

EXHIBIT 3

REDACTED – PUBLIC VERSION



COOPERATION OF SCAAP RECIPIENTS IN THE REMOVAL OF CRIMINAL ALIENS FROM THE UNITED STATES

U.S. Department of Justice
Office of the Inspector General
Audit Division

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REDACTED – PUBLIC VERSION

COOPERATION OF SCAAP RECIPIENTS IN THE REMOVAL OF CRIMINAL ALIENS FROM THE UNITED STATES*

EXECUTIVE SUMMARY

As required by Congress (Public Law 109-162), the United States Department of Justice (DOJ) Office of the Inspector General (OIG) conducted an audit of the Office of Justice Programs' (OJP) State Criminal Alien Assistance Program (SCAAP). The congressional mandate required the OIG to provide answers to four questions involving jurisdictions that receive SCAAP funding:

Whether there are States, or political subdivisions of a State, that have received compensation under Section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) and are not fully cooperating in the Department of Homeland Security's efforts to remove from the United States undocumented criminal aliens (as defined in paragraph (3) of such section).

Whether there are States, or political subdivisions of a State, that have received compensation under section 241(1) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) and that have in effect a policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373).

The number of criminal offenses that have been committed by aliens unlawfully present in the United States after having been apprehended by States or local law enforcement officials for a criminal offense and subsequently being released without being referred to the Department of Homeland Security for removal from the United States.

The number of [criminal] aliens . . . who were released because the State or political subdivision lacked space or funds for detention of the alien.¹

SCAAP is a payment program administered by OJP, through its component the Bureau of Justice Assistance (BJA), in conjunction with the Immigration and Customs Enforcement (ICE) bureau within the Department

* The full version of this report included information that the Department of Homeland Security considered to be Law Enforcement Sensitive information. To create this public version of the report, the OIG redacted (deleted) the sensitive portions and noted that the information was redacted.

¹ See Appendix II of this report for Public Law No. 109-162, section 1196 (c), (2006).

of Homeland Security (DHS).² SCAAP was authorized by the Violent Crime Control and Law Enforcement Act of 1994 to provide federal assistance to states and localities for the costs of incarcerating certain criminal aliens who are in custody based on state or local charges or convictions.³ In fiscal year (FY) 2005, BJA distributed \$287.1 million in SCAAP payments to 752 state, county, and local jurisdictions.⁴

The following table displays the 10 jurisdictions that received the largest SCAAP payments from the FY 2005 appropriation. Collectively, they accounted for nearly 69 percent of the SCAAP payments made from that appropriation.

TOP TEN SCAAP RECIPIENTS – FY 2005		
State	Jurisdiction	Amount
California	State of California ⁵	\$ 85,953,191
New York	State of New York	24,022,356
Texas	State of Texas	18,582,484
New York	City of New York	15,893,255
Florida	State of Florida	12,806,110
California	Los Angeles County ⁶	12,530,034
Arizona	State of Arizona	12,139,791
California	Orange County	6,562,437
Illinois	State of Illinois	4,731,269
Massachusetts	State of Massachusetts	4,728,549
TOTAL		\$197,949,476

Source: Bureau of Justice Assistance (BJA)

Although 752 jurisdictions received SCAAP payments from the FY 2005 appropriation, the vast majority of them received relatively small amounts. The following chart summarizes the number of recipients by dollar amount.

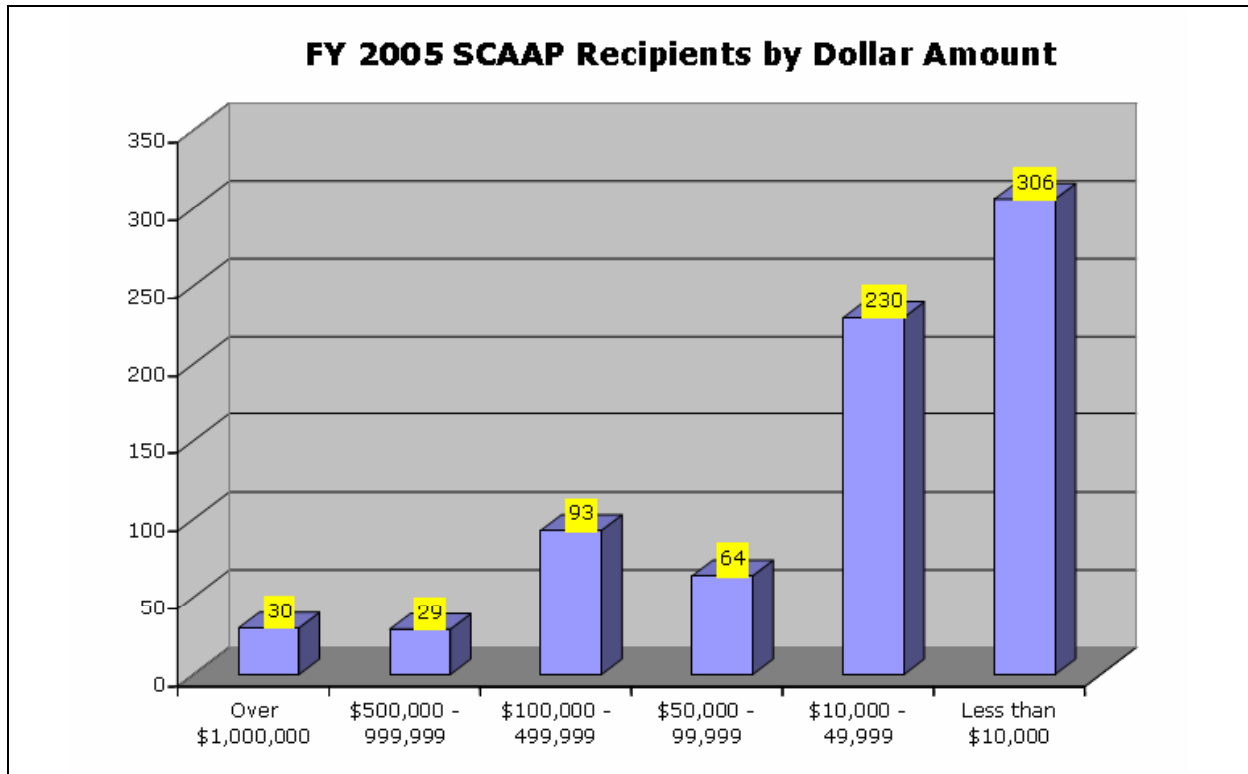
² Prior to creation of the DHS in 2003, the functions currently performed by ICE were performed by the Immigration and Naturalization Service, which at the time was part of DOJ.

³ Public Law No. 103-322 (1994).

⁴ FY 2005 is the most recent year for which payment information was available. See Appendix III for payment information for FYs 2005 and 2004.

⁵ When we define a jurisdiction as the “state,” we are referring to the state department of corrections. We are not including all the counties and municipalities within the state that may have separately received SCAAP payments.

⁶ This refers to the Los Angeles County Sheriff’s Department.



Source: OIG analysis of BJA data

The program reimburses states and localities that incur correctional officer salary costs for incarcerating undocumented criminal aliens who: (1) have at least one felony or two misdemeanor convictions for violations of state or local law, and (2) are incarcerated for at least four consecutive days during the established reporting period.⁷ Applicants for funding are required to provide correctional officer salary costs, the total of all inmate days, and details about eligible inmates housed in their correctional facilities during that period.

For the applications received, ICE assists BJA by checking the inmate data submitted by the jurisdictions that seek SCAAP payments to determine the immigration status of those inmates. This process is described as “vetting” the data.⁸

⁷ The reporting period does not coincide with the fiscal year for which SCAAP funds are appropriated. For example, the reporting period for FY 2006 funds was July 1, 2004, through June 30, 2005. Similarly, the reporting period for FY 2005 funds was July 1, 2003, through June 30, 2004.

⁸ According to a July 2003 Memorandum of Understanding between ICE and OJP, ICE agreed to determine, by SCAAP applicant, the number of eligible inmates.

Historically, congressional appropriations for SCAAP have been less than the total amount sought by all the jurisdictions applying for SCAAP payments. As a result, BJA pays a *pro rata* amount of the jurisdictions' submitted expenses. In April 2005, the Government Accountability Office (GAO) issued a report stating that 80 percent of the SCAAP aliens were incarcerated in the five states of Arizona, California, Florida, New York, and Texas in FY 2003. GAO found that SCAAP payments to four of those states were less than 25 percent of the estimated cost to incarcerate SCAAP criminal aliens. The FY 2003 SCAAP payments amounted to 12 percent of the estimated incarceration costs for California, 24 percent for New York, 17 percent for Florida, and 14 percent for Arizona.⁹

SCAAP RECIPIENTS' COOPERATION WITH ICE

The first congressional question asked us to determine whether there are recipients of SCAAP funds that do not fully cooperate with the efforts of DHS to remove undocumented criminal aliens from the United States. Congress did not define "fully cooperate," nor did our review of immigration legislation disclose any specific steps that localities are required to take to help effect the removal of criminal aliens from the United States.

To respond to this question, we interviewed ICE officials to obtain their views, distributed a questionnaire to 164 SCAAP recipients, and conducted independent testing in 7 jurisdictions that received SCAAP funding.¹⁰ Our field testing included interviews with local officials and review of local files.¹¹

⁹ Government Accountability Office. *Information on Criminal Aliens in Federal and State Prisons and Local Jails*, GAO-05-337R, April 7, 2005. GAO reported that data on the cost of incarceration for the State of Texas were not available.

¹⁰ See Appendix IV for a list of the jurisdictions we surveyed and those that responded. The 164 agencies in the sample received \$264.8 million, or 92.2 percent of the FY 2005 SCAAP payments. The 99 respondents to our questionnaire received \$205.4 million, or 71.6 percent of the FY 2005 SCAAP payments.

¹¹ We performed field work at the State of California Department of Corrections and Rehabilitation; State of Oregon Department of Corrections; State of Texas Department of Criminal Justice; Clark County, Nevada; Cook County, Illinois; City of New York, New York; and the City and County of San Francisco, California. We selected these sites to have a mix of state, county, and local jurisdictions that received SCAAP payments of at least \$1 million each. Collectively, these seven jurisdictions received \$128.3 million, or 44.7 percent of the SCAAP payments issued from the FY 2005 appropriation.

Views of ICE Officials

We asked ICE officials to identify SCAAP recipients that they believe do not fully cooperate with ICE in the removal of undocumented criminal aliens from the United States. Because ICE does not maintain records describing SCAAP recipients that do not cooperate in the effort to remove criminal aliens, they noted that any information they might provide us would be anecdotal.

We also contacted officials at ICE headquarters and solicited their views first about the cooperativeness of SCAAP recipients generally and later about the seven jurisdictions where we performed field work. ICE officials commented favorably with respect to the entities' cooperation about every jurisdiction except the City and County of San Francisco, and they declined to suggest alternative sites for our field work.

According to an agent working at ICE headquarters, the ICE San Francisco Field Office has encountered difficulties, which they attributed to a "bare minimum" of cooperation. Specifically, we were told that ICE agents are not permitted to access San Francisco County jail records without the authorization and approval of the Sheriff. ICE agents are authorized to enter the jails to interview prisoners and to access the "all-jail alphabetical list" of inmates but they do not have authorization to access booking cards, housing cards or other jail records. ICE officials commented on this situation as being different from other localities that have allowed ICE agents such access. Despite these views expressed by ICE officials, San Francisco officials believe they are cooperating sufficiently with ICE.

