

Testimony before the House Committee on Homeland Security
***“Examining 287(g): The Role of State and Local Law Enforcement in
Immigration Law”***

Chief J. Thomas Manger, Montgomery County (Maryland) Police Department, Chairman of the Legislative Committee for the Major Cities Chiefs Association, presents testimony on behalf of the Major Cities Chiefs:

Enforcement of Immigration Laws by Local Police Agencies:

A. **STATEMENT OF ISSUE:**

Illegal immigration is a problem that vases our nation and society as a whole and one that must be dealt with at the national level. It is absolutely critical that our country develop a consistent unified national plan to deal with immigration and this plan must include the critical component of securing our borders to prevent illegal entry into the United States.

Since the horrendous attacks of September 11, 2001, local law enforcement has been called upon to do its part in protecting the nation from future terrorist attacks. The response of local law enforcement to the call to protect the homeland has been tremendous. Today, local police agencies stand as the first line of defense here at home to prevent future attacks. Local law enforcement’s unending efforts include providing additional training and equipment to officers, increasing communication and coordination with federal agencies, gathering, assessing and sharing intelligence, modifying patrol methods and increasing security for potential targets such as power plants, airports, monuments, ports and other critical facilities and infrastructure. Much of these efforts have been at a high cost to local budgets and resources.

The federal government and others have also called upon local police agencies to become involved in the enforcement of federal immigration laws as part of the effort to protect the nation. This issue has been a topic of great debate in the law enforcement community since September 11th. The call for local enforcement of federal immigration laws has become more prominent during the debate over proposed immigration reform at the national level.

Major city police departments have a long undeniable history of working with federal law enforcement agencies to address crime in the United States, whether committed by citizens, visitors, and/or illegal immigrants. Local police agencies have not turned a blind eye to crimes related to illegal immigration. They have worked and continue to work daily with federal agencies whenever possible and to the extent allowable under state criminal law enforcement authority to address crimes such as human trafficking and gang violence, which have a nexus with illegal immigration.

How local agencies respond to the call to enforce immigration laws could fundamentally change the way they police and serve their communities. Local enforcement of federal immigration laws raises many daunting and complex legal, logistical and resource issues for local agencies and the diverse communities they serve. Some in local law enforcement would embrace immigration enforcement as a means of addressing the violation of law represented by illegal immigration across our borders. Many others recognize the obstacles, pitfalls, dangers and negative consequences to local policing that would be caused by immigration enforcement at the local level.

It is important for Major Cities Chiefs [MCC] as a leader and representative of the local law enforcement community to develop consensus on this important subject. The purpose of this position statement is to evaluate and address the impact and potential consequences of local enforcement of federal immigration laws and to highlight steps that, if taken, might allow local agencies to become involved in immigration enforcement. It is hoped that this statement will help to draw attention to the concerns of local law enforcement and provide a basis upon which to discuss and shape any future national policy on this issue. In this regard it is absolutely critical that MCC be involved in all phases of this debate from developing this official position statement to demanding input and involvement in the development of any national initiatives.

B. **OVERVIEW OF IMMIGRATION AND IMMIGRANT STATUS**

The federal government has the clear authority and responsibility over immigration and the enforcement of immigration laws. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act (INA), that regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration. The federal government has given federal agencies such as Immigration and Customs Enforcement [ICE] the specific authority to investigate a person's immigration status and deport individuals who have no legal status or authority to be in the United States.

Under the current immigration laws there exist various immigration-status classifications. The immigration status of any particular person can vary greatly. The most common status classifications include the following:

- 1) **Legal Immigrants** are citizens of other countries who have been granted a visa that allows them to live and work permanently in the United States and to become naturalized U.S. citizens. Once here, they receive a card, commonly referred to as a "green card" from the federal government indicating they are permanent residents. Some legal immigrants are refugees who fear persecution based on race, religion, nationality, membership in a

particular social group, or political opinion in their home countries. Refugees are resettled every year in the United States after they requests for asylum have been reviewed and granted.

