legal limitations to state and local governments' authority to choose what role they will play in the enforcement of federal immigration law. Part III provides a profile of sanctuary cities in the United States, including their historical development. Part III also provides an overview of the potential hazards of nonfederal enforcement of immigration law that sanctuary policies seek to avert, as well as recent programs adopted by these localities to acclimate the undocumented migrant population into the larger community. Next, Part IV discusses recent Congressional proposals in the area of immigration, particularly Indiana Representative Dan Burton's "No Sanctuary for Illegals Act"¹¹ and the "Clear Law Enforcement for Criminal Alien Removal Act."¹² This Note concludes by arguing that public policy dictates that the Houses of Congress must work together with state and local government, considering all interests involved, in order to improve the current state of immigration policy.

I. PROFILE OF UNDOCUMENTED MIGRANTS IN 21ST CENTURY AMERICA AND THE BROKEN STATE OF THE IMMIGRATION SYSTEM

The Pew Hispanic Center recently published a report concluding that many U.S. citizens rank immigration as one of the most important problems currently facing the United States, falling immediately after the War in Iraq, energy and gas prices, and the general state of politics.¹³ Even the term "illegal immigration" sparks debate among immigration lawyers, legal scholars, and lawmakers alike.¹⁴

The issue of immigration lies at the forefront of public policy concerns.¹⁵ However, before an effective analysis of immigration policy may begin, it is important to start with a discussion of those issues that form the backdrop of the

11. H.R. 3549, 110th Cong. (2007).

12. H.R. 842, 110th Cong. (2007).

13. PEW HISPANIC CTR., THE STATE OF AMERICAN PUBLIC OPINION ON IMMIGRATION IN SPRING 2006: A REVIEW OF MAJOR SURVEYS 2 (May 17, 2006), *available at* <http://pewhispanic.org/files/factsheets/18.pdf> [hereinafter PEW HISPANIC CTR., THE STATE OF AMERICAN PUBLIC OPINION].

14. *See* LEGOMSKY, *supra* note 5, at 1192 (arguing that the "choice of terminology has [serious] social and political connotations"). This Note uses the term "undocumented migrant," as suggested by Professor Legomsky, when referring to "non-U.S. citizens who are present in the United States without valid documentation of lawful immigration status." *Id.* at 1193.

15. *See* PEW HISPANIC CTR., THE STATE OF AMERICAN PUBLIC OPINION, *supra* note 13, at 2. For further discussion related to American opinion on immigration, see generally THE PEW HISPANIC CTR., AMERICA'S IMMIGRATION QUANDARY: NO CONSENSUS ON IMMIGRATION PROBLEM OR PROPOSED FIXES (Mar. 30, 2006), *available at* <http://www.pewhispanic.org/files/reports/63.pdf>.

immigration debate, including the overwhelming presence of undocumented migrants, the effect that this presence has on the budgets of state and local governments, and the broken state of current federal enforcement efforts.

A. The “Undocumented” Presence

Researchers estimate that there are currently more than thirty-six million foreign-born individuals living in the United States, with as many as twelve million living here without valid immigration documentation.¹⁶ Using this estimate, undocumented migrants make up nearly 4% of the entire U.S. population.¹⁷ Of these twelve million undocumented persons, researchers estimate that up to one-half were initially admitted lawfully, “but overstayed or otherwise violated the terms of their authorization.”¹⁸

Researchers face many obstacles in their efforts to gather information on the undocumented migrant community. Factors contributing to the difficult task of calculating an accurate estimate of the size and demographics of the undocumented population include: “[T]he extent to which that population is undercounted in the census; rates of emigration and mortality; and whether

16. Parlow, *supra* note 10, at 1062; Wolpin, *supra* note 3, at 6. An immigrant will be considered unlawfully present within the United States under one of five set of circumstances:

(i) Present without inspection (PWI). Any alien who enters U.S. territory without presenting himself or herself to an immigration inspector at a designated point of entry is “PWI.”

(ii) Appearing for inspection at a point of entry without proper documents. Typically, this provision applies to persons who attempt to enter at U.S. land borders hoping that their documents will not be checked.

(iii) Appearing for inspection and making a material misrepresentation that makes the alien excludable. The misrepresentation could be made with false documents, false statements to the inspector, or presentation of a valid visa that was obtained by fraud.

(iv) Overstaying the time period authorized for a temporary period of stay after entering the country legally.

(v) Entering the United States legally, but becoming deportable for other violations of the terms of admission. Common grounds for deportability include unauthorized employment and conviction of an aggravated felony or a crime of moral turpitude.

Michael M. Hethmon, *The Chimera and the Cop: Local Enforcement of Federal Immigration Law*, 8 UDC/DCSL L. REV. 83, 98 (2004) (referencing various sections of Chapter 8 of the United States Code) (footnotes omitted).

17. Parlow, *supra* note 10, at 1062.

18. U.S. CONGRESSIONAL BUDGET OFFICE, THE IMPACT OF UNAUTHORIZED IMMIGRANTS ON THE BUDGETS OF STATE AND LOCAL GOVERNMENTS 4 (Dec. 2007), available at <http://www.cbo.gov/ftpdocs/87xx/doc8711/12-6-Immigration.pdf>.

immigrants who are in the United States in a quasi-legal capacity should be classified as unauthorized.”¹⁹

Recent studies provide a wealth of information about the undocumented migrant community living in the United States.²⁰ In 2005, the Pew Hispanic Center published a report outlining the size and demographics of the undocumented migrant population living in twenty-first century America.²¹ According to that report, migrants arriving from Mexico make up over half of the undocumented migrants currently living in the United States.²² Between 1995 and 2005, the number of undocumented migrants increased by an average of 700,000-800,000 annually.²³ This growth rate is roughly synonymous with those lawfully-present migrants arriving in the country.²⁴

However, some studies estimate that the number of undocumented migrants entering the United States over the past several years has declined.²⁵ Other estimates suggest that the rate of undocumented migration will continue to decrease in the future as well, not “because of civilian border patrols, laws being passed, [or] pronouncements by politicians,” but rather, because of the expansion of the Mexican economy and the promise for new job opportunities in Mexico during the coming years.²⁶

Approximately 60% of the estimated twelve million undocumented migrants are located within six states: California, Texas, Florida, Illinois, New York and New Jersey.²⁷ Large metropolitan areas within these states, such as Los Angeles,

19. *Id.* at 3 (defining “quasi-legal immigrants” as “those individuals whose legal authorization has expired but for whom renewals of or adjustments to status have not yet been finalized”).

20. For a comprehensive discussion about the demographical patterns of the undocumented migrant population living in the United States, see generally KARINA FORTUNY ET AL., THE URBAN INST., THE CHARACTERISTICS OF UNAUTHORIZED IMMIGRANTS IN CALIFORNIA, LOS ANGELES COUNTY, AND THE UNITED STATES (2007), available at http://www.urban.org/UploadedPDF/411425_Characteristics_Immigrants.pdf; ROBERTO SURO, DIRECTOR, PEW HISPANIC CTR., ATTITUDES ABOUT IMMIGRATION AND MAJOR DEMOGRAPHIC CHARACTERISTICS (Mar. 2, 2005), available at <http://www.pewhispanic.org/files/reports/41.pdf>.

21. JEFFREY S. PASSEL, PEW HISPANIC CTR., ESTIMATES OF THE SIZE AND CHARACTERISTICS OF THE UNDOCUMENTED POPULATION (Mar. 21, 2005), available at <http://www.pewhispanic.org/files/reports/44.pdf> [hereinafter PASSEL, ESTIMATES OF THE SIZE].

22. *Id.* at 2 (noting that in March 2004, Mexicans made up 57% of the undocumented migrant population; 24% originated from other Latin American countries; 9% were from Asia; 6% were from European nations and Canada; and 4% were from other miscellaneous countries).