In the absence of a congressional definition of "fully cooperating" to guide us, we developed specific tests to measure the degree to which SCAAP recipients assisted ICE in the effort to remove criminal aliens from the United States. We looked at whether SCAAP recipients: (1) inquire into the immigration status of individuals in custody; (2) notify ICE when criminal aliens are in custody; (3) accept detainers from ICE; and (4) notify ICE when criminal aliens are about to be released from custody.¹²

Our review did not disclose any instances of outright failure to cooperate with ICE in the removal of criminal aliens from the United States. Instead, we found that local jurisdictions often set the enforcement of state and local law as a priority, while sometimes permitting or encouraging law

¹² A detainer is a notice from ICE asking officials at the detention facility to notify ICE before releasing a detainee.

enforcement agencies and officers to work with ICE to some degree on immigration matters.

In addition to answering our questions on the level of cooperation received by state and local agencies, ICE officials also made suggestions on how to improve the SCAAP program. Some ICE headquarters officials expressed a desire to have responsibility for SCAAP transferred from BJA to ICE and to make SCAAP payments contingent upon participation in the "287(g)" program. Section 287(g) of the Immigration and Nationality Act provides that ICE may enter into a written agreement with a state or locality enabling qualified state or local law enforcement agents to carry out certain functions relating to immigration enforcement, including investigation, apprehension, or detention of aliens in the United States.¹³

Other ICE officials expressed the view that SCAAP is "misguided" primarily because SCAAP applications are based on a custody period in the year prior to the one in which payments are sought. In the view of those officials, payment for the past costs of incarceration does nothing to further the removal of undocumented criminal aliens currently in the United States.

Some ICE headquarters officials also stated they would like to have graduated payments based on the SCAAP recipient taking steps toward the removal of criminal aliens from the United States. Larger payments could be provided to a jurisdiction when a final order of removal is obtained and for participating in the "Section 287(g)" program. This would result in payment for assisting ICE in identifying and removing criminal aliens rather than merely housing them.

Results of Survey

We also surveyed 164 of the 752 state, county, and local agencies that received SCAAP funding from the FY 2005 appropriation and received responses from 99 jurisdictions. Our questionnaire included the following four questions designed to assess their cooperation with ICE:¹⁴

¹³ 8 U.S.C. § 1357(g) (1996).

¹⁴ Our questionnaire included boxes where the respondent could check "yes" or "no." However, some respondents wrote in "not applicable," or "unknown," and, in some cases, the respondent chose not to answer a particular question. Our questionnaire also included spaces where the respondent could add explanatory comments.

- *If law enforcement officers from your jurisdiction arrest an individual on state or local charges, do they generally ask the subject about his or her immigration status?*
- *If law enforcement officers from your jurisdiction have reason to believe that someone they arrest may be an undocumented alien, do they generally inform ICE that the individual is in their custody?*
- *Do the detention facilities in your jurisdiction generally accept detainers from ICE for undocumented criminal aliens in their custody?*
- *Do the detention facilities in your jurisdiction generally alert ICE prior to releasing any undocumented criminal aliens in their custody?*

None of the respondents answered negatively to all four questions. Fourteen respondents answered "no" to 2 questions and 5 respondents answered "no" to 3 questions.¹⁵

- Thirty jurisdictions reported they do not generally ask arrestees about their immigration status. However, some jurisdictions explained that arrestees are asked about their country of birth rather than immigration status, and others stated that immigration status is determined during the booking process rather than at the time of arrest.¹⁶
- Seventeen respondents reported they do not inform ICE when they have someone in custody who they believe may be an undocumented alien. However, many of those 17 jurisdictions added qualifying remarks. For example, some agencies stated that ICE agents come to the state or local institution to review files, which would obviate the need to inform ICE. Other jurisdictions criticized ICE and stated they do not inform ICE about possible undocumented aliens in their custody because they believe ICE will not respond.

¹⁵ See Appendix X for additional details about the responses that contained more than one negative answer.

¹⁶ Thirty-four jurisdictions checked the "no" box on the questionnaire, but 4 of those 34 jurisdictions added comments stating that they are custodial institutions and their officers do not have arrest authority.

- Eighteen jurisdictions reported they do not alert ICE prior to releasing undocumented criminal aliens from custody. However, several of those jurisdictions added clarifying remarks. For example, one respondent stated they are generally not aware of the immigration status of individuals in custody. Another reported that releases of inmates must occur within a very short time after a local court orders the release. Another jurisdiction stated its officials do not alert ICE prior to releasing an undocumented criminal alien from custody "unless ICE asks us to."

Results of Field Work

In addition, we interviewed officials and reviewed files at seven jurisdictions that received funding from the FY 2005 appropriation for SCAAP. The officials whom we interviewed included local officials knowledgeable in the areas of SCAAP and detention, as well as ICE officials who had dealings with the state, county, or locality. Local officials from all seven jurisdictions reported that their detention facilities: (1) accept ICE detainers for undocumented criminal aliens in their custody; and (2) alert ICE before releasing undocumented criminal aliens from custody.

To test these assertions, we reviewed a total of 76 files relating to criminal aliens who had been recently discharged from local custody at the 7 locations where we performed field work. We found that:

- ICE was notified in a timely manner that the 76 criminal aliens were in custody;
- ICE detainers were accepted for all 76 individuals;
- 70 criminal aliens were transferred to ICE, all in a timely manner.¹⁷

We further examined the issue of cooperation between SCAAP recipients and ICE by researching the policies of localities that may have laws, resolutions, or other policies limiting the role of local agencies in the enforcement of immigration legislation. In some cases, localities have designated themselves with terms such as "sanctuary city" or "civil liberties safe zone." ICE officials expressed dissatisfaction with the level of cooperation provided by some of these "sanctuary" sites.

¹⁷ Five of the remaining six individuals were transferred to other jurisdictions, such as a state prison, and one, a Cuban, was paroled because repatriation to Cuba was not possible.

We were able to locate an official “sanctuary” policy for only two jurisdictions that received at least \$1 million in SCAAP funding, the State of Oregon, which received \$3.4 million, and the City and County of San Francisco, which received \$1.1 million and has designated itself as a “City and County of Refuge.” We also located an Executive Order issued by the Mayor of the City of New York limiting the activities of local law enforcement agencies and officers in the enforcement of immigration law.¹⁸ However, in each instance the local policy either did not preclude cooperation with ICE or else included a statement to the effect that those agencies and officers will assist ICE or share information with ICE as required by federal law.

The results of our review were inconclusive in identifying SCAAP recipients that were not fully cooperating with ICE in its efforts to remove undocumented criminal aliens from the United States. We found conflicting views between ICE and local jurisdictions as to what actions constitute full cooperation. In addition, our fieldwork at select locations found that the SCAAP recipients notified ICE in a timely manner of aliens in custody, accepted detainers from ICE, and promptly notified ICE of an impending release from local custody.

COMMUNICATION BETWEEN SCAAP RECIPIENTS AND ICE

The second congressional question asked us to determine whether any SCAAP recipients have in effect a policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. § 1373). Two key provisions of this statute provide:

- *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.*
- *Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:*
 - *Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.*

¹⁸ See Appendix VII.

- o *Maintaining such information.*
- o *Exchanging such information with any other Federal, State, or local government entity.*¹⁹

Views of ICE Officials

ICE officials objected to provisions of the administrative code of the City and County of San Francisco that limit the ability of local agencies and officers to communicate immigration information to ICE.

Results of Survey

We included a question in our survey asking about laws, regulations, or policies affecting each organization that might restrict the free exchange of immigration-related information between local law enforcement agencies and ICE. The 99 jurisdictions that responded to the questionnaire stated almost unanimously that there was no legislation or policy impeding the ability of local officers and agencies to communicate with ICE on immigration-enforcement matters.

Only the City and County of San Francisco gave a qualified “yes” in response to our queries about the existence of a local ordinance or a departmental policy limiting the ability of local law enforcement officers or agencies to exchange information with ICE relating to immigration enforcement. The response included a copy of Chapter 12H of the City Administrative Code, which contains a provision stating “no department, agency, commission, officer or employee . . . shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco *unless such assistance is required by federal or state statute, regulation, or court decision.*” [Emphasis added.] The Code also states “nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying or reporting any person pursuant to a state or federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws.” Finally, the Code states that “nothing in this chapter shall preclude any . . . department, agency, commission, officer or employee from (a) reporting information to the INS regarding an individual who has

¹⁹ The statutory references to the Immigration and Naturalization Service now apply to ICE.

been booked at any county jail facility, and who has previously been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law; (b) cooperating with an INS request for information regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law; or (c) reporting information as required by federal or state statute, regulation or court decision, regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law.”²⁰

San Francisco city officials also cited provisions of a police department General Order, which states that generally “a member [of the police department] shall not inquire into an individual’s immigration status or release or threaten to release information to the INS regarding an individual’s identity or immigration status.” However, the General Order makes exceptions that parallel those enumerated in the City Administrative Code.

Results of Field Work

In our interviews with local officials at the seven sites, we asked if their jurisdictions currently have in effect any statute, ordinance, executive order, or other legislation or official policy prohibiting local law enforcement agencies and officers from freely exchanging information with ICE on the citizenship or immigration status of individuals. Officials at four of the seven sites we visited replied unequivocally, “no,” while officials at the other three sites gave qualified answers.

- The State of Oregon has a state “sanctuary” statute, but the officials whom we interviewed believe it does not infringe on the exchange of information with ICE.²¹
- Officials from the City of New York informed us there is no prohibition on exchanging information with ICE on individuals who have been arrested. Executive Order No. 41, issued by the Mayor, defines “immigration status” as “confidential information” and forbids disclosure except when “such disclosure is required by law.” The Executive Order also provides exceptions to the prohibition against disclosure when “the individual to whom [immigration]

²⁰ The San Francisco City Administrative Code references to INS now apply to ICE.

²¹ The State of Oregon “sanctuary” statute is located in Appendix VI.

information pertains is suspected . . . of engaging in illegal activity, other than mere status as an undocumented alien” or “the dissemination of such information is necessary to apprehend a person suspected of illegal activity, other than mere status as an undocumented alien” or “such disclosure is necessary in furtherance of an investigation of potential terrorist activity.”²²

- Local officials stated the City of San Francisco Police Department’s policy is “consistent with its obligations under state and federal law, to adhere to the City of Refuge Ordinance. This ordinance prohibits the use of city resources to assist in the enforcement of federal immigration laws except in certain limited circumstances consistent with state and federal law.”

As previously mentioned, ICE officials objected to San Francisco’s policies but they did not raise any concerns about the flow of information to and from any of the other six sites where we performed field work.

RECIDIVISM OF CRIMINAL ALIENS RELEASED FROM LOCAL CUSTODY

The third congressional question asked us to determine how many criminal offenses were committed by criminal aliens who were released from state or local custody without a referral to DHS for removal from the United States.

To address this question, we performed limited testing to determine the number of subsequent *arrests* of criminal aliens who were released from state or local custody. We based our testing on information from the vetted FY 2004 SCAAP database, which was the last year when ICE reported to BJA on the status of every person identified in support of applications for SCAAP funding.²³ There were 262,105 records in that database. We requested assistance from the Federal Bureau of Investigation (FBI) to have those records compared to arrest data in the FBI’s National Crime Information Center (NCIC).²⁴

²² A copy of the Executive Order may be found in Appendix VII.

²³ FY 2004 SCAAP funding was based on the incarceration of criminal aliens between July 1, 2002, and June 30, 2003.