- 2) **Nonimmigrant Visa Holders** are persons who are granted temporary entry into the United States for a specific purpose, such as visiting, working, or studying. The U.S. has 25 types of nonimmigrant visas, including A1 visas for ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the U.S. to work under NAFTA. Visa Holders are allowed to stay in the U.S. as long as they meet the terms of their status.
- 3) **Illegal Immigrants** are citizens of other countries who have entered or remained in the U.S. without permission and without any legal status. Most illegal immigrants cross a land or sea border without being inspected by an immigration officer. Some persons fall into illegal status simply by violating the terms of a legal entry document or visa.
- 4) **Absconders** are persons who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States.

C. **CONCERNS WITH LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS**

Local police agencies must balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities, while taking into account: limited resources; the complexity of immigration laws; limitations on authority to enforce; risk of civil liability for immigration enforcement activities and the clear need to foster the trust and cooperation from the public including members of immigrant communities.

1) **Undermine Trust and Cooperation of Immigrant Communities**

Major urban areas throughout the nation are comprised of significant immigrant communities. In some areas the immigrant community reaches 50%-60% of the local population. Local agencies are charged with protecting these diverse populations with communities of both legal and illegal immigrants. The reality is that undocumented immigrants are a significant

part of the local populations that major police agencies must protect, serve and police.

Local agencies have worked very hard to build trust and a spirit of cooperation with immigrant groups through community-based policing and outreach programs and specialized officers who work with immigrant groups. Local agencies have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant—whether documents or undocumented—is the victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety and security in the whole community. Local police contacts in immigrant communities are important as well in the area of intelligence-gathering to prevent future terroristic attacks and to strengthen homeland security.

Immigration enforcement by local police would likely negatively affect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that he/she will be deported or subjected to an immigration-status investigation, then the individual will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration-enforcement action, the hard-won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups 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.

2) **Lack of Resources**

The budgets and resources of local police agencies are not unlimited. Local police agencies struggle every year to find the resources to police and serve their respective communities. Since the events of September 11, local agencies have taken on the added duty of serving as the first line of defense and response to terrorist attacks for our country. These efforts on the local level to deter and prevent another terrorist attack and to be prepared to respond to the aftermath of an attack have stretched local resources even further. Since the creation of the Homeland Security Department, federal funding for major city police departments has been greatly reduced. Local agencies have also had to take on more responsibilities in areas that have traditionally been handled by

the FBI, whose investigative resources are now more focused on counter-terrorism efforts. Local agencies are forced to fill the gap left by the shift of federal resources away from investigating white-collar crimes and bank robberies, areas traditionally handled by federal agencies.

Enforcement of federal immigration laws would be a burden that most major police agencies would not be able to bear under current resource levels. The cost in terms of personnel, facilities and equipment necessary for local agencies to address the 8-12 million illegal immigrants currently living in the United States would be overwhelming. The federal government, which has primary authority to enforce immigration laws, has itself failed to provide the tremendous amount of resources necessary to accomplish such enforcement to its own agencies specifically charged with that responsibility. Local communities and agencies have even fewer resources to devote to such an effort than does the federal government, given all the numerous other demands on local police departments.

Local police agencies must meet their existing policing and homeland-security duties and can not even begin to consider taking on the added burden of immigration enforcement until federal assistance and funding are in place to support such enforcement. Current calls for local police agencies to enforce immigration come with no clear statement or guarantee to provide adequate federal funding. Local agencies also fear that the call for local enforcement of immigration laws signals the beginning of a trend towards local police agencies being asked to enter other areas of federal regulation or enforcement.

3) **Complexity of Federal Immigration Law**

Federal immigration laws are extremely complicated in that they involve both civil and criminal aspects. The federal government and its designated agencies such as ICE and the Department of Justice have clear authority and responsibility to regulate and enforce immigration laws. It is these federal agencies who have the authority to determine if a person will be criminally prosecuted for his/her violations of immigration laws or be dealt with through a civil-deportation process. Based on their authority, training, experience and resources available to them, these federal agencies and the federal courts are in the best position to determine whether or not a person has entered or remained in the country in violation of federal regulations and the applicability of criminal sanctions.