23. *Id.*

24. *Id.*

25. See, e.g., Marla Dickerson, *U.S. Less Alluring to Illegal Migrants*, L.A. TIMES, Dec. 26, 2007, at 1 (noting a 20% drop in the number of individuals arrested while attempting to cross the United States-Mexico border during fiscal year 2007). “A drop in apprehensions is often interpreted as a sign that fewer migrants are attempting the trip.” *Id.*

26. Matthew Dowd, *The Mexican Evolution*, N.Y. TIMES, Aug. 1, 2005, at A15.

27. PASSEL, ESTIMATES OF THE SIZE, *supra* note 21, at 2 (noting the following concentration breakdown of undocumented migrant population in the United States using data compiled between

Houston, and New York City are currently recognized as sanctuary cities,²⁸ a factor likely contributing to the large undocumented presence within these states. However, this pattern is slowly changing as more undocumented migrants begin to settle in non-traditional areas, such as Arizona, North Carolina, and Tennessee.²⁹

The demographic data related to the undocumented migrant population is also worth noting. In 2004, men between the ages of eighteen and thirty-nine made up approximately 43% of the undocumented migrant population.³⁰ Women within the same age group accounted for nearly 30% of the total undocumented migrant population.³¹ A notable statistic is that children under the age of eighteen totaled 1.7 million, or approximately 17% of the total undocumented migrant population.³² These “[d]emographic characteristics are key factors in estimating the [undocumented] population’s fiscal impact on state and local governments.”³³

B. The “Cost” of the Undocumented Presence: The Impact of Undocumented Migrants on the Budgets of State and Local Governments

In December 2007, the Congressional Budget Office (CBO) published a paper discussing the impact of undocumented migrants on the budgets of state and local governments.³⁴ When considering the aggregate effect of unauthorized immigration at the state and local level, the CBO paper indicated that many studies show the cost of providing public services to this population exceeds what undocumented migrants pay in state and local taxes.³⁵ However, the report also stated that when taking into consideration total revenues and spending at the federal, state, and local levels *combined*, “tax revenues of all types generated by immigrants—both legal and unauthorized—exceed the cost of services they use.”³⁶ Furthermore, the CBO paper concluded that state and local spending on services provided specifically to the undocumented migrant population “makes up a small percentage of those governments’ total spending.”³⁷

The CBO identified several factors that may influence the discrepancy between the cost of services provided and the undocumented migrant population’s contribution in taxes. First, the extent to which undocumented

2002 and 2004: California (24%); Texas (14%); Florida (9%); New York (7%); Arizona (5%); Illinois (4%); New Jersey (4%); North Carolina (3%); and all other states (combined 32%)).

28. *See infra* note 125.

29. *See* PASSEL, ESTIMATES OF THE SIZE, *supra* note 21, at 2.

30. *Id.* at 10 (Fig. 8).

31. *Id.*

32. *Id.* at 3, 10 (Fig. 8).

33. U.S. CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 6.

34. *Id.* at 1.

35. *Id.*

36. *Id.*

37. *Id.*

migrants use certain public resources is a factor contributing to the added costs incurred by state and local governments.³⁸ For example, in the area of healthcare, studies suggest that many undocumented migrants are uninsured.³⁹ In 2004, the Pew Hispanic Center estimated that over half of undocumented migrants under the age of eighteen and nearly 60% of adult undocumented migrants were uninsured.⁴⁰ As such, these individuals tend to rely on public hospitals and emergency facilities when seeking medical treatment.⁴¹

Yet another relevant factor affecting immigration-related spending by state and local governments involves the circumstances giving rise to the amount of taxes the undocumented migrant population contributes to state and local governments.⁴² The issue does not rest solely on the argument that these individuals fail to comply with state and local tax laws. The CBO report noted that many researchers estimate up to 75% of undocumented migrants comply with federal, state and local tax laws.⁴³ In fact, the United States Social Security Administration estimated that undocumented migrants “contribute \$6-7 billion in Social Security funds that they will be unable to claim.”⁴⁴

Instead, the lack of tax contributions is directly related to the earning capacity of the undocumented migrant population.⁴⁵ The CBO cited to several studies conducted by the Pew Hispanic Center and the Urban Institute indicating that undocumented migrant workers tend to earn much less than their native-born counterparts and, consequently, a smaller portion of that income is subject to state and local taxes.⁴⁶ In 2004, for example, the Pew Hispanic Center estimated that “the average annual income for unauthorized families was \$27,400,

38. *Id.*

39. *Id.* at 2.

40. JEFFREY S. PASSEL, PEW HISPANIC CTR., UNAUTHORIZED MIGRANTS: NUMBERS AND CHARACTERISTICS 35 (June 14, 2005), *available at* <http://www.pewhispanic.org/files/reports/46.pdf> [hereinafter PASSEL, UNAUTHORIZED MIGRANTS].

41. U.S. CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 1-2.

42. *Id.* at 2.

43. *Id.* at 6.

44. RANDY CAPPS & MICHAEL FIX, THE URBAN INST., UNDOCUMENTED IMMIGRANTS: MYTHS AND REALITIES 1 (Oct. 25, 2005), *available at* http://www.urban.org/UploadedPDF/900898_undocumented_immigrants.pdf.

45. U.S. CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 2 (noting that the average household income of the undocumented migrant is “significantly less than that of both legal [migrants] and native-born citizens”). For further discussion related to the effect of immigration on the American workforce, see generally RAKESH KOCHHAR, PEW HISPANIC CTR., GROWTH IN THE FOREIGN-BORN WORKFORCE AND EMPLOYMENT OF THE NATIVE BORN (Aug. 10, 2006), *available at* <http://www.pewhispanic.org/files/reports/69.pdf>. For a discussion from the perspective of the immigrant community, see generally RAKESH KOCHHAR, PEW HISPANIC CTR., SURVEY OF MEXICAN MIGRANTS: THE ECONOMIC TRANSITION TO AMERICA (Dec. 6, 2005), *available at* <http://www.pewhispanic.org/files/reports/58.pdf> (providing information obtained during survey of Mexican migrants arriving in the United States).

46. U.S. CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 2.

compared with \$47,800 for legal immigrant families and \$47,700 for native-born families.”⁴⁷ The CBO also noted that as a result of undocumented migrants’ lower earning capacity, these individuals have “less disposable income to spend on purchases subject to sales or use taxes”; revenues of which “[s]tate and local governments typically rely more heavily on” than those revenues generated from taxes based on income.⁴⁸ The CBO report also discussed in detail the effect of undocumented migrants on state and local government spending in the three primary areas of public services: education, health care, and law enforcement.⁴⁹

1. *Education.*—The CBO credited education costs as the “largest single expenditure in state and local budgets.”⁵⁰ Pursuant to the landmark case of *Plyler v. Doe*,⁵¹ “state and local governments bear the primary fiscal and administrative responsibility of providing schooling” for the nearly two million undocumented migrant children currently living in the United States.⁵² Public efforts to educate these children, however, can be a costly endeavor. For example, the costs of educating those children who do not speak English fluently can be between 20% and 40% higher than that of educating native-born, English-speaking children.⁵³ In 2000, 1.5% of all children enrolled in kindergarten through the fifth grade, and 3% of children enrolled in the sixth through the twelfth grade, were undocumented.⁵⁴

2. *Health Care.*—Publicly funded healthcare facilities must provide medical assistance to all individuals, “regardless of their ability to pay for such medical services or their immigration status.”⁵⁵ According to the CBO, “[t]he amount of uncompensated care provided by some state and local governments is growing because an increasing number of [undocumented migrants] are using those services,” many of whom fail to have proper health insurance.⁵⁶ For example, in areas along the U.S.-Mexico border, state and local governments incurred nearly \$190 million in healthcare costs in 2000 as a result of providing uncompensated medical care to undocumented migrants.⁵⁷ This multi-million dollar deficit is hardly a national trend, however, as these uncompensated healthcare costs represent only a small percentage of total spending for most state and local governments away from the U.S.-Mexico border.⁵⁸ In Oklahoma, for example,

47. *Id.* (citing PASSEL, UNAUTHORIZED MIGRANTS, *supra* note 40).

48. *Id.*

49. *See id.* at 1, 7-12.

50. *Id.* at 7.

51. 457 U.S. 202 (1982) (holding that children could not be denied access to a public education as a result of their immigration status).

52. U.S. CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 7 (citing *Plyler*, 457 U.S. 202).

53. *Id.* at 2.

54. CAPPS & FIX, *supra* note 44, at 1.

55. U.S. CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 8.

56. *Id.*

57. *Id.* This figure represents nearly one quarter of the uncompensated healthcare costs incurred by these state and local governments during this time. *Id.*

58. *Id.*

“the services provided to [undocumented migrants] have accounted for less than [1%] of the total individuals served and cost less than [1%] of the total dollars spent for Medicaid services.”⁵⁹

3. *Law Enforcement.*—Those undocumented migrants who are accused or convicted of violating state and local criminal codes are not subject to immediate deportation.⁶⁰ Instead, these individuals must pass “through the local criminal justice system in the same fashion that any other suspect would.”⁶¹ During this time, state and local governments incur the costs of this process, including the investigation, detention, prosecution, and incarceration of those individuals accused of criminal activity.⁶²

The CBO concluded that immigrants, taken as a whole, are less likely to be subject to incarceration than native-born citizens.⁶³ Researchers have yet to pinpoint the exact reason for this phenomenon.⁶⁴ However, areas along the U.S.-Mexico border appear to incur greater costs related to law enforcement activities involving undocumented migrants.⁶⁵ In 1999, for example, local governments in California, Arizona, New Mexico, and Texas that are on the U.S.-Mexico border incurred more than \$108 million in total law enforcement expenditures.⁶⁶

In its calculations, the CBO report failed to consider the added costs that state and local governments would incur if responsible for immigration enforcement within their communities. The necessary funds associated with additional personnel and training programs would presumably create further financial burden on the already strained budgets of state and local governments.