²⁴ NCIC is a computerized database of criminal justice information available to law enforcement agencies nationwide. The NCIC database consists of millions of records arranged in 18 files, including one relating to immigration violators.

After querying NCIC, the FBI provided us with nearly 433,000 text files that could not be searched by automated means. The volume of files was too great to search manually and quantify the results. Consequently, we judgmentally selected a sample of 100 criminal histories, which we reviewed for evidence of arrests of criminal aliens subsequent to June 30, 2003. The criminal histories for 73 of the 100 individuals documented at least one arrest after that date. Those 73 individuals accounted for a total of 429 arrests, with 878 charges and 241 convictions. These figures represent an average of nearly six arrests per individual.

The charges for the 73 individuals ranged from traffic violations and trespassing to more serious crimes, such as burglary or assault. Some of those charges included:

- 166 drug-related;
- 37 immigration-related;
- 213 burglary, robbery, or theft;
- 40 assault;
- 10 property damage;
- 3 terrorist threat;²⁵ and
- 13 weapons charges.

Based on this limited sample, we cannot statistically extrapolate the number of offenses committed by undocumented criminal aliens who were released from local custody without a referral to ICE. Based on the information available to us in the criminal histories, we could not determine the number of the criminal aliens in our sample that were deported, if any, and later arrested after reentering the United States. We also could not determine if ICE was notified before the criminal aliens in our sample were released from custody. But if this data is indicative of the full population of 262,105 criminal histories, the rate at which released criminal aliens are rearrested is extremely high.

²⁵ The "terrorist threat" cases related to misdemeanor charges based on domestic disputes.

CRIMINAL ALIENS RELEASED DUE TO LACK OF RESOURCES

The fourth congressional question asked us to determine how many of the criminal aliens who were released from state or local custody were released for lack of sufficient detention space or funding to hold them. While we believe it likely that this occurs regularly, our review could not identify specific instances of such releases because ICE does not track the number of aliens released from local custody due to lack of the necessary resources to detain them.

In an effort to address this issue, the questionnaire that we sent to 164 SCAAP recipients included a request that the respondents provide the number of criminal aliens who were released from custody between October 1, 2004, and June 30, 2006, because the respondent lacked the space or funds to detain those aliens. None of the respondents reported having released criminal aliens from custody due to lack of resources.

Even though the respondents to our questionnaire did not report releasing undocumented criminal aliens because of insufficient local resources, we noted an issue regarding the lack of space available to ICE to detain aliens in custody. In an April 2006 report, the Inspector General of the Department of Homeland Security reported, "[the Detention and Removal Operations (DRO)] estimates that in FY 2007 there will be 605,000 foreign-born individuals admitted to state correctional facilities and local jails during the year for committing crimes in the U.S.²⁶ Of this number, DRO estimates half (302,500) will be removable aliens. Most of these incarcerated aliens are being released into the U.S. at the conclusion of their respective sentences because DRO does not have the resources to identify, detain, and remove these aliens under its Criminal Alien Program (CAP). It is estimated that DRO would need an additional 34,653 detention beds, at an estimated cost of \$1.1 billion, to detain and remove [them]."²⁷

The DHS Inspector General went on to state, "additionally, DRO's ability to detain and remove illegal aliens with final orders of removal is impacted by: (1) the propensity of illegal aliens to disobey orders to appear in immigration court; (2) the penchant of released illegal aliens with final orders to abscond; (3) the practice of some countries to block or inhibit the repatriation of its citizens; and (4) two recent U.S. Supreme Court decisions

²⁶ At our exit conference, representatives of DRO stated that references to "DRO" in the DHS OIG report would in this context be more appropriately read as "ICE."

²⁷ Department of Homeland Security, Office of the Inspector General. *Detention and Removal of Illegal Aliens: U.S. Immigration and Customs Enforcement (ICE)*, OIG-06-033, April 2006, p. 2.

which mandate the release of criminal and other high-risk aliens 180 days after the issuance of the final removal order except in 'Special Circumstances.' Collectively, the bed space, personnel and funding shortages coupled with the other factors, has created an unofficial 'mini-amnesty' program for criminal and other high-risk aliens."

The DHS Inspector General reported that 345,006 criminal aliens were apprehended between FYs 2001 and 2004, of which 27,947 (8 percent) were released. However, the DHS Inspector General could not determine whether they were released because of a lack of detention space or for other reasons, because ICE does not track that information.

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CHAPTER 1 – INTRODUCTION

As required by Congress (Public Law 109-162), the United States Department of Justice (DOJ) Office of the Inspector General (OIG) conducted an audit of the Office of Justice Programs' (OJP) State Criminal Alien Assistance Program (SCAAP). The congressional mandate required the OIG to perform a study and report to the Judiciary Committees of the United States Senate and the United States House of Representatives on the following matters pertaining to recipients of SCAAP payments:

Whether there are States, or political subdivisions of a State, that have received compensation under Section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) and are not fully cooperating in the Department of Homeland Security's efforts to remove from the United States undocumented criminal aliens (as defined in paragraph (3) of such section).

Whether there are States, or political subdivisions of a State, that have received compensation under section 241(1) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) and that have in effect a policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373).

The number of criminal offenses that have been committed by aliens unlawfully present in the United States after having been apprehended by States or local law enforcement officials for a criminal offense and subsequently being released without being referred to the Department of Homeland Security for removal from the United States.

The number of [criminal] aliens . . . who were released because the State or political subdivision lacked space or funds for detention of the alien.²⁸

Background

SCAAP is a payment program administered by OJP through the Bureau of Justice Assistance (BJA) and in conjunction with the Immigration and Customs Enforcement (ICE) bureau within DHS.²⁹ SCAAP was authorized by

²⁸ See Appendix II of this report for Public Law No. 109-162, section 1196 (c) (2006).

²⁹ Prior to creation of the DHS in 2003, the functions currently performed by ICE were performed by the Immigration and Naturalization Service, which at the time was part of DOJ.

the Violent Crime Control and Law Enforcement Act of 1994 to provide federal assistance to states and localities for the costs of incarcerating certain criminal aliens who are in custody based on state or local charges or convictions.³⁰ Since SCAAP is a payment program rather than a grant program, jurisdictions that are eligible to receive funds simply provide OJP with their accounting information and accept payment through OJP's Grants Management System. They do not have to submit program progress reports or financial status reports.

The program pays states and localities that incur correctional officer salary costs for incarcerating undocumented criminal aliens who: (1) have at least one felony or two misdemeanor convictions for violations of state or local law, and (2) are incarcerated for at least four consecutive days during the established reporting period.³¹ Applicants for funding are required to provide correctional officer salary costs, the total of all inmate days, and details about eligible inmates housed in their correctional facilities during that period.

For the applications received, ICE assists BJA by checking the inmate data submitted by the jurisdictions that seek SCAAP payments to determine the immigration status of those inmates. This process is described as "vetting" the data. In FY 2005, BJA distributed \$287.1 million in SCAAP payments to 752 state, county, and local jurisdictions.³² Individual payments ranged from a high of \$85.9 million (State of California) to a low of \$40 (Polk County, Minnesota). In FY 2004, BJA distributed \$281.6 million to 741 jurisdictions in amounts ranging from \$77.4 million (State of California) to \$35 (Louisville Jefferson County Metro Government, Kentucky).³³

Historically, congressional appropriations for SCAAP have been less than the total amount sought by all the jurisdictions applying for SCAAP payments. As a result, BJA pays a *pro rata* amount of a jurisdiction's submitted expenses. In April 2005, the Government Accountability Office (GAO) reported that 80 percent of the SCAAP aliens were incarcerated in the

³⁰ Pub. L. No. 103-322 (1994).

³¹ The reporting period does not coincide with the FY for which SCAAP funds are appropriated. For example, the reporting period for FY 2006 funds was July 1, 2004, through June 30, 2005. Similarly, the reporting period for FY 2005 funds was July 1, 2003, through June 30, 2004.

³² FY 2005 was the most recent year for which payment information was available.

³³ See Appendix III for details of the SCAAP payments made from the FY 2005 and FY 2004 appropriations.

5 states of Arizona, California, Florida, New York, and Texas in FY 2003, but payments to 4 of those states were less than 25 percent of the estimated cost to incarcerate SCAAP criminal aliens. The FY 2003 SCAAP payments amounted to 12 percent of the estimated incarceration costs for California, 24 percent for New York, 17 percent for Florida, and 14 percent for Arizona.³⁴

Prior to FY 2006, there were no restrictions on how SCAAP funds could be used. In the FY 2006 re-authorization Congress required that SCAAP payments be used by the recipients for correctional purposes.

Legal Authority for SCAAP

The legislation governing SCAAP includes the Immigration and Nationality Act and the Violent Crime Control and Law Enforcement Act of 1994.³⁵ According to BJA's SCAAP program guidelines, these statutes provide that "in general terms, if a chief executive officer of a state or a political division exercises authority over the incarceration of undocumented criminal aliens and submits a written request to the U.S. Attorney General, the Attorney General may provide compensation to that jurisdiction for those incarceration costs. SCAAP is subject to additional terms and conditions of yearly congressional appropriations." BJA states that eligibility for SCAAP payments extends to all 50 state governments, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, and more than 3,000 counties and cities with correctional facilities.³⁶

Application Process

BJA's annual guidelines alert potential SCAAP applicants of the deadline for applying for SCAAP funding and describe the application process. Applications for SCAAP payments are accepted electronically and "must provide all required information on undocumented criminal aliens for the prescribed reporting period, the total reporting period salary information for their full and part-time permanent and contracted correctional officers,

³⁴ Government Accountability Office. *Information on Criminal Aliens in Federal and State Prisons and Local Jails*, GAO-05-337R, April 7, 2005. GAO reported that data on the cost of incarceration for the State of Texas were not available.

³⁵ 8 U.S.C. § 1231(i), as amended, (1996).

³⁶ Bureau of Justice Assistance. *State Criminal Alien Assistance Program: FY 2006 Guidelines*, pp. 1 and 2. The incarceration costs for which BJA pays states and localities are the salary costs of correctional officers.

and the total of all inmate days."³⁷ The "required information on undocumented criminal aliens" includes the alien registration number, name, date of birth, unique inmate identification number assigned by the local jurisdiction, country of birth, date taken into custody, date released from custody, and Federal Bureau of Investigation (FBI) number.³⁸

BJA forwards the submitted information about aliens to ICE for a determination of whether each purportedly undocumented criminal alien is indeed illegally present in the United States³⁹ Confirmation of each individual's immigration status is crucial in determining whether payment for detention-related expenses would be allowable under SCAAP.

In the past, ICE reported back to BJA on the eligibility for SCAAP payments using three categories: eligible, not eligible, and unknown. If ICE determined an individual was a qualifying undocumented criminal alien, ICE categorized that individual as eligible. If ICE determined an individual was not an undocumented criminal alien, ICE would categorize the individual as ineligible. The immigration status of the remaining individuals would be categorized as unknown. After receiving the results of the ICE vetting process, BJA determined the amounts to be paid each jurisdiction using a formula based: on (1) the number of jail days for eligible inmates, (2) an allowance for a percentage of the jail days of inmates whose eligibility was unknown, and (3) the amount of appropriated funds available for distribution.

However, FY 2004 was the last year for which ICE reported to BJA on the status of every person identified in support of applications for SCAAP funding.⁴⁰ In that year, the applicants for SCAAP payments provided data on a total of 270,807 inmates. After vetting those records, ICE determined that 96,085 were eligible and 49,210 were ineligible as a basis for SCAAP payment. ICE categorized the immigration status of the remaining 125,512 inmates as unknown.