Immigration violations are different from the typical criminal offenses that patrol officers face every day on their local beats. The law enforcement activities of local police officers revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters they handle on a regular basis. The

specific immigration status of any particular person can vary greatly and whether the person is in fact in violation of the complex federal immigration regulations would be very difficult if not almost impossible for the average patrol officer to determine. At this time local police agencies are ill-equipped in terms of training, experience and resources to delve into the complicated area of immigration enforcement.

4) **Lack of Local Authority and State Law Limitations of Authority**

The federal government has clear authority over immigration and immigration enforcement. Federal law does not require the states or local police agencies to enforce immigration laws nor does it give the states or local agencies the clear authority to act in the area of immigration.

Laws in their respective states define the authority of local police officers. The authority of local police officers to act to enforce against criminal acts is clear and well established. Federal immigration laws, however, include both civil and criminal process to address immigration violations. It is within the authority of federal agencies such as ICE and the Department of Justice to determine if an immigration violation will be dealt with as a criminal matter or through a civil process. Given the complexity of the immigration laws, it would be difficult for local police agencies to determine if a particular violation would result in criminal charges or purely civil proceedings and regulation. This duality in immigration law creates a gap in authority for local police officers who generally are limited to acting only in criminal matters.

In addition, state laws may restrict a local police officer's authority to act even in criminal matters in such a way that it would prevent or hinder the officer's ability to investigate, arrest or detain a person for immigration violations alone. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police officers may be constrained by local laws that deal with their general police powers such as the ability to arrest without a warrant, lengths of detention and prohibitions against racial profiling.

An example of this conflict between the civil nature of immigration enforcement and the established criminal authority of local police exists in the federal initiative of placing civil immigration detainer notices on the NCIC system. The NCIC system had previously been used only to notify law enforcement of strictly criminal warrants and/or criminal matters. The civil detainees being placed on this system by federal agencies notify local officers that the detainees are civil in nature by including a warning that local officers should not act upon the detainees unless permitted by the laws of their state. This initiative has created confusion due to the fact that these civil detainees do not fall within the clear criminal-enforcement authority of local police agencies and in

fact lays a trap for unwary officers who believe them to be valid criminal warrants or detainers.

5) **Risk of Civil Liability**

In the past, local law enforcement agencies have faced civil litigation and liability for their involvement in immigration enforcement. For example, the Katy, Texas, Police Department participated in an immigration raid with federal agents in 1994. A total of 80 individuals who were detained by the police were later determined to be either citizens or legal immigrants with permission to be in the country. The Katy Police Department faced suits from these individuals and eventually settled their claims out of court.

Because local agencies currently lack clear authority to enforce immigration laws, are limited in their ability to arrest without a warrant, are prohibited from racial profiling and lack the training and experience to enforce complex federal immigration laws, it is more likely that local police agencies will face the risk of civil liability and litigation if they chose to enforce federal immigration laws.

D. **MCC's NINE-POINT POSITION STATEMENT**

Based upon a review, evaluation and deliberation regarding the important and complex issue of local enforcement of federal immigration laws, the members of MCC, who are the 56 Chief Executive Officers of police departments located within a metropolitan area of more than 1.5 million population and which employ more than 1,000 law enforcement officers, hereby set forth our consensus-position statement, which is comprised of nine crucial components.

1) **SECURE THE BORDERS**

Illegal immigration is a national issue and the federal government should first act to secure the national borders to prevent illegal entry into the United States. We support further and adequate funding of the federal agencies responsible for border security and immigration enforcement so they can accomplish this goal. We also support consideration of all possible solutions including construction of border fences where appropriate, use of surveillance technologies and increases in the number of border-patrol agents. Only when the federal government takes the necessary steps to close the revolving door that exists at our national borders will it be possible for local police agencies to even begin to consider dedicating limited local resources to immigration enforcement.