4. *Federal Assistance.*—The CBO identified several federal programs established to “assist state and local governments in funding the additional costs associated with providing services to [undocumented migrants].”⁶⁷ “Those

59. *Id.* at 9.

60. *Id.* Unless such crimes are “immigration related” offenses. *Id.*

61. *Id.* For a summary of the number of undocumented migrants entering the criminal justice system during the mid-1990’s, and the types of offenses for which they were convicted, see generally REBECCA L. CLARK & SCOTT A. ANDERSON, *THE URBAN INST., ILLEGAL ALIENS IN FEDERAL, STATE AND LOCAL CRIMINAL JUSTICE SYSTEMS* (2000), available at http://www.urban.org/UploadedPDF/410366_alien_justice_sum.pdf.

62. U.S. CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 9 (“The federal government may take custody of those who are convicted after they have completed their sentences and then begin the deportation process, but until that point, state and local governments bear the cost . . .”).

63. *Id.*

64. For further discussion on incarceration rates of immigrants versus native-born citizens, see generally Kristin F. Butcher & Anne Morrison Piehl, *Why Are Immigrants’ Incarceration Rates So Low? Evidence on Selective Immigration, Deterrence, and Deportation* (Fed. Res. Bank of Chi., Working Paper No. 2005-19, 2005), available at www.chicagofed.org/publications/workingpapers/wp2005_19.pdf.

65. U.S. CONGRESSIONAL BUDGET OFFICE, *supra* note 18, at 9.

66. *Id.*

67. *Id.* at 10 (discussing the No Child Left Behind Act of 2001, Medicaid, and the Immigration Reform and Control Act of 1986).

programs, however, do not offset the full costs of providing those services” related to education, healthcare, and law enforcement incurred by state and local governments.⁶⁸ Consequently, state and local governments are left to bear much of the weight that is created as a result of the United States’ broken federal immigration policy.

C. The Broken State of the Immigration System

Immigration lawyers, scholars, and lawmakers alike would likely agree that the current state of immigration law and policy in the United States is broken. Aside from the large number of individuals evading immigration enforcement efforts and entering or remaining in this country without proper immigration documentation,⁶⁹ additional concerns exist related to the lack of federal enforcement resources. As the debate surrounding federal immigration policy continues, it remains clear that “the muddled status quo cannot hold.”⁷⁰

1. *Excessive Number Disparity Faced by Federal Law Enforcement.*—The power to regulate immigration is traditionally recognized as being vested in the federal government.⁷¹ The U.S. Bureau of Immigration and Customs Enforcement (ICE) is the agency formally responsible for enforcing the United States’ federal immigration laws, which includes the responsibility for the removal of those individuals unlawfully present.⁷² Effective enforcement over these twelve million undocumented migrants faces a huge number disparity, however, as there are currently only two-thousand ICE employees working solely as enforcement officers.⁷³ Recent studies estimate that the current number of individuals living unlawfully in the United States “outweighs the number of federal agents whose job it is to find them within our borders by 5,000 to 1.”⁷⁴

2. *Lack of Resources During Subsequent Legal Proceedings.*—Defects in the current federal immigration system result not only from a lack of personnel resources during the detection and apprehension phase of immigration enforcement, but also from a lack of appropriate resources during the subsequent legal proceedings. There is a lengthy delay in the Department of Homeland Security’s deportation proceedings as courts continue to be hindered with huge

68. *Id.*

69. *See supra* text accompanying note 16.

70. Boatright, *supra* note 8, at 1674.

71. LEGOMSKY, *supra* note 5, at 103-06 (referencing possible sources of federal immigration power, including the Commerce Clause, the Migration or Importation Clause, and the Naturalization Clause of the United States Constitution).

72. *See* 6 U.S.C. § 252(a)(1) (2006) (establishing the “Bureau of Border Security”). Homeland Security, pursuant to 6 U.S.C. §§ 452, 542(b)&(c), later changed this Bureau to ICE. *See* 3 C.J.S. *Aliens* § 199 (2003); *see also* U.S. Immigration and Customs Enforcement, <http://www.ice.gov/about/index.htm> (last visited Feb. 3, 2009).

73. Parlow, *supra* note 10, at 1062-63 (noting that also ICE currently has more than 17,000 total employees).

74. Booth, *supra* note 10, at 1066 (quoting 151 CONG. REC. S7853 (daily ed. June 30, 2005)).

caseloads.⁷⁵ According to the *U.S. Immigration and Customs Enforcement Annual Report for Fiscal Year 2006*, “[i]n immigration courtrooms, ICE attorneys prepare about 1,430 cases, create 683 new case records, create 562 new document records and obtain 528 final removal orders” on a daily basis.⁷⁶ Likewise, the Department of Homeland Security lacks appropriate funding and personnel to properly detain those individuals deemed deportable or removable.⁷⁷ Researchers estimate that the Department of Homeland Security has only 20,000 detention “beds” available for its detainees, while the number of undocumented migrants runs into the millions.⁷⁸ As a result of this shortage, federal authorities historically have declined to take custody of undocumented migrants arrested by local officials.⁷⁹

In addition, the physical removal of individuals deemed “deportable” can turn into a costly endeavor for federal immigration authorities.⁸⁰ Michael Hethmon, a staff attorney for the Federation for American Immigration Reform (FAIR), noted that most aliens are unable to afford transportation back to their home country once the courts deem them deportable.⁸¹ As such, the government is forced to cover the expenses of purchasing a one-way airline ticket back to the alien’s home country.⁸² Furthermore, many airline companies refuse to board deported individuals, unless they are escorted by at least one federal immigration officer; thereby increasing any transportation and lodging costs associated with the seemingly simple act of physically removing the alien from the United States.⁸³

II. LEGAL LIMITATIONS TO STATE AND LOCAL GOVERNMENTS’ ABILITY TO CHOOSE THEIR ROLE IN IMMIGRATION ENFORCEMENT

A. 8 U.S.C. §§ 1373 and 1644

The emphasis toward state and local assistance in immigration enforcement began years before the September 11, 2001, terrorist attacks. In 1996, Congress passed into law two statutes that limit state and local governments’ ability to

75. Honorable Rachel L. Brand, Assistant Attorney General for Legal Policy, U.S. Dep’t of Justice, Panel Discussion at the George Mason University Civil Rights Law Journal Symposium: Immigration—Practice and Policy Fall 2006 (Oct. 18, 2006), in 17 GEO. MASON U. CIV. RTS. L.J. 545, 550 (2007).

76. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ICE FISCAL YEAR 2006 ANNUAL REPORT, at ix (2007), available at <http://www.ice.gov/doclib/about/ICE-06AR.pdf> [hereinafter U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ICE].

77. See Hethmon, *supra* note 16, at 132.

78. See *id.*

79. See Boatright, *supra* note 8, at 1635.

80. See Hethmon, *supra* note 16, at 134.

81. *Id.*

82. *Id.*

83. *Id.*

freely choose what role they will play in the enforcement of federal immigration law. The first statute, 8 U.S.C. § 1373, states in pertinent part:

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.⁸⁴

Similarly, 8 U.S.C. § 1644 states:

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigrant status, lawful or unlawful, of an alien in the United States.⁸⁵

These statutes specifically prohibit government agencies at any level from preventing their employees from voluntarily conveying information regarding another individual's immigration status to federal authorities.⁸⁶ Interestingly, sanctuary policies appear to run afoul of these federal statutes, yet continue to exist today virtually unchallenged.⁸⁷ So long as government agencies do not retaliate against or punish employees who communicate with federal immigration authorities, no violation of the above-mentioned statutes appears to exist by the mere preserve of a written sanctuary policy. The debate regarding these sanctuary policies, however, rests on the argument that these policies are violations of federal law that are just not enforced.

In *City of New York v. United States*,⁸⁸ New York City, a self-identified sanctuary since 1989,⁸⁹ challenged the constitutionality of 8 U.S.C. § 1373 and 8 U.S.C. § 1644.⁹⁰ The City argued, among other things, that these sections of the U.S. Code violated the Tenth Amendment of the Constitution⁹¹ "because they directly forbid state and local government entities from controlling the use of information regarding the immigration status of individuals obtained in the

84. 8 U.S.C. § 1373(a) (2006).

85. *Id.* § 1644.

86. See María Pabón López, *The Phoenix Rises from El Cenizo: A Community Creates and Affirms a Latino/A Border Cultural Citizenship Through its Language and Safe Haven Ordinances*, 78 DENV. U. L. REV. 1017, 1039 (2001).

87. See, e.g., *id.* at 1039-40 (discussing the Safe Haven Ordinance).

88. 179 F.3d 29 (2d Cir. 1999).

89. See *id.* at 31 (noting that New York City's sanctuary policy was issued in the form of Executive Order No. 124 in August 1989 by then mayor, Edward Koch).