The following table displays the 10 jurisdictions that received the largest SCAAP payments from the FY 2005 appropriation. Collectively, they

³⁷ *State Criminal Alien Assistance Program: FY 2006 Guidelines*, p. 2.

³⁸ The FBI number is issued by the FBI to track arrests and fingerprint records.

³⁹ According to a July 2003 Memorandum of Understanding between ICE and OJP, ICE agreed to determine, by SCAAP applicant, the number of eligible inmates.

⁴⁰ In the FY 2005 SCAAP funding process, ICE merely reported the number of qualifying jail days for each applicant locality.

accounted for nearly 69 percent of the SCAAP payments made from that appropriation.

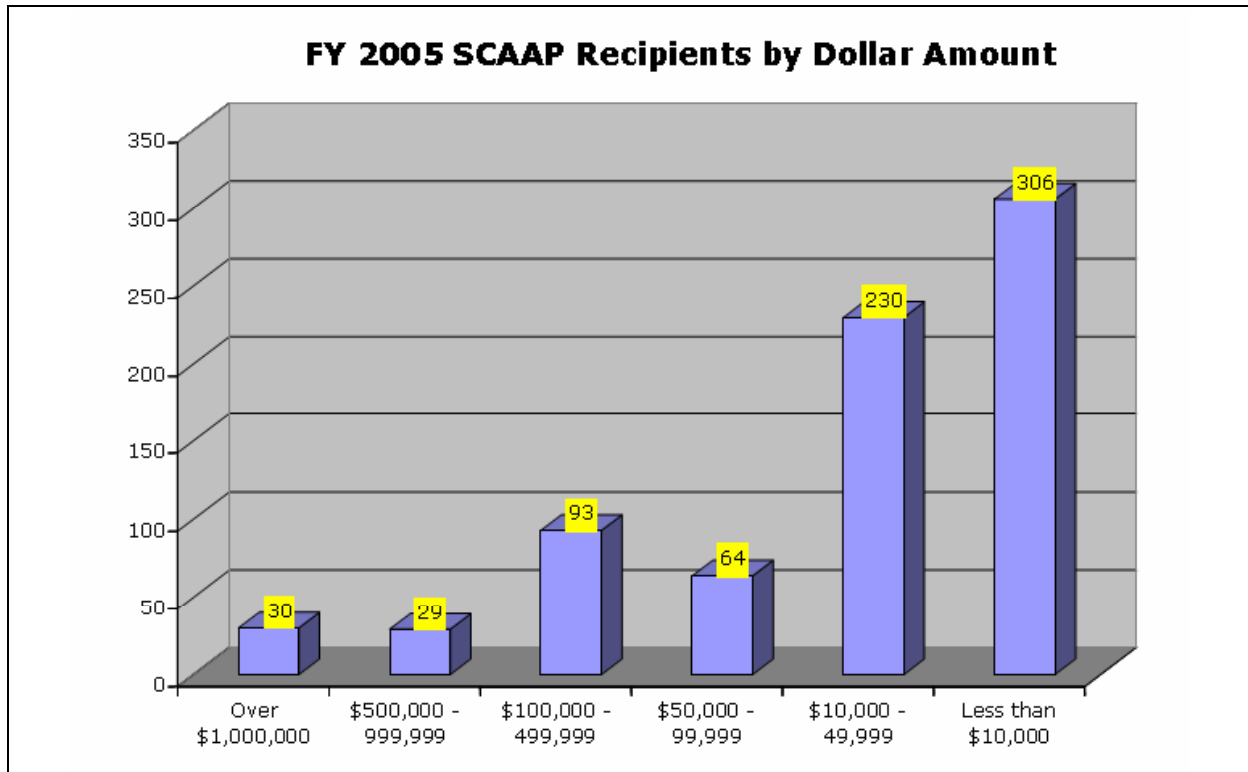
TOP TEN SCAAP RECIPIENTS – FY 2005		
State	Jurisdiction	Amount
California	State of California ⁴¹	\$ 85,953,191
New York	State of New York	24,022,356
Texas	State of Texas	18,582,484
New York	City of New York	15,893,255
Florida	State of Florida	12,806,110
California	Los Angeles County ⁴²	12,530,034
Arizona	State of Arizona	12,139,791
California	Orange County	6,562,437
Illinois	State of Illinois	4,731,269
Massachusetts	State of Massachusetts	4,728,549
	TOTAL	\$197,949,476

Source: Bureau of Justice Assistance (BJA)

Although 752 jurisdictions received SCAAP payments from the FY 2005 appropriation, the vast majority of them received relatively small amounts. The following chart summarizes the number of recipients by dollar amount.

⁴¹ When we define a jurisdiction as the “state” we are referring to the state department of corrections. We are not including all the counties and municipalities within the state that may have received SCAAP payments.

⁴² This refers to the Los Angeles County Sheriff’s department.



Source: OIG analysis of BJA Data

Prior Audits

Department of Justice, Office of the Inspector General, Office of Justice Programs State Criminal Alien Assistance Program, 00-13, May 2000. Our audit reviewed FY 1996 SCAAP payments to the states of California, Texas, New York, Florida, and Illinois to determine whether the payments were appropriate based on incarceration costs and the number of undocumented criminal aliens. The five jurisdictions collectively received 76 percent of the FY 1996 SCAAP funding. The audit concluded that they were over-compensated by \$19.3 million for unallowable inmate costs and ineligible inmates included in the SCAAP applications. The audit also found that OJP's compensation methodology was over-inclusive in the degree to which it paid SCAAP applicants for inmates whose immigration status was "unknown."

Department of Justice, Office of the Inspector General, Immigration and Naturalization Service Institutional Removal Program, 02-41, September 2002. The Institutional Removal Program (IRP) is a national program that aims to: (1) identify removable criminal aliens in federal, state, and local correctional facilities, (2) ensure that they are not released into the community, and (3) remove them from the United States upon completion of their sentences. In our audit report on this

program, we noted “the whole IRP process is predicated on the cooperation of the institutions in which criminal aliens are incarcerated. Without that cooperation, the IRP cannot function effectively. Interestingly, states and counties throughout the United States have received hundreds of millions of dollars annually through . . . SCAAP, yet there are no provisions in the program requiring state and county recipients to cooperate with the INS in its removal efforts.” Our report recommended that INS request that OJP change SCAAP provisions to require the full cooperation of state and local governments “in the INS’s efforts to process and deport incarcerated criminal aliens.” The current SCAAP guidelines do not contain any such requirement.

Government Accountability Office, *Information on Criminal Aliens in Federal and State Prisons and Local Jails, GAO-05-337R, April 7, 2005.* GAO reported a variety of statistical data regarding the criminal alien population of federal, state, and local custodial facilities.

Department of Homeland Security, Office of the Inspector General, *Detention and Removal of Illegal Aliens: Immigration and Customs Enforcement, OIG-06-33, April 2006.* The DHS Inspector General reported that many criminal aliens in state and local custody will be released at the conclusion of their sentences because ICE lacks the resources to identify, detain, and remove them from the United States.

OIG Audit Approach

We organized our audit of SCAAP to answer the four questions Congress posed in Public Law 109-162. To answer these questions, we interviewed officials at ICE; sent an OIG-developed questionnaire to 164 SCAAP recipients; visited seven locations that received SCAAP funding from the FY 2005 appropriation;⁴³ reviewed files at those seven sites; interviewed local officials; and performed research on the policies of SCAAP recipients that may have designated themselves as immigration “sanctuary” sites.⁴⁴

⁴³ We performed field work at the State of California Department of Corrections and Rehabilitation; State of Oregon Department of Corrections; State of Texas Department of Criminal Justice; Clark County, Nevada; Cook County, Illinois; City of New York, New York; and the City and County of San Francisco, California. We selected these sites to have a mix of state, county, and local jurisdictions that received SCAAP payments of at least \$1 million each. Collectively, these seven jurisdictions received \$128.3 million, or 44.7 percent of the SCAAP payments issued from the FY 2005 appropriation.

⁴⁴ In this report, we use the term “sanctuary” site to refer to jurisdictions that may have state laws, local ordinances, or departmental policies limiting the role of local law enforcement agencies and officers in the enforcement of immigration laws.

CHAPTER 2 – SCAAP RECIPIENTS’ COOPERATION WITH ICE

The first congressional question asked us to determine whether there are recipients of SCAAP funds that do not fully cooperate with the efforts of DHS to remove undocumented criminal aliens from the United States. Congress did not define “fully cooperate,” nor did our review of immigration legislation disclose any specific steps that localities are required to take to help effect the removal of criminal aliens from the United States.

Views of ICE Officials

We asked ICE officials to identify SCAAP recipients that they believe do not fully cooperate with ICE in the removal of undocumented criminal aliens from the United States. Because ICE does not maintain any records describing SCAAP recipients that do not cooperate in the effort to remove criminal aliens, they noted that any information they might provide us would be anecdotal.

We also contacted officials at ICE headquarters on several occasions and solicited their views first about the cooperativeness of SCAAP recipients generally and later about the seven jurisdictions where we performed field work.

Some ICE headquarters officials expressed the opinion that jurisdiction over SCAAP should rest with ICE rather than BJA and that payments should be contingent upon the recipient’s taking of certain affirmative steps, such as participation in the “287(g)” program, to assist immigration enforcement. Section 287(g) of the Immigration and Nationality Act provides that ICE “may enter into a written agreement with a state, or any political subdivision of a state, pursuant to which an officer or employee of the state or subdivision, who is determined . . . to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across state lines to detention centers), may carry out such function at the expense of the state or political subdivision and to the extent consistent with state and local law.”⁴⁵

Enforcing immigration law remains primarily a federal responsibility, but Section 287(g) provides a mechanism for enlisting the help of state and local law enforcement entities in this effort. Under Section 287(g), ICE provides participating state and local law enforcement officers with the training and subsequent authorization to identify, process, and when

⁴⁵ 8 U.S.C. § 1357(g) (1996).

appropriate, detain immigration offenders who are encountered during regular, daily law-enforcement activity. States or localities that wish to participate in the program enter into a Memorandum of Understanding (MOU) with ICE.

Other ICE officials questioned why SCAAP applications are based on a custody period in the year prior to the one in which payments are sought. In the view of those officials, this payment for the past costs of incarceration does not further the removal of undocumented criminal aliens currently in the United States.

ICE headquarters officials also stated they would like to have graduated payments based on the SCAAP recipient taking steps toward the removal of criminal aliens from the United States. Larger payments could be provided to a jurisdiction when a final order of removal is obtained and for participating in the "Section 287(g)" program to determine alienage. Those officials believe this would result in payment for assisting ICE in identifying and removing criminal aliens rather than merely housing them.

When we asked ICE headquarters officials specifically about the seven sites where we intended to perform field work, they declined to suggest alternative sites. They also commented favorably about the cooperation ICE received from every jurisdiction, except the City and County of San Francisco. The ICE responses on the seven sites we visited included the following observations:

Clark County, Nevada – ICE has a very good working relationship with the Clark County Sheriff's Office, including the county jail. The jail sends information about foreign-born subjects to ICE on a 24-hour a day basis. This information is processed, and, if appropriate, a detainer is placed on the subject.

Cook County, Illinois – The ICE Office of Investigations Special Agent in Charge of the Chicago field office has had a good working relationship with the Cook County jail for the last several years.