2) **ENFORCE LAWS PROHIBITING THE HIRING OF ILLEGAL IMMIGRANTS**

The federal government and its agencies should vigorously enforce existing immigration laws prohibiting employers from hiring illegal immigrants. Enforcement and prosecution of employers who illegally seek out and hire undocumented immigrants or turn a blind eye to the undocumented status of their employees will help to eliminate one of the major incentives for illegal immigration.

3) **CONSULT AND INVOLVE LOCAL POLICE AGENCIES IN DECISION-MAKING**

Major Cities Chiefs and other representatives of the local law enforcement community such as the International Association of Chiefs of Police and local district attorneys and prosecutors should be consulted and brought in at the beginning of any process to develop a national initiative to involve local police agencies in the enforcement of federal immigration laws. The inclusion of local law enforcement at every level of development would utilize their perspective and experience in local policing, address their concerns and likely result in a better program that would be more effectively implemented.

4) **COMPLETELY VOLUNTARY**

Any initiative to involve local police agencies in the enforcement of immigration laws should be completely voluntary. The decisions related to how local law enforcement agencies allocate their resources, direct their workforce and define the duties of their employees to best serve and protect their communities should be left in the control of state and local governments. The decision to enter this area of enforcement should be left to the local government and not mandates or forced upon them by the federal government through the threat of sanctions or the withholding of existing police assistance funding.

5) **INCENTIVE-BASED APPROACH WITH FULL FEDERAL FUNDING**

Any initiative to involve local police agencies in the enforcement of immigration laws should be an incentive-based approach with full federal funding to provide the necessary resources to the local agencies that choose to enforce immigration laws. Federal funds should be available to participating local agencies to cover the costs associated with enforcement such as expenditures on equipment and technology, training and educational programs and costs of housing, caring for and transporting immigrants prior to their release to federal authorities.

6) **NO REDUCTION OR SHIFTING OF CURRENT ASSISTANCE FUNDING**

The funding of any initiative to involve local police agencies in the enforcement of immigration laws should not be at the detriment or reduction directly or indirectly of any current federal funding or programs focused on assisting local police agencies with local policing or homeland-security activities. Local police agencies are currently working on strained budgets and limited resources to meet local policing needs and strengthening homeland security and in fact need increased funding and grant assistance in these areas. Merely shifting or diverting federal funding currently available for local policing and homeland-security activities to any new immigration-enforcement initiative would only result in a detrimental net loss of total resources available to local police agencies to police their neighborhoods and strengthen homeland security.

7) **CLARIFICATION OF AUTHORITY AND LIMITATION OF LIABILITY**

The authority of local police agencies and their officers to become involved in the enforcement of immigration laws should be clearly stated and defined. The statement of authority should also establish liability protection and an immunity shield for police officers and police agencies that take part in immigration enforcement as authorized by clear federal legislation.

8) **REMOVAL OF CIVIL IMMIGRATION DETEAINERS FROM THE NCIC SYSTEM**

Until the borders are secured and vigorous enforcement against employers who hire illegal immigrants has taken place and the concerns regarding lack of authority and confusion over the authority of local agencies to enforce immigration laws and the risk of civil liabilities are adequately addressed, MCC strongly requests that the federal agencies cease placing civil-immigration detainees on NCIC and remove any existing civil detainees currently on the system. The integrity of the system as a notice system for criminal warrants and/or criminal matters must be maintained. The inclusion of civil detainees on the system has created confusion for local police agencies and subjected them to possible liability for exceeding their authority by arresting a person upon the basis of a mere civil detainee.

MCC would encourage the federal agencies to seek federal criminal warrants for any person they have charged criminally with violations of immigration laws and to submit those criminal warrants on the NCIC system so the warrants can be acted upon by local police officers within their established criminal-enforcement authority and training.