90. *Id.* at 33.

91. U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

course of their official [duties].”⁹² Upon review of the district court’s dismissal of the complaint,⁹³ the U.S. Court of Appeals for the Second Circuit upheld the constitutionality of §§ 1373 and 1644 because “Congress ha[d] not compelled state and local governments to enact or administer any federal regulatory program.”⁹⁴ Despite its loss in this constitutional challenge, New York City is still formally recognized as a sanctuary city.⁹⁵

More recently, the Department of Justice (DOJ) implemented a new policy that would further restrict state and local governments’ chosen role in federal immigration enforcement.⁹⁶ Beginning in 2001, the DOJ began to include immigration warrants in a national database traditionally reserved for wanted felons.⁹⁷ Police officers customarily query this national database during any routine stop.⁹⁸ Departmental policy requires that officers arrest individuals if the query shows that there is a warrant out for the individual’s arrest.⁹⁹ Through this policy, police officers are inadvertently enforcing federal immigration law through the course of their day-to-day duties.

Concerns arise, however, from studies suggesting that the information contained in this database is inaccurate.¹⁰⁰ According to the Migration Policy Institute, information entered into this national database between 2002 and 2004 contained an error rate of 42%.¹⁰¹ Furthermore, additional issues exist “when addressing state and local law enforcement’s access to immigration databases” such as this.¹⁰² For example, “how can the quality of the database be improved to avoid potential problems such as ‘false positives’ and individuals with similar names.”¹⁰³

92. *City of New York*, 179 F.3d at 33.

93. *City of New York v. United States*, 971 F. Supp. 789, 799 (S.D.N.Y. 1997), *aff’d*, 179 F.3d 29 (2d Cir. 1999).

94. *City of New York*, 179 F.3d at 35 (noting also that “[t]hese Sections do not directly compel states or localities to require or prohibit anything. Rather, they prohibit state and local governmental entities or officials only from directly restricting the voluntary exchange of immigration information with the [federal authorities].”).

95. *See infra* note 125 and accompanying text.

96. *See* Ben Arnoldy, “Sanctuary” Cities for Illegals Draw Ire, CHRISTIAN SCI. MONITOR, Sept. 25, 2007, at 3.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* (discussing the Migration Policy Institute’s Study).

101. *Id.*

102. CONG. RESEARCH SERV., ENFORCING IMMIGRATION LAW: THE ROLE OF STATE AND LOCAL LAW ENFORCEMENT 32 (Aug. 14, 2006), available at <http://www.ilw.com/immigdaily/news/2006,0912-crs.pdf>.

103. *Id.*

B. Recent Legal Action Related to Sanctuary Policies

In *City of New York v. United States*, New York City's sanctuary policy was not the basis of the legal challenge; rather, New York City challenged provisions of the United States Code that limited the City's ability to choose its role in federal immigration enforcement efforts.¹⁰⁴ To date, *no* party has brought a constitutional challenge regarding the validity of any specific sanctuary ordinance or order.

Most recently, Judicial Watch, a public interest group that advocates the investigation and prosecution of government corruption,¹⁰⁵ brought open records lawsuits against police departments in Washington, D.C.; Chicago, Illinois; and Los Angeles, California.¹⁰⁶ Judicial Watch also conducted investigations into similar policies of police departments in Houston, Texas, and Westchester, New York.¹⁰⁷ In its most recent litigation, the organization sought judicial orders to compel local police departments to proffer documents related to their sanctuary policies, many of which remained undisclosed to the public.¹⁰⁸ What exactly Judicial Watch is looking to gain from the production of these documents is unclear. The organization believes that access to these documents advances one of its core missions: "[T]o promote transparency, integrity, and accountability in government and fidelity to the rule of law."¹⁰⁹ Information provided on Judicial Watch's website indicates that these lawsuits are still ongoing.¹¹⁰

To date, neither Congress nor the Court has clearly explained the precise role states are to play in the enforcement of federal immigration law.¹¹¹ As a result, state and local governments are ultimately left to choose their own individual immigration policy. The reality is that "[c]ity councils can[not] change the federal government's failed immigration policies, but they can choose whether to offset or intensify the damage."¹¹² This lack of consistency in the enforcement of federal immigration law among state and local governments creates a

104. *City of New York v. United States*, 179 F.3d 29, 33 (2d Cir. 1999).

105. Judicial Watch, About Us, <https://www.judicialwatch.org/about.shtml> (last visited Feb. 5, 2009).

106. See Judicial Watch, *Judicial Watch Files Open Records Lawsuit Against Washington, D.C. Police Department over Illegal Immigration Policies*, Mar. 12, 2007, <http://www.judicialwatch.org/6205.shtml>.

107. *Id.*

108. *Id.*

109. Judicial Watch, Litigation, <http://www.judicialwatch.org/litigation> (last visited Feb. 5, 2009).

110. *Id.* (noting that immigration enforcement is "currently [being] litigated").

111. The City of New York filed a petition for certiorari following its loss in *City of New York v. United States*; however, the U.S. Supreme Court subsequently rejected such petition. *City of New York v. United States*, 528 U.S. 1115 (2000). No party has brought a similar challenge since that time.

112. Michele Wucker, Op-Ed., *A Safe Haven in New Haven*, N.Y. TIMES, Apr. 15, 2007, § 14, at 15.

patchwork “quilt of local immigration policies,”¹¹³ and only fans the fires of the existing immigration debate. In order to extinguish these concerns, it is important that Congress issue precise guidelines as to the proper role of state and local governments in the enforcement of federal immigration law.¹¹⁴

The issue of state and local involvement is ultimately left in the hands of Congress to decide and outline. As the raging debate surrounding immigration continues, Congress should finally define in clear and unequivocal terms the proper role, if any, of state and local governments in the enforcement of federal immigration law.

III. PROFILE OF SANCTUARY CITIES IN THE UNITED STATES

A. Historical Development: Past and Present

In the United States, the concept of “sanctuary” is hardly a recent development. During the 1980s, religious organizations across the country provided sanctuary for undocumented Central American refugees fleeing the political turmoil occurring in their home countries.¹¹⁵ This initial sanctuary movement was a response to the federal Immigration and Naturalization Service’s denial of the majority of refugee applications filed during this time despite the passage of the Refugee Act of 1980.¹¹⁶

During the mid-1980s, the sanctuary movement crossed into the public sector, as the cities of Berkeley, California; St. Paul, Minnesota; Madison, Wisconsin; and Cambridge, Massachusetts, among others, passed local resolutions to serve as sanctuaries for Central American refugees.¹¹⁷ It is from these historical roots that the modern sanctuary movement has evolved, expanding its protection from Central American refugees to all foreign-born

113. Kevin Johnson, *Report for Local Police Explains Immigration Issues*, USA TODAY, July 25, 2007, at 5A.

114. See Linda Reyna Yanez & Alfonso Soto, *Local Police Involvement in the Enforcement of Immigration Law*, 1 HISP. L.J. 9, 50 (1994) (“If the states are to be preempted, Congress needs to indicate this stance in clear and unequivocal terms. If state participation is to be encouraged, Congress should issue clear and authoritative guidelines to promote uniform application . . .”).

115. See John M. Gannon, Note, *Sanctuary: Constitutional Arguments for Protecting Undocumented Refugees*, 20 SUFFOLK U. L. REV. 949, 954-56 (1986) (noting that many sanctuary advocates were prosecuted during this time for harboring and transporting these undocumented refugees). For additional legal analysis of this initial sanctuary movement made in light of the arrival of Central American refugees, see Paul Wickham Schmidt, *Refuge in the United States: The Sanctuary Movement Should Use the Legal System*, 15 HOFSTRA L. REV. 79 (1986).

116. See Ignatius Bau, *Cities of Refuge: No Federal Preemption of Ordinances Restricting Local Government Cooperation with the INS*, 7 LARAZAL.J. 50, 50-51 (1994) (noting that between 1983 and 1991, the INS denied 97% of Salvadoran and 98% of Guatemalan applications for asylum).

117. See *id.* at 51-52. Many of these areas continue to be recognized as immigration sanctuaries to this day. See *infra* note 125 and accompanying text.

individuals.