New York, New York – The ICE Detention and Removal Operations (DRO), New York Field Office, has received full cooperation from the participating SCAAP local and state entities.

State of California Department of Corrections and Rehabilitation – In 1994, the State of California amended the Penal Code to include Section 834(b), which requires all cities and localities within the State of California to

verify the immigration status of individuals arrested and to contact [ICE] when appropriate.

State of Oregon Department of Corrections – All state facilities have been very cooperative with respect to identifying, holding, and transferring foreign nationals to ICE custody.

State of Texas Department of Criminal Justice – The DRO Houston Field Office reports significant cooperation with the Texas Department of Criminal Justice in both the Texas Prison System and the Texas state jail system. The Texas Department of Criminal Justice works closely with ICE in assisting in identifying foreign-born aliens within the Texas prison and state jail system and transports the prisoners to one central location in [SENSITIVE INFORMATION REDACTED], Texas, where they can be interviewed as well as presented for court proceedings. ICE has received cooperation from operations at [SENSITIVE INFORMATION REDACTED] regarding the state prisoners system. In addition to providing transportation and identification assistance, the Texas Department of Criminal Justice provides an entire facility for exclusive use by ICE.

City and County of San Francisco – The San Francisco ICE Field Office has encountered difficulties in its attempt to expand the Criminal Alien Program (CAP). According to an agent working at ICE headquarters, the San Francisco County Jail and its administration appear to have implemented a “bare minimum of cooperation with ICE and the CAP to ensure they are compliant with state rules and the SCAAP regulations.” Agents employed by ICE are not permitted to access jail records without the authorization and approval of the Sheriff. ICE agents are authorized to enter the jails to interview prisoners and to access the “all-jail alphabetical list” of inmates. However, ICE agents do not have the authorization to access booking cards, housing cards or other jail records, including computers.

Results of OIG Survey

We also surveyed 164 of the 752 state, county, and local agencies that received SCAAP funding from the FY 2005 appropriation.⁴⁶

Our criteria for selecting the SCAAP recipients we surveyed involved grouping them into three categories: those that received at least \$500,000,

⁴⁶ The sample was selected judgmentally, and the results cannot be projected to the universe of SCAAP recipients. See Appendix IV for a list of the jurisdictions we surveyed and those that responded.

those that received between \$50,000 and \$499,999, and those that received less than \$50,000.

There were 59 entities that received at least \$500,000, and we selected all of them for our sample. Collectively, those 59 jurisdictions received \$256.9 million, or approximately 90 percent of all the SCAAP payments made from FY 2005 funds. There were 157 entities that received between \$50,000 and \$499,999 and 536 that received less than \$50,000. We judgmentally selected and surveyed 50 of the former group and 55 of the latter. Together these groups received \$7.9 million, or nearly 3 percent of the SCAAP payments from FY 2005 funds.

Our survey inquired whether the state or local agency asked arrestees about their immigration status, informed ICE about criminal aliens in local custody, accepted detainers from ICE, or alerted ICE prior to releasing criminal aliens from local custody.⁴⁷ In our judgment, affirmative answers to these questions would indicate a degree of cooperation in the effort to remove criminal aliens from the United States. However, it is important to note that a negative response by itself to one or more questions would not necessarily establish a lack of cooperation on the part of the SCAAP recipient.

Survey responses were received from 99 (60 percent) of the 164 SCAAP recipients that we surveyed. The respondents received a total of \$205.4 million, or 71.6 percent of the SCAAP payments from FY 2005 funds.

Immigration Status of Arrested Individuals

Survey Results				
Legend: N/A=Not Applicable; DNR=Did Not Respond to this Question.				
<i>If law enforcement officers from your jurisdiction arrest an individual on state or local charges, do they generally ask the subject about his or her immigration status?</i>				
Yes	No	N/A	Unknown	DNR
59	34	4	0	2

Source: Responses from SCAAP recipients to the OIG questionnaire

Thirty-four respondents reported that they do not generally ask the subject of an arrest about his or her immigration status. However, many of

⁴⁷ A detainer is a notice from ICE asking officials at the detention facility of notify ICE before releasing a detainee.

those jurisdictions qualified their response. The following comments were offered by some of the respondents who replied "no."

- "[The [SENSITIVE INFORMATION REDACTED] Department of Corrections] does not have arrest authority; however every adjudicated offender is asked about his or her immigration status during in-processing."
- "Each person arrested is asked their country of origin, not necessarily about immigration status." [SENSITIVE INFORMATION REDACTED]
- "Generally no, unless there is reason to believe [the] individual has been involved in certain criminal activities such as arrested for, or has been convicted of a felony, violent crime, etc." [SENSITIVE INFORMATION REDACTED]
- ". . . Pursuant to [state legislation] 'a peace officer who has probable cause that an arrestee for a criminal offense is not legally present in the U.S. shall report such arrestee to the U.S. ICE office. . . .'" [SENSITIVE INFORMATION REDACTED]
- "It is not the Police Department's policy to ask, however, some officers ask voluntarily. It is not the Police Department's policy to take proactive enforcement action against undocumented aliens. However, if an encounter with an undocumented alien yields a wanted status for an immigration violation listed by another agency, the Police Department will confirm extradition before arrest." [SENSITIVE INFORMATION REDACTED]
- ". . . Only on domestic battery and felonies, because on other charges ICE does not respond . . . anymore." [SENSITIVE INFORMATION REDACTED]
- "The [[SENSITIVE INFORMATION REDACTED] Department of Corrections] is tasked with housing inmates after arrest and sentencing."

The responses from several localities emphasized the absence of federal or state law requiring them to inquire into the immigration status of arrestees.

- "There is no local ordinance or regulation from the County's Board of Supervisors authorizing the Department of Corrections to ask

arrestees about their immigration status.” [SENSITIVE INFORMATION REDACTED]

- “Not required under state or federal law.” [SENSITIVE INFORMATION REDACTED]
- “We do not ask the question for two reasons. First, some time back, the local law chiefs agreed to not engage in this type of behavior in the field. Second, a recent opinion by the California Attorney General states local and state law enforcement is not obligated to abide by the federal immigration statutes.”⁴⁸ [SENSITIVE INFORMATION REDACTED]
- “Currently there are no policies or procedures in place requiring such action.” [SENSITIVE INFORMATION REDACTED]
- “Only if the investigation points to the fact that the individual(s) may be an undocumented alien.” [SENSITIVE INFORMATION REDACTED]

Informing ICE About Aliens in Custody

Survey Results				
<i>Legend: N/A=Not Applicable; DNR=Did Not Respond to this Question.</i>				
<i>If law enforcement officers from your jurisdiction have reason to believe that someone they arrest may be an undocumented alien, do they generally inform the ICE that the individual is in their custody?</i>				
Yes	No	N/A	Unknown	DNR
78	17	3	0	1

Source: Responses from SCAAP recipients to the OIG questionnaire

Seventeen respondents reported they do not generally inform ICE when they have someone in custody who they believe may be an undocumented criminal alien. However, many of those 17 jurisdictions added qualifying remarks. In some instances, they were critical of a

⁴⁸ We believe the respondent from [SENSITIVE INFORMATION REDACTED] misinterpreted the California Attorney General’s opinion, which clearly states that federal law preempts state law and requires state and local government entities to cooperate with federal immigration agents. During a follow-up interview, the county official who gave this response confirmed that he may have misinterpreted the opinion. See Appendix IX for the opinion.

perceived lack of response on the part of ICE, but there were other explanatory factors as well.

- "Our experience has shown that ICE is not going to respond anyway." [SENSITIVE INFORMATION REDACTED]
- "On every occasion we attempt to inform ICE but ICE does not always respond." [SENSITIVE INFORMATION REDACTED]
- "Past history has shown that they will rarely pick the subjects up for transport." [SENSITIVE INFORMATION REDACTED]
- "Depends on nature of crime." [SENSITIVE INFORMATION REDACTED]
- "ICE agents come into our facility on a regular basis and review our records of undocumented aliens." [SENSITIVE INFORMATION REDACTED]
- "Sheriff's deputies do not inform ICE. Detention staff will notify ICE if information obtained from a criminal history rap sheet or information obtained from our local database alerts [our] Department of previous contacts with ICE (releases to ICE or previously deported criminal alien)." [SENSITIVE INFORMATION REDACTED]
- "This is a sheriff's department function." [SENSITIVE INFORMATION REDACTED]
- "Law enforcement officers may contact ICE but jail staff do not. We have an ICE employee [who] regularly reviews inmate rosters." [SENSITIVE INFORMATION REDACTED]
- "Most patrol officers do not have the time or know the number in order to inform ICE." [SENSITIVE INFORMATION REDACTED]

Accepting Detainers from ICE

Survey Results				
<i>Legend: N/A=Not Applicable; DNR=Did Not Respond to this Question.</i>				
<i>Do the detention facilities in your jurisdiction generally accept detainers from ICE for undocumented criminal aliens in their custody?</i>				
Yes	No	N/A	Unknown	DNR
94	3	1	0	1

Source: Responses from SCAAP recipients to the OIG questionnaire

One possible measure of cooperation with ICE would be if the respondent accepted detainers from ICE and continuing to hold criminal aliens until ICE agents can take physical custody of them. The responses to our questionnaire disclosed a widespread willingness to accept detainers from ICE. Ninety-four of the 99 respondents reported that they accept such detainers and the 3 that responded negatively added comments indicating that they may have misinterpreted the question as asking about the lodging of ICE prisoners.

Alerting ICE Before Releasing Aliens from Custody

Survey Results				
<i>Legend: N/A=Not Applicable; DNR=Did Not Respond to this Question.</i>				
<i>Do the detention facilities in your jurisdiction generally alert ICE prior to releasing any undocumented criminal aliens in their custody?</i>				
Yes	No	N/A	Unknown	DNR
78	18	1	1	1

Source: Responses from SCAAP recipients to the OIG questionnaire

In answer to our question about alerting ICE before releasing undocumented criminal aliens from local custody, 78 respondents reported that they notify ICE and 18 stated they do not. We asked those that alert ICE to report how much advance notice they provide and the responses ranged from the date of release to substantially longer periods, as the following comments illustrate:

- "At least 45 days in advance." [SENSITIVE INFORMATION REDACTED]
- "Six months." [SENSITIVE INFORMATION REDACTED]

- "At any time between 6 and 30 days, depending on the type of release." [SENSITIVE INFORMATION REDACTED]
- "ICE is informed of all foreign born state sentenced inmates and their earliest possible release dates when the inmate is processed in the county or Reception." [SENSITIVE INFORMATION REDACTED]
- "As early in the sentence as possible." [SENSITIVE INFORMATION REDACTED]
- "Upon initial booking." [SENSITIVE INFORMATION REDACTED]
- "Only when ICE has placed a 'hold' on the person." [SENSITIVE INFORMATION REDACTED]

The jurisdictions that stated they do not notify ICE offered varying explanations. For example, [SENSITIVE INFORMATION REDACTED], stated it does not notify ICE in advance, "unless ICE asks us to." However, as previously noted, the county also reported that ICE agents regularly visit the county facility and review the records of undocumented aliens. That being the case, it would appear that additional notification by [SENSITIVE INFORMATION REDACTED] may not be necessary. The [SENSITIVE INFORMATION REDACTED] reported that "releases must occur on a timeline of minutes and hours after the court issues the ruling." [SENSITIVE INFORMATION REDACTED], stated "in most cases we are unaware of [the] status."