9) **COMMITMENT OF CONTINUED ENFORCEMENT AGAINST CRIMINAL VIOLATORS REGARDLESS OF IMMIGRATION STATUS**

MCC member agencies are united in their commitment to continue arresting anyone who violates the criminal laws of their jurisdictions regardless of the immigration status of the perpetrator. **Those immigrants—documented and/or undocumented—who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of the law within any major city but will instead face the full force of criminal prosecution.**

Chief Manger’s oral testimony before the Committee:

Mr. Chairman, distinguished members of the Committee ... I’m Chief Tom Manger, Chief of Police in Montgomery County, Maryland, and Chairman of the Major Cities Chiefs Legislative Committee. The Major Cities Chiefs Association represents the 56 largest police departments in the U.S. and we are the first responders to over 50 million residents.

Each one of these 56 police chiefs is dealing every day with the issues of undocumented residents and the crime committed by a fraction of these residents. Nowhere is this challenge more acute than in this country’s largest urban settings.

Local governments have, by necessity, had to react and respond to the growing number of challenges caused by an increasing population of undocumented residents. Municipalities have chosen a range of approaches:

Some are proud to be “sanctuary jurisdiction.” Not only does local law enforcement not inquire about anyone’s immigration status, some jurisdictions will not honor nor serve warrants from immigration and customs enforcement agency. On the other end of the spectrum, some jurisdictions have adopted policies that prohibit government services going to undocumented individuals and have elected to participate in the federal 287(g) training.

Most jurisdictions have adopted policies somewhere between the two approaches I just described.

The overwhelming majority of major city police agencies have elected not to participate in 287(g) training. In fact, the last figures I’ve seen indicate that

over 95% of police and sheriffs departments in the U.S. have elected not to participate in the 287(g) training. I think it is important to make two points here:

- 1) we are not critical of those agencies who do participate in 287(g);
- 2) we believe that there should be strong cooperation and coordination with all of our federal law enforcement partners, including ICE.

So why have the nation's largest police agencies elected not to participate in 287(g)?

First, it undermines the trust and cooperation with immigrant communities that are essential elements of community policing. We need to have strong policies that take into full account the realities of local law enforcement. One of those realities is that public safety increases when people have trust and confidence in their police department. Consequently, unreported crime goes down. Another reality is that immigrants—both documented and undocumented—are more likely to be victims of crimes than are U.S. citizens. Delivering fair and consistent police service to all crime victims has to be a priority.

A second reason that most jurisdictions are not taking the 287(g) training is that local agencies do not possess adequate resources to enforce these laws in addition to the added responsibility of Homeland Security. Enforcing federal law is an unfunded mandate that most agencies just cannot afford to do.

Third, immigration laws are very complex and the training required to understand them would significantly detract from the core mission of the local police to create safe communities.

Prior to a few years ago, enforcing immigration law was solely a federal responsibility. It was a specialty like the IRS and tax law. If the federal government comes to the conclusion some day that too many people are tax evaders, will the solution be to authorize local police to enforce tax laws? It is contrary to our mission.

That said, working cooperatively with our federal partners is essential for public safety. Using the IRS again as an example, when we make a case against an individual as a major narcotics distributor, notifying and working closely with the IRS is the effective thing to do.

In the same way, working closely with ICE on human-traffic cases, gang investigations, and fraudulent-document cases is a proven crime-fighting technique.

The bottom line is this: local law enforcement needs to work closely and effectively with ICE ... but we cannot do their job for them.

The Major Cities Chiefs have sent a clear and consistent message to each attorney general for the past eight years:

- 1) securing our borders must be a top propriety
- 2) remove the civil-immigration detainers from the NCIC data base.
In August 2003, Attorney General John Ashcroft put these civil warrants in a national database that had previously been for criminal warrants. Our current Attorney General can remedy this with the stroke of a pen.
- 3) Consulting and involving local police agencies when developing any immigration initiative is imperative if the initiative is to involve local law enforcement.

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