Through local resolutions, departmental policies, executive orders, or city ordinances, these sanctuary policies generally “forbid local law enforcement personnel to ask about immigration status or report illegal aliens to federal authorities, except in the cases of serious criminal offense.”¹¹⁸ The substantive provisions of sanctuary policies are categorized as: “[(1)] no discrimination based on [immigration] status; [(2)] no enforcement of [federal] immigration laws; [(3)] no enforcement of civil [federal] immigration laws; [(4)] no inquiry about [immigration] status; and [(5)] no notif[ication of] federal immigration authorities.”¹¹⁹

Confusion still exists, however, as to the extent of protection these local governments offer to undocumented migrants.¹²⁰ These local governments appear to merely take a passive approach to federal immigration enforcement with the “don’t ask, don’t tell” policies that they implement.¹²¹ There are no reported instances of local law enforcement personnel physically interfering with the efforts of federal immigration enforcement officers.¹²² However, those who oppose these sanctuary policies argue that this passivity is just as dangerous as proactive resistance, which is where the heart of the debate lies.¹²³

In 2007, researchers identified as many as seventy cities, counties and state governments that have sanctuary-like policies in place.¹²⁴ In 2006, however, the Congressional Research Service (CRS) reported only thirty-two different cities, and counties that are formally recognized as immigration “sanctuaries.”¹²⁵ The

118. Carpenter, *supra* note 9, at 3.

119. Pham, *supra* note 10, at 1389.

120. *See, e.g.*, Arnoldy, *supra* note 96, at 2 (referencing a comment made by Michael Chertoff, Former Secretary of Homeland Security, who said, “People use the term ‘sanctuary city’ in different ways, so I’m never quite sure what people mean.”).

121. *Id.*

122. *Id.*

123. *See* Hethmon, *supra* note 16, at 85 (“To turn an official blind eye to violations of federal immigration law in such circumstances is not an exercise of state sovereignty, but rather impermissible passive resistance to federal law.”).

124. *See* Arnoldy, *supra* note 96, at 2 (discussing the court by the National Immigration Law Center).

125. CONG. RESEARCH SERV., *supra* note 102, at 26 n.85. The cities enumerated in the report include: Anchorage, Alaska; Fairbanks, Alaska; Chandler, Arizona; Fresno, California; Los Angeles, California; San Diego, California; San Francisco, California; Sonoma County, California; Evanston, Illinois; Cicero, Illinois; Cambridge, Massachusetts; Orleans, Massachusetts; Portland, Maine; Baltimore, Maryland; Takoma Park, Maryland; Ann Arbor, Michigan; Detroit, Michigan; Minneapolis, Minnesota; Durham, North Carolina; Albuquerque, New Mexico; Aztec, New Mexico; Rio Arriba County, New Mexico; Santa Fe, New Mexico; New York, New York; Ashland, Oregon; Gaston, Oregon; Marion County, Oregon; Austin, Texas; Houston, Texas; Katy, Texas; Seattle, Washington; and Madison, Wisconsin. *Id.* FIRM provides a number of examples of local pro-immigration resolutions on its website. FIRM, <http://www.fairimmigration.org/learn/immigration-reform-and-immigrants> (last visited Feb. 5, 2009).

most notable locality not listed within the CRS report that is currently recognized as a self-identified immigration sanctuary is Washington, D.C.¹²⁶

Police departments in San Diego, California; Chandler, Arizona; and Philadelphia, Pennsylvania, adopted similar non-cooperation policies in regards to federal immigration law.¹²⁷ David Cohen, spokesperson for the San Diego Police Department (SDPD), argued in support of SDPD's policy: "'We've spent decades establishing trust . . . with our very diverse immigrant communities. If there is an immigration emergency tied to criminal activity, of course we'll assist. But if it is simply an immigration violation . . . we will not be involved.'"¹²⁸

The Chandler, Arizona, Police Department's non-cooperation policy similarly prohibits the Department's Officers from arresting an individual whose only violation is immigration-related.¹²⁹ Additionally, the Chandler policy "prohibits [the] police from notifying the [federal authorities] of undocumented persons when those persons are material witnesses of crime, are seeking medical treatment, or are involved in family disturbances, minor traffic offenses, or minor misdemeanors."¹³⁰

The passage of sanctuary policies is a growing trend in the United States.¹³¹ The sanctuary policies discussed thus far were all at the department, city, and county level.¹³² Worth noting, however, is the fact that both Alaska and Oregon have adopted *statewide* sanctuary policies forbidding state agencies from using government resources to aid in the enforcement of federal immigration law.¹³³

126. See Carpenter, *supra* note 9, at 3. In 2007, the Washington, D.C., Police Department published a public memorandum in which Police Chief Charles H. Ramsey stated,

MPD [Metropolitan Police Department] officers are strictly prohibited from making inquiries into citizenship or residency status for the purpose of determining whether an individual has violated the civil immigration laws or for the purpose of enforcing those laws . . . the MPD is not in the business of inquiring about the residency status of the people we serve and is not in the business of enforcing civil immigration laws.

Id.

127. See Rebecca Smith et al., *Low Pay, High Risk: State Models for Advancing Immigrant Workers' Rights*, 28 N.Y.U. REV. L. & SOC. CHANGE 597, 629 (2004).

128. *Id.* (quoting Kris Axtman, *Police Can Now Be Drafted to Enforce Immigration Law*, CHRISTIAN SCI. MONITOR, Aug. 19, 2002, at 2).

129. See *id.*

130. *Id.*

131. See Wolpin, *supra* note 3, at 6 (reporting that sanctuary policies have been adopted by over forty localities in the United States as of April 2007).

132. See generally NATIONAL IMMIGRATION LAW CENTER, LAWS, RESOLUTIONS AND POLICIES INSTITUTED ACROSS THE U.S. LIMITING ENFORCEMENT OF IMMIGRATION LAWS BY STATE AND LOCAL AUTHORITIES (Dec. 2008), available at <http://www.nilc.org/immlawpolicy/LocalLaw/localaw-limiting-tbl-2008-12-03.pdf> (listing all local and state laws and showing that only two states—Alaska and Oregon—have adopted statewide policies).

133. *Id.* at 1, 16 (referencing Alaska's House Joint Resolution 22, passed in 2003 and Oregon's Statute 181.850, passed in 2001).

*B. Potential Hazards of Nonfederal Immigration Enforcement that
Sanctuary Policies Seek to Avert*

The use of the 800,000 state and local police officers¹³⁴ working in the United States today to aid in immigration enforcement seems to be a simple solution to a very complicated problem. The significance that this additional manpower would have in the enforcement of immigration violations is undeniable. However, the negative collateral consequences associated with this seemingly simple solution are equally difficult to dismiss.¹³⁵

Those government agencies with sanctuary policies in place proffer several reasons for their decision to adopt such a policy. The potential hazards that may result from using state and local resources in the enforcement of federal immigration law are both economical and practical in nature.¹³⁶

1. *Lack of Resources at the State and Local Level.*—First, localities are concerned that expending local law enforcement resources for federal immigration purposes would leave fewer resources for typical, day-to-day functions of local law enforcement.¹³⁷ The concern is that if police officers spend significant amounts of time investigating the immigration status of local residents, core duties such as general public safety assurance and order maintenance will be neglected. Detroit City Council President Ken Cockrel, Jr. argues, “I want Detroit police officers out there catching people who are stealing cars and mugging old ladies, not asking people for their passports.”¹³⁸

Also, concerns arise that programs that solicit the aid of local law enforcement may not provide the financial resources necessary to fund such efforts.¹³⁹ As a result, any such program would create an unfunded federal mandate, leaving open many questions as to where necessary funding would come from, if not from the federal government, to subsidize the immigration enforcement duties now expected from local agencies.¹⁴⁰

2. *Local Enforcement Undermines Community Policing Efforts.*—Furthermore, supporters of sanctuary policies argue that mandating local law

134. See Kobach, *supra* note 10, at 183.

135. See generally Carrie L. Arnold, Note, *Racial Profiling in Immigration Enforcement: State and Local Agreements to Enforce Federal Immigration Law*, 49 ARIZ. L. REV. 113 (2007) (describing the negative effects state and local enforcement of federal immigration law may have on community policing efforts, as well as the potential for increased incidences of racial profiling).

136. See Wucker, *supra* note 112 (describing some of the costs associated with the “crackdown” on undocumented migrant population, including: “high legal fees, damage to local businesses, scarce police resources wasted, the negative impact on public safety of keeping undocumented immigrants underground and the social division”).