We asked two additional questions related to the cooperativeness of SCAAP recipients in the effort to remove criminal aliens from the United States. These questions deal with the transportation of criminal aliens to ICE offices and participation in the Section 287(g) program.

Transporting Undocumented Criminal Aliens to the Nearest ICE Office

Survey Results				
Legend: N/A=Not Applicable; DNR=Did Not Respond to this Question.				
<i>If ICE agents cannot transport an undocumented criminal alien from your facility, do your officers transport the alien to the nearest ICE office?</i>				
Yes	No	N/A	Unknown	DNR
23	70	2	0	4

Source: Responses from SCAAP recipients to the OIG questionnaire

We are not aware of any requirement for states, counties, or localities to transport undocumented criminal aliens to an ICE office. Therefore, an answer of “no” to our question does not imply any lack of cooperation on the part of the locality. However, we included this question because an answer of “yes” may be reasonably considered an indicator of cooperation. In response to the questionnaire, 23 respondents stated they would transport undocumented criminal aliens to the nearest ICE office if ICE agents could not do so, and 70 respondents reported they would not.

The comments provided in reply to our question included the following.

- “We have never been in the position where ICE does not transport the alien from the state correctional facility to the ICE office. In the event ICE could not transport the alien, the [SENSITIVE INFORMATION REDACTED] would not transport the alien back to the nearest ICE office.” [SENSITIVE INFORMATION REDACTED]
- “Has not happened, though we would assist.” [SENSITIVE INFORMATION REDACTED]

Participation in the 287(g) Program

Survey Results				
Legend: N/A=Not Applicable; DNR=Did Not Respond to this Question.				
<i>Are you aware of the program under Section 287(g) of the Immigration and Nationality Act by which local officers may be trained and authorized to perform certain immigration enforcement tasks?</i>				
Yes	No	N/A	Unknown	DNR
50	45	1	0	3
<i>Is your jurisdiction currently participating in the Section 287(g) program?</i>				
Yes	No	N/A	Unknown	DNR
11 ⁴⁹	84	1	1	2
<i>If your jurisdiction does not currently participate in the Section 287(g) program, are you interested in entering into a Memorandum of Understanding with ICE to participate in the Section 287(g) program?</i>				
Yes	No	N/A	Unknown	DNR
33	41	6	6	13

Source: Responses from SCAAP Recipients to OIG Questionnaire

As mentioned previously, some ICE officials expressed a desire to place SCAAP under the control of ICE and make SCAAP payments contingent

⁴⁹ Although 11 respondents stated they participate in the “287(g)” program, ICE officials told us only 7 jurisdictions have current MOUs. Other jurisdictions are negotiating with ICE to participate in the “287(g)” program.

upon participation in the "287(g)" program. Regardless of which agency has responsibility for SCAAP, we believe that participation in the "287(g)" program may be considered evidence of cooperation with ICE in the removal of criminal aliens from the United States. For this reason we included questions about the "287(g)" program in a questionnaire we sent to 164 recipients of FY 2005 SCAAP funding. We received responses from 99 jurisdictions and 33 of them indicated an interest in entering into an MOU to participate in the "287(g)" program.

Our questionnaire asked if the respondents were aware of the "287(g)" program, whether they participated in it, and, if not, whether they were interested in receiving information about it. In response to our three questions, we received very few comments. The following are examples of the comments provided by respondents.

- "We are currently in discussion with ICE officials in order to learn more about the Section 287(g) program; no decision has been made regarding participation in the program." [SENSITIVE INFORMATION REDACTED]
- "Not sure - more information is needed." [SENSITIVE INFORMATION REDACTED]
- "We are unfamiliar. We require additional information in order to answer correctly." [SENSITIVE INFORMATION REDACTED]
- "We are in the approval process." [SENSITIVE INFORMATION REDACTED]
- "This matter must be referred to a higher legal authority than what the respondent has." [SENSITIVE INFORMATION REDACTED]

Results of Field Work

Interviews with Local ICE Officials

At each of the sites where we performed field work, we asked local ICE officials about the cooperativeness of the SCAAP recipient in question. The views of those officials mirrored the views previously obtained from ICE headquarters. Local ICE officials offered favorable comments about each of the jurisdictions, except the City and County of San Francisco. Those ICE officials stated that the San Francisco Sheriff's Department accepts detainees from ICE and promptly notifies ICE when criminal aliens are about to be released from custody, but neither the Sheriff's Department nor the Police

Department [SENSITIVE INFORMATION REDACTED]. Moreover, the process for interviewing aliens in the jail was described as “uncooperative” by the local ICE officials, who also characterized relations with the Sheriff’s Department as unfriendly and marked by “much animosity.”

Interviews with State and Local Officials

We interviewed officials and reviewed files at seven jurisdictions that received funding from the FY 2005 appropriation for SCAAP. The officials whom we interviewed included local officials knowledgeable in the areas of SCAAP and detention. Local officials from all seven jurisdictions reported that their detention facilities: (1) accept ICE detainers for undocumented criminal aliens in their custody; and (2) alert ICE before releasing undocumented criminal aliens from custody.

We asked whether law enforcement officers ask arrestees about their immigration status and received mixed responses, but none that indicated an unwillingness to cooperate with ICE in the removal of criminal aliens from the United States. For example:

- At institutions in the [SENSITIVE INFORMATION REDACTED], correctional officers generally ask an inmate’s place of birth rather than immigration status. They defer the determination of an individual’s immigration status to ICE.
- At corrections facilities in the [SENSITIVE INFORMATION REDACTED], individuals are asked about their immigration status.
- In [SENSITIVE INFORMATION REDACTED], it is not considered the arresting officer’s mission to determine immigration status. Research into a detainee’s place of birth occurs during the booking process. Similarly, in the [SENSITIVE INFORMATION REDACTED], arrestees are asked about their place of birth rather than their immigration status during the booking process.
- In [SENSITIVE INFORMATION REDACTED], neither the city police nor personnel in the county sheriff’s office [SENSITIVE INFORMATION REDACTED]. However, the immigration status of a detainee is often determined during the classification process either by: (1) self-identification of the detainee as foreign-born; (2) queries of databases, including NCIC, the [SENSITIVE INFORMATION REDACTED] Law Enforcement Telecommunications System, and ICE’s Law Enforcement Support Center; and

(3) submission of fingerprints through the Automated Fingerprint Identification System.

We also asked about notification of ICE when local jurisdictions have someone in custody who may be an undocumented alien. The following are some responses:

- If [SENSITIVE INFORMATION REDACTED] enforcement officers have reason to believe someone they arrest may be an undocumented alien, they inform ICE and seek further advice.
- [SENSITIVE INFORMATION REDACTED] facilities determine whether inmates are "foreign born" during the intake process. Biographical information sheets and a fingerprint cards for foreign born inmates are sent to ICE for review, usually during the first week of incarceration.
- The [SENSITIVE INFORMATION REDACTED] Department of Corrections sends ICE a referral if the booking process determines an inmate may have a foreign place of birth.
- [SENSITIVE INFORMATION REDACTED], sends a notice to ICE with a request for a prompt response. The county tries not to hold any inmate more than four hours past the scheduled release unless ICE places a detainer on that individual.
- When officers from the [SENSITIVE INFORMATION REDACTED] arrest an alien for a criminal offense, the police department notifies ICE based on information entered into the booking system.

Local officials at two jurisdictions indicated a willingness to transport criminal aliens from their facilities to the nearest ICE office if ICE agents could not do so.

- [SENSITIVE INFORMATION REDACTED] corrections officials said inmates are transported without charge to an ICE facility or to an ICE contract facility if ICE transportation is not available.
- [SENSITIVE INFORMATION REDACTED] corrections officials state their officers transport alien inmates if necessary, but they added this happens only on rare occasions because releases are coordinated with ICE.

Officials at all seven of the sites we visited were aware of the "287(g)" program, but none of the jurisdictions were participating in it. When asked if they were interested in participating in the program, local officials offered the following comments.

- The [SENSITIVE INFORMATION REDACTED] legislature is still evaluating the overall benefits to the [SENSITIVE INFORMATION REDACTED], whose mission is directed more toward rehabilitation of inmates than to immigration enforcement. At this time, officials do not believe the benefits are clear.
- [SENSITIVE INFORMATION REDACTED] officials believe participation in the "287(g)" program would probably conflict with state law.
- The [SENSITIVE INFORMATION REDACTED] is exploring participation in the program. Officials are awaiting more information so they can weigh the pros and cons. They are particularly concerned about who will pay for the state officers while engaged in "287(g)" activities, how many days officers would be required to participate, the reporting structure, and personnel issues.
- Officials from [SENSITIVE INFORMATION REDACTED]; [SENSITIVE INFORMATION REDACTED]; [SENSITIVE INFORMATION REDACTED], and the [SENSITIVE INFORMATION REDACTED] all stated their jurisdictions were not interested in participating in the "287(g)" program.

File Reviews

We reviewed a total of 76 files relating to criminal aliens who had been recently discharged from local custody at the 7 locations where we performed field work. Our review disclosed that:

- ICE was notified in a timely manner that the 76 criminal aliens were in custody;
- ICE detainers were accepted for all 76 individuals;
- Seventy criminal aliens were transferred to ICE, all in a timely manner. Five of the remaining six individuals were transferred to other jurisdictions, such as a state prison, and one, a Cuban, was paroled because repatriation to Cuba was not possible.

This limited review of local files did not disclose evidence of any local policy or procedure that we would consider less than fully cooperative with ICE in the removal of criminal aliens.

Statement of Major Cities Chiefs of Police

The complexity of determining whether jurisdictions fully cooperate with ICE is further illustrated by a statement issued in June 2006, by the Major Cities Chiefs of Police (MCC) organization.⁵⁰ This document describes illegal immigration as a problem that "must be dealt with at the national level" and details certain concerns that local agencies have. A key paragraph states, "local police agencies must balance any decision to enforce 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."

The MCC statement also observes that "assistance and cooperation from immigrant communities is especially important when an immigrant, whether documented 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. . . . Immigration enforcement by local police would likely negatively effect (*sic*) and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that they will be deported or subjected to an immigration status investigation, then they 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."

The MCC statement taken as a whole articulates a two-pronged position that we frequently encountered in our review, namely that many state, county, and local law enforcement agencies are unwilling to initiate immigration enforcement but have policies that suggest they are willing to

⁵⁰ See Appendix V for the MCC's "Nine-Point Position Statement." The MCC describes its membership as the 57 Chief Executive Officers of police departments located within metropolitan areas with a population of more than 1.5 million population and that employ more than 1,000 law enforcement officers.

cooperate with ICE when they arrest individuals on state or local charges and learn that those individuals may be criminal aliens.

Additional Research

We further examined the issue of cooperation between SCAAP recipients and ICE by researching the policies of localities that may have laws, resolutions, or other policies limiting the role of local agencies in the enforcement of immigration legislation. In some cases, those localities have designated themselves with terms such as a "sanctuary city" or a "civil liberties safe zone." Our research revealed much anecdotal information, but little in the way of formal policies.

We were guided initially in our research by listings of sanctuary cities posted on the websites of several organizations.⁵¹ Later, we focused our search on jurisdictions that received SCAAP funding of at least \$1 million from the FY 2005 appropriation. We searched the websites for those jurisdictions in an effort to locate policy statements affecting how local law enforcement agencies interact with ICE in the effort to remove criminal aliens from the United States.