137. See Booth, *supra* note 10, at 1066.

138. Emily Bazar, *Lawmakers Seek “Sanctuary Cities” Crackdown*, USA TODAY, Oct. 25, 2007, at 3A.

139. See Orde F. Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 IOWA L. REV. 1449, 1477 (2006).

140. See *id.*

enforcement agencies to enforce federal immigration law will lead to the deterioration of bonds with the alien community that took much time and effort to establish.¹⁴¹ The concern is that if state and local police are involved in the enforcement of federal immigration law, undocumented migrants who are either victims or witnesses of criminal activity may hesitate to contact police out of fear that they will be deported.¹⁴² In the current era of “community policing,” with enhanced focus on community relations, it is understandable why agencies are hesitant to take any action that may jeopardize the relationships they worked so hard to create and maintain.¹⁴³ Joan Friedland of the National Immigration Law Center argues, “[i]f people fear the police at every turn, that undermines community policing, which undermines community safety.”¹⁴⁴ Sanctuary policies are a strong illustration of the value that state and local police agencies place on these local relationships.¹⁴⁵ Lynn Tramonte of the National Immigration Forum argues, “What’s going on now is not really a sanctuary movement It’s a modern community-policing strategy.”¹⁴⁶

Advocates of sanctuary policies also argue that if undocumented migrants who are victims of crime are afraid to come forward, the entire community will suffer the effects.¹⁴⁷ New York City Mayor Michael Bloomberg explains:

“[W]e all suffer when an immigrant is afraid to tell the police As good as they are, our police officers cannot stop a criminal when they are not aware of his crimes, which leaves him free to do it again to anyone he chooses. Which means that all of us lose.”¹⁴⁸

3. *State Autonomy Based on Ideals of Federalism.*—Likewise, ideals of federalism suggest that local governments should be given the authority to deal with local issues as they see fit, without the threat of federal interference. “[L]ocal governments are more in touch with their constituents and are thus able to be more responsive to the needs of their communities – whether friendly or

141. See Booth, *supra* note 10, at 1066-67 (“[R]equiring state and local officials to enforce immigration laws may actually destroy the relationships that these officials have with the aliens in their communities, thus making it less likely that illegal aliens, fearing deportation, will come forward with information about crimes.”).

142. Arnold, *supra* note 135, at 122.

143. See Arnoldy, *supra* note 96, at 2.

144. Bazar, *supra* note 138.

145. See Bau, *supra* note 116, at 71 (“State and local officials must decide whether such cooperation is more important than any actual or perceived cooperation between those local governments and the [federal authorities]. The answer to that public policy question will determine the future of local noncooperation ordinances.”).

146. Arnoldy, *supra* note 96, at 2.

147. Kittrie, *supra* note 139, at 1454.

148. *Id.* (quoting Press Release, Mayor’s Office of Immigrant Affairs, Mayor Michael R. Bloomberg Signs Executive Order 41 Regarding City Services for Immigrants (Sept. 17, 2003), available at <http://www.nyc.gov/cgi-bin/misc/pfprinter.cgi?action=print&sitename=OM>).

hostile to undocumented [migrants].”¹⁴⁹ Justice Brandeis once said, “It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”¹⁵⁰ State and local governments serve as laboratory settings for a number of social issues, including firearm regulation, homosexual rights, and campaign finance reform.¹⁵¹ The issue of immigration at the state and local level creates yet another opportunity for social experimentation, and hopefully, will result in inspiration for reform that balances the “often competing policy concerns of community policing . . . and national security.”¹⁵²

4. *Lack of Training Resources and Potential for Civil Rights Violations.*— Finally, sanctuary advocates maintain that immigration law is one of the most complex areas of federal law, making immigration enforcement and verification at the state and local level nearly impossible without extensive training.¹⁵³ “Currently, state and local police do not have the training or experience to enforce immigration laws . . .”¹⁵⁴ In order to be effective, those faced with the responsibility of enforcing immigration law must be able to fully understand the law that they are expected to enforce.¹⁵⁵ In a society where money is always an issue, it is difficult to ascertain where the necessary resources and funding would come from to provide for this type of training.

Some may argue that running an individual’s name through a national database hardly calls for extensive training resources. Opponents maintain “that the identification and detention of immigrant violators is rooted in simple legal concepts.”¹⁵⁶ However, the major concern associated with the lack of training available to local police is the increased potential for civil rights violations of U.S. citizens and legal residents who are adversely affected by immigration enforcement efforts.¹⁵⁷ In the area of immigration enforcement, state and local police officers simply “do not have the benefit of experience that federal officers possess.”¹⁵⁸ Furthermore, “[t]he identification of unlawful immigrants necessarily requires judgment calls properly made through training and experience [O]fficers must be skilled in determining legal status without

149. Parlow, *supra* note 10, at 1070.

150. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

151. Parlow, *supra* note 10, at 1070.

152. Boatright, *supra* note 8, at 1670.

153. *Id.* at 1648.

154. INT’L ASS’N OF CHIEFS OF POLICE, ENFORCING IMMIGRATION LAW: THE ROLE OF STATE, TRIBAL AND LOCAL LAW ENFORCEMENT 3 (2004), available at <http://www.theiacp.org/Portals/0/pdfs/Publications/ImmigrationEnforcementconf.pdf>.

155. *See id.*

156. Greg K. Venbrux, *Devolution or Evolution? The Increasing Role of the State in Immigration Law Enforcement*, 11 UCLA J. INT’L L. & FOREIGN AFF. 307, 329-30 (2006) (citing Hethmon, *supra* note 16, at 130).

157. Yanez & Soto, *supra* note 114, at 12-13.

158. Venbrux, *supra* note 156, at 330.

stepping on the constitutional rights of those lawfully present.”¹⁵⁹

The U.S. Border Patrol, a federal agency, has received much scrutiny over the years resulting from allegations of constitutional violations.¹⁶⁰ There are similar instances of state and local police implicating constitutional issues during their enforcement of federal immigration laws.¹⁶¹ In order to comply with constitutional requirements, specifically “the Fourth Amendment and the Equal Protection Clause, an immigration arrest or detention cannot be based on racial appearance, English-speaking difficulty, or lack of identification.”¹⁶²

In the enforcement of federal immigration law, however, individuals’ physical appearance and their inability to speak fluent English are oftentimes the very basis for an initial stop. For example, in 1997, police officers in Chandler, Arizona, teamed with federal Border Patrol officers in a joint effort to investigate undocumented migrants in the area.¹⁶³ The “Chandler Roundup,” as it was referred, lasted nearly a week and resulted in the arrest and deportation of 432 undocumented migrants of Hispanic descent.¹⁶⁴

Although officers were initially told that probable cause of state or local law violations must exist before conducting stops, an Arizona Attorney General’s Office investigation concluded that many of the stops conducted during the “Chandler Roundup” were based solely on the apparent Mexican descent of the individual.¹⁶⁵ Witnesses reported that police often stopped “anyone who was dark-complexioned or ‘Mexican-looking’ and that ‘non-Mexican-looking’ people were permitted to pass by freely.”¹⁶⁶ Many U.S. citizens and legally permanent residents were questioned during this time ““for no other apparent reason than their skin color or Mexican appearance or use of the Spanish language.””¹⁶⁷ Many of the individuals detained during the “Chandler Roundup” had no prior history of criminal activity separate from their immigration violations and were subsequently voluntarily deported.¹⁶⁸

159. *Id.*

160. *See, e.g.,* Yanez & Soto, *supra* note 114, at 13 (noting reported allegations of “intimidation at gun-point, physical and verbal abuse, use of excessive force, and unwarranted arrests and detentions” of both U.S. citizens and legally present aliens at the border).

161. *Id.* at 13-14 (citing *United States v. Perez-Castro*, 606 F.2d 251 (9th Cir. 1979) (unwarranted arrest of an undocumented migrant)).

162. *Id.* at 16.

163. Arnold, *supra* note 135, at 119-20.

164. *Id.* at 120.

165. *Id.* (citing OFFICE OF THE ATT’Y GEN., STATE OF ARIZ., RESULTS OF THE CHANDLER SURVEY 31 (1997) [hereinafter RESULTS OF THE CHANDLER SURVEY]).

166. *Id.* at 121 (citing RESULTS OF THE CHANDLER SURVEY, *supra* note 165 (recounting the report of a woman stopped by a Chandler police officer who asked, “Hey lady, you Mexican, huh?” before reviewing her immigration papers without ever asking to see any driver’s license or providing any explanation for why she was being questioned. This same woman was stopped two more times during the “Chandler Roundup”)).

167. *Id.* (quoting RESULTS OF THE CHANDLER SURVEY, *supra* note 165).

168. *Id.* (citing RESULTS OF THE CHANDLER SURVEY, *supra* note 165).

The Arizona Attorney General concluded that the “Chandler Roundup” violated the constitutional rights of American citizens and legally present residents in the Chandler area as set forth in the Fourth Amendment and the Equal Protection Clause.¹⁶⁹ The city of Chandler incurred \$400,000 of settlement costs as a result of lawsuits following the “Chandler Roundup,” in which plaintiffs alleged that they were stopped and questioned solely on the basis of their “apparent Mexican descent.”¹⁷⁰ Aside from the costly legal expenses, “even more damaging to the City was the deep distrust the police created in the local community.”¹⁷¹ Now more than a decade following the “Chandler Roundup,” the city of Chandler is formally recognized as an immigration “sanctuary,”¹⁷² presumably influenced in part by the negative impact the Roundup had on citizens and non-citizens alike.