We were able to locate an official "sanctuary" policy for only two jurisdictions that received at least \$1 million in SCAAP funding, the State of Oregon, which received \$3.4 million, and the City and County of San Francisco, which received \$1.1 million and has designated itself as a "City and County of Refuge." We also located an Executive Order issued by the Mayor of New York limiting the activities of local law enforcement agencies and officers in the enforcement of immigration law.⁵² However, in each instance, the local policy either did not preclude cooperation with ICE or else included a statement to the effect that those agencies and officers must assist ICE or share information with ICE as required by federal law.

The Oregon policy begins by stating, "No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws." However, the policy goes on to state that a law

⁵¹ In using the information posted by these organizations, we do not endorse any position they may advocate regarding immigration enforcement. We simply used their lists as leads pointing toward jurisdictions that may have policies such as those described in our congressional mandate.

⁵² See Appendix VII.

enforcement agency may exchange information with federal immigration authorities to “verify the immigration status of a person if the person is arrested for any criminal offense;” or to “request criminal investigation information with reference to persons named in [federal] records.”⁵³

San Francisco has designated itself as a “City and County of Refuge” and has limited the extent to which municipal agencies and employees may assist in immigration enforcement. The City Administrative Code states that “no department, agency, commission, officer or employee . . . shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals . . . *unless such assistance is required by federal or state statute, regulation or court decision.*” [Emphasis added.] The proviso requiring compliance with federal law reinforces our view that there is insufficient evidence to conclude that San Francisco fails to cooperate with ICE’s efforts to remove undocumented aliens.

We did not locate a “sanctuary city” designation for the City of New York, which received \$15.9 million in SCAAP funding. However, we located a Mayor’s Executive Order that enunciates a policy that local law enforcement officers will not initiate immigration enforcement but will cooperate with federal immigration authorities in some respects. The Mayor’s Executive Order 41 addresses local law enforcement as it relates to immigration matters and states, “Law enforcement officers shall not inquire about a person’s immigration status unless investigating illegal activity other than mere status as an undocumented alien.” However, in the next paragraph it states, “Police officers and peace officers, including members of the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity.”⁵⁴

⁵³ See Appendix VI.

⁵⁴ See Appendix VII.

CHAPTER 3 – COMMUNICATION BETWEEN SCAAP RECIPIENTS AND ICE

The second congressional question asked us to determine whether any SCAAP recipients have in effect a policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. § 1373). This statute, in effect, prohibits any interference in the free exchange of immigration-related information between state or local law enforcement and federal immigration authorities. Two key provisions of the statute are 8 U.S.C. § 1373 (a) and (b), which state:

- *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, Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, or any individual.*
- *Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:*
 - *Sending such information to, or requesting or receiving such information from, Immigration and Naturalization Service.*
 - *Maintaining such information.*
 - *Exchanging such information with any other Federal, State, or local government entity.*⁵⁵

Views of ICE Officials

ICE officials objected to provisions of the administrative code of the City and County of San Francisco that limit the ability of local agencies and officers to communicate immigration information to ICE.

The City Administrative Code states “no department, agency, commission, officer or employee . . . shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or

⁵⁵ The statutory references to the Immigration and Naturalization Service now apply to ICE.

disseminate information regarding the immigration status of individuals in the City and County of San Francisco *unless such assistance is required by federal or state statute, regulation, or court decision.*" [Emphasis added.]

The Code also states "nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying or reporting any person pursuant to a state or federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws." Finally, the Code states that "nothing in this chapter shall preclude any . . . department, agency, commission, officer or employee from (a) reporting information to the INS regarding an individual who has been booked at any county jail facility, and who has been previously been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law; (b) cooperating with an INS request for information regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law; or (c) reporting information as required by federal or state statute, regulation or court decision, regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law."⁵⁶

As mentioned in the preceding chapter, ICE officials considered these policies of the City and County of San Francisco as the "bare minimum" of cooperation. However, in light of the specific provisions requiring compliance with federal law, we cannot conclude that San Francisco's policies are contrary to 8 U.S.C. § 1373.

Results of OIG Survey

We included a question in our survey asking about laws, regulations, or policies affecting each organization that might restrict the free exchange of immigration-related information between local law enforcement agencies and ICE. The 99 jurisdictions that responded to the questionnaire stated almost unanimously that there was no legislation or policy impeding the ability of local officers and agencies to communicate with ICE on immigration-enforcement matters. The detailed results are displayed in the following table.

⁵⁶ See Appendix VIII. The San Francisco City Administrative Code references to INS now apply to ICE.

Survey Results				
Legend: N/A=Not Applicable; DNR=Did Not Respond to this Question.				
<i>In your jurisdiction, is there currently in effect any limitation on the ability of local law enforcement officers or agencies to exchange information relating to immigration enforcement due to:</i>				
<i>State law?</i>				
Yes	No	N/A	Unknown	DNR
0	96	1	2	0
<i>Local ordinance?</i>				
Yes	No	N/A	Unknown	DNR
1	94	1	0	3
<i>Executive order?</i>				
Yes	No	N/A	Unknown	DNR
0	96	1	0	2
<i>Departmental policy?</i>				
Yes	No	N/A	Unknown	DNR
1	96	1	0	1

Source: Responses from SCAAP recipients to the OIG questionnaire

The City and County of San Francisco gave a qualified “yes” in response to our queries about the existence of a local ordinance or a departmental policy limiting the ability of local law enforcement officers or agencies to exchange information with ICE relating to immigration enforcement. The response to the survey included a copy of the previously cited sections of the City Administrative Code and a police department General Order, which states that generally “a member [of the police department] shall not inquire into an individual’s immigration status or release or threaten to release information to the INS regarding an individual’s identity or immigration status.” However, the General Order makes exceptions that parallel those enumerated in the City Administrative Code.

Results of Field Work

In our interviews with local officials at the seven sites, we asked if their jurisdictions currently have in effect any statute, ordinance, executive order, or other legislation or official policy prohibiting local law enforcement agencies and officers from freely exchanging information with ICE on the citizenship or immigration status of individuals. Officials at four of the seven sites we visited replied unequivocally, “no,” while officials at the other three sites gave qualified answers.

- The State of Oregon has a state “sanctuary” statute, but the officials whom we interviewed believe it does not infringe on the exchange of information with ICE.

- Officials from the City of New York informed us there is no prohibition on exchanging information with ICE on individuals who have been arrested.
- Local officials stated the City of San Francisco Police Department's policy is "consistent with its obligations under state and federal law, to adhere to the City of Refuge Ordinance. This ordinance prohibits the use of City resources to assist in the enforcement of federal immigration laws except in certain limited circumstances consistent with state and federal law."

As discussed in the preceding chapter, our examination of official policies published by those jurisdictions confirmed the views expressed by local officials.

CHAPTER 4 – RECIDIVISM OF CRIMINAL ALIENS RELEASED FROM LOCAL CUSTODY

The third congressional question asked us to determine how many criminal offenses were committed by criminal aliens who were released from local custody without a referral to DHS for removal from the United States.

To address this question, we performed limited testing to determine the number of subsequent *arrests* of criminal aliens who were released from state or local custody. We based our testing on information from the vetted FY 2004 SCAAP database, which was the last year when ICE reported to BJA on the status of every person identified in support of applications for SCAAP funding.⁵⁷ The vetted database included 262,105 criminal histories.

NCIC Query

We requested assistance from the Federal Bureau of Investigation (FBI) to have the vetted FY 2004 SCAAP database compared to arrest data in the FBI's National Crime Information Center (NCIC).⁵⁸

The FBI ran two queries, one for SCAAP records that included an FBI number, and another for those records that lacked an FBI number. For the latter group, the FBI queried NCIC using the name and date of birth for each individual listed in the vetted data.

The FBI provided us with nearly 433,000 individual text files that were not searchable by automated means. Because the files were not in a searchable format, we were not able to quantify all the arrests that occurred subsequent to the cutoff date for FY 2004 funding, June 30, 2003. Instead, we reviewed a judgmental sample of 100 criminal histories for evidence of arrests of individuals subsequent to the time when their incarceration was used to support an application for SCAAP funding.

We sampled 53 from records that had FBI numbers and 47 from records that lacked such numbers.⁵⁹ The criminal histories for 73 individuals documented at least one arrest after June 30, 2003. Those 73 individuals

⁵⁷ FY 2004 SCAAP funding was based on the incarceration of criminal aliens between July 1, 2002, and June 30, 2003.

⁵⁸ NCIC is a computerized database of criminal justice information available to law enforcement agencies nationwide. The NCIC database consists of millions of records arranged in 18 files, including one relating to immigration violators.

⁵⁹ This number is issued by the FBI to track arrests and fingerprint records.

accounted for a total of 429 arrests based on 878 charges and included 241 convictions. These figures represent an average of nearly six arrests per individual.

The charges for the 73 individuals ranged from traffic violations and trespassing to more serious crimes, such as burglary or assault. Some of those charges included:

- 166 drug-related;
- 37 immigration-related;
- 213 burglary, robbery, or theft;
- 40 assault;
- 10 property damage;
- 3 terrorist threat;⁶⁰ and
- 13 weapons charges.

Based on this limited sample, we cannot statistically extrapolate the number of offenses committed by undocumented criminal aliens who were released from local custody without a referral to ICE. Based on the information available to us in the criminal histories, we could not determine the number of the criminal aliens in our sample that were deported, if any, and later arrested after reentering the United States. We also could not determine if ICE was notified before the criminal aliens in our sample were released from custody. But if this data is indicative of the full population of nearly 262,105 criminal histories, the rate at which released criminal aliens are rearrested is extremely high.

⁶⁰ The "terrorist threat" cases related to misdemeanor charges based on domestic disputes.

CHAPTER 5 – CRIMINAL ALIENS RELEASED DUE TO LACK OF RESOURCES

The fourth congressional question asked us to determine how many of the criminal aliens who were released from custody without a referral to ICE were released for lack of sufficient detention space or funding to hold them. While we believe this happens regularly, our review could not identify specific instances of such releases because ICE does not track the number of aliens released from local custody due to lack of the necessary resources to detain them. While our review did not identify any instances of such releases, it is important to note that the Inspector General of the Department of Homeland Security has reported: (1) a shortage of space available for housing aliens in ICE custody; and (2) the possible release in FY 2007 of a substantial number of removable criminal aliens from state or local custody because ICE does not have the resources to identify, detain, and remove them.

Results of OIG Survey

To examine this question we relied on responses to the questionnaire that we sent to 164 SCAAP recipients. Our questionnaire included a request that the respondents provide the number of criminal aliens who were released from custody between October 1, 2004, and June 30, 2006, because the respondent lacked the space or funds to detain those aliens. None of the respondents reported having released criminal aliens from custody due to lack of resources. Specifically, 9 replied "none," 78 replied "not applicable," 7 replied "unknown," and 5 did not answer the question. Some jurisdictions added comments such as the following.