*C. New Strategies for Acclimation: Issuance of
Municipal Identification Cards*

Recently, sanctuary cities began considering a controversial strategy to acclimate the undocumented migrant population into their respective communities through the issuance of municipal identification cards identifying them as residents.¹⁷³ This plan appears to be an extension of the existing policy of issuing driver’s licenses to undocumented migrants, a practice currently used in eight different states, including New York.¹⁷⁴

These municipal identification cards, set with a debit chip, are used by all city residents to open bank accounts, borrow books from public libraries, and access municipal services such as the public beach, the garbage dump, and public parking.¹⁷⁵ In July 2007, New Haven, Connecticut, was the first city to begin issuing these municipal identification cards to all of its residents, upon request, including undocumented migrants.¹⁷⁶ Other U.S. cities have distributed identification cards in the past for access to specific city services, such as borrowing books from the local library; however, the New Haven program is the

169. *Id.* (citing RESULTS OF THE CHANDLER SURVEY, *supra* note 165).

170. *Id.* at 120.

171. Venbrux, *supra* note 156, at 329.

172. *See supra* note 125.

173. Emily Bazar, *Illegal Immigrants Are Issued ID Cards in Some Places*, USA TODAY, Oct. 4, 2007, at 1A.

174. *Id.* New York Motor Vehicles Commissioner David Swarts defended the issuance of driver’s licenses to undocumented migrants: “[It is] important to bring a significant population in New York state out of the shadows . . . [and] allow them to participate in the economy.” *Id.*; *see also* Smith et al., *supra* note 127, at 640-51 (discussing recent trends related to the issuance of driver’s licenses of undocumented migrants).

175. *See* Bazar, *supra* note 173; Wucker, *supra* note 112.

176. Bazar, *supra* note 173 (noting that as of October 2007, 3,700 municipal identification cards were issued in New Haven, Connecticut).

first of its kind to issue identification cards for general use.¹⁷⁷ John DeStefano, mayor of New Haven, defended this program: “You have a population that works hard and lives among us as neighbors; we ought to know who they are.”¹⁷⁸ Estimates suggest that there are approximately 15,000 illegal immigrants currently residing in New Haven—a number accounting for over 10% of the city’s total population.¹⁷⁹ According to Mayor DeStefano, he does not want undocumented migrants to fear local government officials and agencies.¹⁸⁰ “Alienating illegal immigrants fosters a hide-and-seek attitude in which those who have knowledge of a crime will either say nothing or, worse, give shelter to suspected criminals.”¹⁸¹

Those who disagree with the practice of issuing municipal identification cards to undocumented migrants often present public safety related arguments. While he did not identify specific threats or other security concerns, Representative Randy Terrill of Oklahoma argued that “[t]here are huge security concerns when it comes to somebody who is a foreign national in this country possessing [an] official, government-issued ID.”¹⁸² Advocates respond to this concern by arguing that public safety will actually improve by issuing this form of identification because undocumented migrants will be able to buy car insurance and instances of uninsured hit-and-run accidents will presumably decrease as well.¹⁸³ Likewise, advocates urge that the use of these identification cards will reduce crime rates “by widening access to bank accounts so that residents do not have to hide money in mattresses or carry it on them, making them easy targets for muggers.”¹⁸⁴ Undocumented migrants were often considered “‘walking A.T.M.’s’ because they were easy victims who probably would not report crimes for fear of deportation,” seeking aid from local community centers rather than the police.¹⁸⁵

Lawmakers in San Francisco, California; New York City, New York; Madison, Wisconsin; and Miami, Florida, are considering the use of similar forms of identification.¹⁸⁶ As a recent development in immigration policy, only time will tell how effective these identification cards prove to be for both undocumented migrants and citizens alike. The issuance of these cards adds yet another facet to the national debate on immigration policy, as opponents of this practice argue that the “cards ‘raise the specter of local governments conspiring

177. Jennifer Medina, *New Haven Welcomes Immigrants, Legal or Not*, N.Y. TIMES, Mar. 5, 2007, at B1.

178. *Id.*

179. *Getting Carded: Should Illegal Immigrants Get IDs?*, CURRENT EVENTS, Sept. 24, 2007, at 7.

180. Wolpin, *supra* note 3, at 6.

181. *Id.*

182. Bazar, *supra* note 173.

183. *Id.*

184. Wucker, *supra* note 112.

185. Medina, *supra* note 177.

186. Bazar, *supra* note 173.

with illegals to help them stay here.”¹⁸⁷ However, a recent article in the *New York Times* counters that all residents will benefit from a municipal identification card system: “[C]itizens themselves benefit when all residents feel they have a stake and are not pariahs. A place is far better off when people want to come to it than if they are fleeing in fear, and when practical solutions take precedence over mean-spirited non-solutions.”¹⁸⁸

IV. 2007 CONGRESSIONAL PROPOSALS

Representatives in Congress have reacted in recent years to society’s call for clarification as to the proper role of state and local government in the enforcement of federal immigration law. However, many of their proposals for improvements related to immigration policy currently remain in committee, with progress moving slowly. Representatives introduced two notable pieces of legislation in 2007 relevant to those state and local governments struggling to determine the role they will play in the “illegal immigration” debate: (1) the No Sanctuary for Illegals Act,¹⁸⁹ and (2) the Clear Law Enforcement for Criminal Alien Removal Act.¹⁹⁰

A. *The No Sanctuary for Illegals Act*

Although no local governments within Indiana have passed sanctuary-type legislation to date, the issue hit close to home recently. On September 17, 2007, Representative Dan Burton of Indiana introduced legislation aimed directly at sanctuary cities that would have a nationwide impact if adopted. Entitled the No Sanctuary for Illegals Act, the text of the bill states:

(a) In General. No officer or employee of the Federal Government may provide Federal funds to any State, or political subdivision of a State, that is determined by the Secretary of Homeland Security to be interfering with efforts to enforce Federal immigration laws.

(b) Termination of Funding Prohibition. Subsection (a) shall cease to be effective with respect to a State or political subdivision denied funds under such subsection when the Secretary of Homeland Security certifies that the State or political subdivision has entered into an agreement with the Secretary of Homeland Security to cease such interference.¹⁹¹

The No Sanctuary for Illegals Act, as proposed, represents a “coercive”

187. *Id.* (quoting Tom Fitton, president of Judicial Watch).

188. Wucker, *supra* note 112.

189. H.R. 3549, 110th Cong. (2007).

190. H.R. 842, 110th Cong. (2007).

191. No Sanctuary for Illegals Act, H.R. 3549, 110th Cong. §§ 2(a)-(b) (2007). Representative Burton was the sole sponsor of the No Sanctuary for Illegals Act. See The Library of Congress, H.R. 3549 Bill Status, <http://www.thomas.gov> (last visited Feb. 7, 2009). As of the time of this Note’s publication, the Act was still before the House Judiciary Committee and the House Oversight and Government Reform Committee. *Id.*

approach to federal immigration policy, which attempts to coerce states and localities into abandoning their sanctuary policies out of fear of repercussions¹⁹²—in this case, denial of federal funding. If adopted, the No Sanctuary for Illegals Act, would ratify the argument that sanctuary policies violate federal law.¹⁹³

In defense of his proposed bill, Representative Burton stated, “This bill is designed to stop American tax dollars from going to [s]tates and cities and their officials that have no respect for our country’s laws All elected officials, regardless of where they serve, are bound by the law of the United States.”¹⁹⁴

There is no clear consensus at this time on whether or not other members of Congress share Representative Burton’s ideas regarding sanctuary cities.¹⁹⁵ Withholding federal funds from state and local governments with sanctuary policies in place “has the advantage of being a quick way to punish and deter defiant localities.”¹⁹⁶ However, this type of coercive approach may not be the most efficient manner to gain state and local government assistance in the fight against illegal immigration. Even if the No Sanctuary for Illegals Act is adopted, it does not guarantee that all state and local governments will be persuaded to drop their sanctuary policies.¹⁹⁷ “A worst-case scenario, [therefore], is that such a policy might endanger citizens by depriving a locality of needed homeland security funding that later experienced a terrorist attack.”¹⁹⁸

B. The Clear Law Enforcement for Criminal Alien Removal Act of 2007

On February 6, 2007, Representative Charles Norwood introduced into the U.S. House of Representatives the Clear Law Enforcement for Criminal Alien Removal Act (CLEAR Act).¹⁹⁹ Representative Norwood introduced two earlier variations of the CLEAR Act in 2003 and 2005.²⁰⁰ Among its many provisions, as proposed, the CLEAR Act outlines a program providing: (1) financial

192. See Boatright, *supra* note 8, at 1659-62. Boatright suggests that “Congress can catch more flies with the ‘honey’ of the federalist system than it can by coercing cooperation with the ‘vinegar’ of withheld federal funds.” *Id.* at 1637.

193. No Sanctuary or Illegals Act, H.R. 3549, 110 Cong. § 2(a).

194. *Rep. Burton Introduces ‘No Sanctuary for Illegals Act’*, US FED. NEWS, Sept. 17, 2007, available at 2007 WLNR 18321470.

195. It should be noted that Representative Burton was the sole sponsor of the No Sanctuary for Illegals Act. See The Library of Congress, *supra* note 191. Likewise, the track record for similar legislation does not offer much hope for this Act’s success. In 2003, proposed legislation that would cut off federal anti-terror funding to sanctuary cities was overwhelmingly defeated by a vote of 102 to 324 in the House of Representatives. Carpenter, *supra* note 9, at 3.

196. Douglas R. Sahmel, Comment, *How Maryland’s Sanctuary Policies Isolate Federal Law and the Constitution While Undermining Criminal Justice*, 36 U. BALT. L.F. 149, 162 (2006).

197. *Id.* at 162.

198. *Id.* at 162-63.

199. H.R. 842, 110th Cong. (2007).

200. See H.R. 3137, 109th Cong. (2005); H.R. 2671, 108th Cong. (2003).

assistance to state and local police departments that assist in the enforcement of federal immigration laws;²⁰¹ and (2) extensive training mechanisms for state and local law enforcement personnel in the “investigation, identification, apprehension, arrest, detention, and transfer to Federal custody of aliens unlawfully present in the United States.”²⁰² As of the date of this writing, all three variations of the CLEAR Act have failed to move past committee.²⁰³

The CLEAR Act’s failure to move past the committee stage of the legislative process is perhaps a result of its coercive undertone. Like the No Sanctuary for Illegals Act, the 2007 CLEAR Act conditions the receipt of federal funds on the cooperation of state and local governments in immigration enforcement efforts.²⁰⁴ Specifically, the bill states:

In General—Effective two years after the date of the enactment of this Act, a State, or a political subdivision of a State, that has in effect a statute, policy, or practice that prohibits law enforcement officers of the State, or of a political subdivision of the State, from assisting or cooperating with Federal immigration law enforcement in the course of carrying out the officers’ routine law enforcement duties shall not receive any of the funds that would otherwise be allocated to the State under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)).²⁰⁵

The CLEAR Act provides that any funds not allocated to state and local governments with sanctuary policies in place will be reallocated upon compliance with the aforementioned section.²⁰⁶ In other words, federal funds will be reallocated only upon the dismissal of any sanctuary policy currently in place.²⁰⁷

C. Coercive Versus Permissive Approaches: Recommendations from the International Association of Chiefs of Police

According to the International Association of Chiefs of Police (IACP), legislation that seeks to solicit state and local aid in immigration enforcement must contain the following five elements in order to be successful: (1) voluntariness; (2) authority clarification; (3) systematic incentives; (4) a liability shield; and (5) appropriate training resources.²⁰⁸ Of these five elements, the

201. Clear Law Enforcement for Criminal Alien Removal Act, H.R. 842, 110th Cong. §§ 3(a), 7 (2007).

202. *Id.* § 10(a)(1).

203. The Library of Congress, <http://www.thomas.gov> (last visited Feb. 7, 2009).

204. Clear Law Enforcement for Criminal Alien Removal Act, H.R. 842, 110th Cong. § 3(a) (2007).

205. *Id.*

206. *Id.* § 3(c).

207. *Id.*

208. INT’L ASS’N OF CHIEFS OF POLICE, *supra* note 154, at 5-6.

IACP focuses its attention on the voluntary nature, or lack thereof, of proposed legislation: “[A]ny legislative proposals that seek to coerce cooperation through the use of sanction mechanisms that would withhold federal assistance funds from states or localities is unacceptable”²⁰⁹

Denial of federal funding altogether, as proposed by the No Sanctuary for Illegals Act, is a coercive approach to federal immigration policy.²¹⁰ It fails to meet the IACP’s recommendations related to effective legislation. Many state and local governments rely on federal funding. To premise the distribution of these funds solely on a local government’s willingness to cooperate in immigration enforcement is overly coercive and fails to meet the “voluntariness” element that the IACP emphasizes so strongly.

The 2007 CLEAR Act shows much promise, as it incorporates many of the IACP recommendations related to effective legislation to increase nonfederal immigration enforcement.²¹¹ As proposed, the 2007 CLEAR Act outlines the authority of state and local police to investigate, apprehend, arrest and detain individuals unlawfully present in the United States.²¹² Likewise, the CLEAR Act provides financial assistance and training mechanisms for state and local law enforcement agencies who decide to aid in federal immigration enforcement efforts.²¹³

However, the CLEAR Act falls short in one important aspect: its involuntary nature. Due to this shortcoming, the IACP did not hesitate to announce its opposition when it “urged Congress to proceed with caution when considering measures that would compel local and state law enforcement agencies to enforce federal immigration laws.”²¹⁴ According to IACP President Joseph Estey, Chief of the Hartford, Vermont, Police Department, “The CLEAR Act’s reliance on sanctions is bad for local law enforcement agencies. If Congress is serious about asking state, tribal and local agencies to assume these additional duties it should focus on giving them the tools they need to combat all crimes not just illegal immigration.”²¹⁵

A permissive approach is a better alternative if Congress is interested in gaining nonfederal assistance in immigration enforcement. In essence, a permissive approach would “leave the ball in the court of each state and locality to weigh the costs and benefits of such a policy and ascertain its own community’s comfort level.”²¹⁶ “Police chiefs know what is best for their communities and should be the ones to decide whether or not their agencies will

209. *Id.* at 5.

210. *See supra* text accompanying note 192.

211. *See supra* text accompanying notes 201-04.

212. Clear Law Enforcement for Criminal Alien Removal Act, H.R. 842, 110th Cong. § 6 (2007).

213. *Id.* § 7.

214. Press Release, Int’l Ass’n of Chiefs of Police, Police Chiefs Announce Immigration Enforcement Policy (Dec. 1, 2004) (on file with author).

215. *Id.*

216. Boatright, *supra* note 8, at 1665.

be involved in enforcing federal immigration laws”²¹⁷

CONCLUSION

The United States was once considered a land of immigrants, and a “melting pot” of cultures and identities. That conglomeration, however, has quickly dissipated and now resembles anything but the “melting pot” that it once was. The current state of immigration law and policy in the United States is broken, and advocates on both sides of the debate agree that improvements are necessary.

From a public policy perspective, it is important to note the large number of states, counties, and municipalities that have followed suit in this “sanctuary” movement. Many prominent areas are making their stance on immigration known by the passage of these sanctuary policies, and in essence, disassociating themselves from federal immigration policy initiatives. As such, it is important to consider these cities’ positions. Likewise, it is equally important to consider *all* of the interests involved in this debate, including not only government at the federal, state and local level, but also the interests of local communities across the nation, and the residents living within them.

There is no simple solution to the problems the United States currently faces in regards to its fractured immigration system. Local, state, and federal governments need to begin to work together in order to establish a united front on immigration policy, and create a comprehensive plan for reform. A comprehensive solution will take time; however, there are intermediate steps Congress can take. The federal government may offer grants to state and local governments in order to alleviate the immigration-related budgetary restraints these entities currently bear in regards to healthcare, education, and criminal justice. Policymakers from across the nation, regardless of their stance on immigration, must come together in order to give due consideration to all interests involved before significant progress is made.

A coercive approach that cuts off federal funding to local entities altogether is a drastic approach that does not appear to be effective. Instead of denying federal funds to state and local governments that have adopted sanctuary policies, a better approach would be investing additional resources in the federal immigration enforcement efforts currently in place. Rather than relying on local law enforcement officers to enforce federal immigration law, Congress should provide ICE with the funds necessary to establish a workforce of enforcement officers large enough to minimize the “5,000 to 1” disparity it currently faces.²¹⁸

ICE continues to evolve as an organization. On March 1, 2008, ICE celebrated its five year anniversary.²¹⁹ During the past five years, records show

217. Press Release, Int’l Ass’ of Chiefs of Police, *supra* note 214 (quoting IACP President Estey).

218. See *supra* text accompanying note 74.

219. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ICE, *supra* note 76, at 1 (noting that ICE was officially created on March 1, 2003, as a component of the Department of Homeland Security).

that ICE has made tremendous progress in carrying out its mission “to protect America and uphold public safety.”²²⁰ Detecting and apprehending the estimated twelve million undocumented migrants currently living in the United States is hardly a task that can feasibly be completed within a day, a month, or even five years. ICE has the potential to be successful in its enforcement efforts, so long as it receives the necessary funding and support from the federal government.

The power to regulate immigration is traditionally recognized as a federal responsibility.²²¹ Likewise, the federal government is by law the primary *enforcer* of federal immigration law.²²² Neither Congress nor the courts has stated in clear and unequivocal terms the exact role state and local governments are to play in federal immigration enforcement efforts; nor have they provided state and local governments with the appropriate training and funding necessary to effectively assist in immigration enforcement. Until this happens, compelling immigration enforcement duties upon state and local government agencies places a burden on those who are critically unequipped and inappropriately funded to effectively manage it.

220. *Id.* at 2.

221. LEGOMSKY, *supra* note 5, at 103-06.

222. *See* U.S. Immigration and Customs Enforcement, *supra* note 72.