- "No, ICE was always contacted." [SENSITIVE INFORMATION REDACTED]
- "Any arrestees without local charges or holds are released by law." [SENSITIVE INFORMATION REDACTED]
- "None; again, referral was made but ICE did not place detainer on subjects." [SENSITIVE INFORMATION REDACTED]
- "None – primarily due to ICE [being] unable or unwilling to transport." [SENSITIVE INFORMATION REDACTED]

DHS Inspector General Report

Even though the state, county, and local respondents to our questionnaire did not report releasing undocumented criminal aliens because of insufficient local resources, we noted an issue regarding the lack of space available to ICE to detain aliens in custody. In an April 2006 report, the Inspector General of the Department of Homeland Security stated, “[the Detention and Removal Operations (DRO)] estimates that in FY 2007 there will be 605,000 foreign-born individuals admitted to state correctional facilities and local jails during the year for committing crimes in the U.S.⁶¹ Of this number, DRO estimates half (302,500) will be removable aliens. Most of these incarcerated aliens are being released into the U.S. at the conclusion of their respective sentences because DRO does not have the resources to identify, detain, and remove these aliens under its Criminal Alien Program (CAP). It is estimated that DRO would need an additional 34,653 detention beds, at an estimated cost of \$1.1 billion, to detain and remove [them].”⁶²

The DHS Inspector General went on to state, “additionally, DRO’s ability to detain and remove illegal aliens with final orders of removal is impacted by: (1) the propensity of illegal aliens to disobey orders to appear in immigration court; (2) the penchant of released illegal aliens with final orders to abscond; (3) the practice of some countries to block or inhibit the repatriation of its citizens; and (4) two recent U.S. Supreme Court decisions which mandate the release of criminal and other high-risk aliens 180 days after the issuance of the final removal order except in ‘Special Circumstances.’ Collectively, the bed space, personnel and funding shortages coupled with the other factors, has created an unofficial ‘mini-amnesty’ program for criminal and other high-risk aliens.”

The DHS Inspector General reported that 345,006 criminal aliens were apprehended between FYs 2001 and 2004, of which 27,947 (8 percent) were released. However, the DHS Inspector General could not determine whether they were released for lack of detention space or for other reasons because ICE does not track that information.

⁶¹ At our exit conference, representatives of DRO stated that references to “DRO” in the DHS OIG report would in this context be more appropriately read as “ICE.”

⁶² Department of Homeland Security, Office of the Inspector General. *Detention and Removal of Illegal Aliens: U.S. Immigration and Customs Enforcement (ICE)*, OIG-06-033, April 2006, p. 2.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

We have performed a congressionally mandated audit of the State Criminal Alien Assistance Program (SCAAP). The audit generally covered FYs 2004 and 2005, included a review of selected activities, and was conducted in accordance with the *Government Auditing Standards*.

In connection with this audit, and as required by the standards, we reviewed the laws and regulations relating to SCAAP, including:

- 8 U.S.C. § 1231(i) (1996), which authorized SCAAP;
- 8 U.S.C. § 1373 (1996), which relates to open communication between local law enforcement and ICE on immigration matters; and
- 8 U.S.C. § 1357(g) (1996), which authorizes the training of local law enforcement agents in immigration enforcement.

Our audit did not disclose any non-compliance on the part of BJA or ICE with provisions of the applicable laws and regulations.

STATEMENT ON INTERNAL CONTROL STRUCTURE

In planning and performing our audit of the SCAAP payment program, we considered the internal control structure of BJA to the extent necessary for the purpose of determining our procedures. Because the scope of our audit was defined by congressional mandate, we did not evaluate BJA's overall internal control structure. Through interviews with officials from OJP, BJA, and ICE, we gained an understanding of the process of applying for, vetting, and awarding SCAAP payments. Our review did not identify any material internal control weaknesses.

APPENDIX I

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In Public Law 109-162, Congress directed us to “perform a study, and report to the Committee on the Judiciary of the United States House of Representatives and the Committee on the Judiciary of the United States Senate” on four questions regarding SCAAP. The objective of our audit was to respond to those questions by determining:

- (1) *Whether there are States, or political subdivisions of a State, that have received compensation under Section 241(i) of the Immigration and Nationality Act (8 U.S.C. § 1231(i)) and are not fully cooperating in the Department of Homeland Security’s efforts to remove from the United States undocumented criminal aliens (as defined in paragraph (3) of such section.*
- (2) *Whether there are States, or political subdivisions of a State, that have received compensation under section 241(1) of the Immigration and Nationality Act (8 U.S.C. § 1231(i)) and that have in effect a policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. § 1373).*
- (3) *The number of criminal offenses that have been committed by aliens unlawfully present in the United States after having been apprehended by States or local law enforcement officials for a criminal offense and subsequently being released without being referred to the Department of Homeland Security for removal from the United States.*
- (4) *The number of [criminal] aliens . . . who were released because the State or political subdivision lacked space or funds for detention of the alien.*

We conducted our audit in accordance with the *Government Auditing Standards* and, accordingly, included such tests of records and procedures as we considered necessary to respond to the congressional mandate. The scope of our work generally covered the state, county, and local law enforcement agencies that received SCAAP funding from the FY 2004 and FY 2005 appropriations.

Our methodology included interviews with officials, distribution of an OIG-developed questionnaire, review of files, queries of automated systems and other research. We interviewed BJA and ICE officials at their respective headquarters in Washington, D.C. In addition, we:

- analyzed BJA records relating to the recipients of SCAAP funding;
- submitted a questionnaire to 164 selected recipients of SCAAP funding;
- researched other relevant information, especially relating to localities that have designated themselves as sanctuary cities;
- performed field work, including interviews and file reviews at the offices of SCAAP recipients in Austin, Texas; Chicago, Illinois; Las Vegas, Nevada; New York, New York; Sacramento, California; Salem, Oregon; and San Francisco, California;
- interviewed local ICE officials whose area of responsibility covered the jurisdictions mentioned above; and
- arranged for the Federal Bureau of Investigation to query the National Crime Information Center database using SCAAP data sets in an effort to identify repeat arrests of criminal aliens.

APPENDIX II

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to evidence of postage payment approved by the United States Postal Service.”

Grants. **SEC. 1193. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS.**

In addition to any other amounts authorized by law, there are authorized to be appropriated for grants to the American Prosecutors Research Institute under section 214A of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13003) \$7,500,000 for each of fiscal years 2006 through 2010.

Hurricanes Katrina and Rita. **SEC. 1194. ASSISTANCE TO COURTS.**

The chief judge of each United States district court is encouraged to cooperate with requests from State and local authorities whose operations have been significantly disrupted as a result of Hurricane Katrina or Hurricane Rita to provide accommodations in Federal facilities for State and local courts to conduct their proceedings.

SEC. 1195. STUDY AND REPORT ON CORRELATION BETWEEN SUBSTANCE ABUSE AND DOMESTIC VIOLENCE AT DOMESTIC VIOLENCE SHELTERS.

The Secretary of Health and Human Services shall carry out a study on the correlation between a perpetrator's drug and alcohol abuse and the reported incidence of domestic violence at domestic violence shelters. The study shall cover fiscal years 2006 through 2008. Not later than February 2009, the Secretary shall submit to Congress a report on the results of the study.

SEC. 1196. REAUTHORIZATION OF STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)) is amended by striking “appropriated” and all that follows through the period and inserting the following: “appropriated to carry out this subsection—

“(A) \$750,000,000 for fiscal year 2006;

“(B) \$850,000,000 for fiscal year 2007; and

“(C) \$950,000,000 for each of the fiscal years 2008 through 2011.”

(b) **LIMITATION ON USE OF FUNDS.**—Section 241(i)(6) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(6)) is amended to read as follows:

“(6) Amounts appropriated pursuant to the authorization of appropriations in paragraph (5) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.”

(c) **STUDY AND REPORT ON STATE AND LOCAL ASSISTANCE IN INCARCERATING UNDOCUMENTED CRIMINAL ALIENS.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the United States Department of Justice shall perform a study, and report to the Committee on the Judiciary of the United States House of Representatives and the Committee on the Judiciary of the United States Senate on the following:

(A) Whether there are States, or political subdivisions of a State, that have received compensation under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) and are not fully cooperating in the Department

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of Homeland Security's efforts to remove from the United States undocumented criminal aliens (as defined in paragraph (3) of such section).

(B) Whether there are States, or political subdivisions of a State, that have received compensation under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) and that have in effect a policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373).

(C) The number of criminal offenses that have been committed by aliens unlawfully present in the United States after having been apprehended by States or local law enforcement officials for a criminal offense and subsequently being released without being referred to the Department of Homeland Security for removal from the United States.

(D) The number of aliens described in subparagraph (C) who were released because the State or political subdivision lacked space or funds for detention of the alien.

(2) IDENTIFICATION.—In the report submitted under paragraph (1), the Inspector General of the United States Department of Justice—

(A) shall include a list identifying each State or political subdivision of a State that is determined to be described in subparagraph (A) or (B) of paragraph (1); and

(B) shall include a copy of any written policy determined to be described in subparagraph (B).

SEC. 1197. EXTENSION OF CHILD SAFETY PILOT PROGRAM.

Section 108 of the PROTECT Act (42 U.S.C. 5119a note) is amended—

(1) in subsection (a)—

(A) in paragraph (2)(B), by striking "A volunteer organization in a participating State may not submit background check requests under paragraph (3).";

(B) in paragraph (3)—

(i) in subparagraph (A), by striking "a 30-month" and inserting "a 60-month";

(ii) in subparagraph (A), by striking "100,000" and inserting "200,000"; and

(iii) by striking subparagraph (B) and inserting the following:

"(B) PARTICIPATING ORGANIZATIONS.—

"(i) ELIGIBLE ORGANIZATIONS.—Eligible organizations include—

"(I) the Boys and Girls Clubs of America;

"(II) the MENTOR/National Mentoring Partnership;

"(III) the National Council of Youth Sports; and

"(IV) any nonprofit organization that provides care, as that term is defined in section 5 of the National Child Protection Act of 1993 (42 U.S.C. 5119c), for children.

"(ii) PILOT PROGRAM.—The eligibility of an organization described in clause (i)(IV) to participate in the pilot program established under this section

APPENDIX III

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
AK	Alaska Department of Corrections	\$26,553	\$33,417
AL	State of Alabama	45,747	61,085
AL	Montgomery County	8,709	7,404
AL	De Kalb County	4,482	1,009
AL	Coffee County		2,454
AR	State of Arkansas	148,764	106,382
AR	Washington County	50,329	25,915
AR	Benton County	29,991	28,348
AR	Carroll County	9,153	4,526
AR	Sebastian County	8,420	12,577
AR	Pope County	6,412	12,295
AR	Polk County	1,561	2,718
AR	Hempstead County	996	
AR	Boone County	403	
AR	Independence County		3,211
AZ	State of Arizona	12,139,791	6,808,219
AZ	Maricopa County	1,297,752	922,938
AZ	Pima County	407,301	747,878
AZ	Yuma County	220,339	217,921
AZ	Yavapai County	93,802	114,615
AZ	Cochise County	72,681	133,904
AZ	Pinal County	55,072	70,660
AZ	Santa Cruz County	31,453	
AZ	Gila County	23,623	21,675
AZ	Mohave County	12,307	32,947
AZ	Greenlee County	7,503	581
AZ	Navajo County	6,021	8,733
AZ	Graham County	2,844	3,296
CA	State of California	85,953,191	77,356,015
CA	Los Angeles County	12,530,034	13,876,508
CA	Orange County	6,562,437	4,593,198
CA	San Diego County	2,346,881	795,416
CA	Santa Clara County	1,616,147	1,382,031
CA	Riverside County	1,254,534	1,349,430
CA	San Francisco City & County	1,087,199	1,405,674

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
CA	Fresno County	1,045,772	1,025,096
CA	San Mateo County	955,843	1,185,621
CA	Sacramento County	873,005	1,168,675
CA	Monterey County	735,201	925,407
CA	Kern County	613,980	882,708
CA	Sonoma County	604,578	784,290
CA	Contra Costa County	592,346	520,503
CA	Ventura County	564,332	355,127
CA	San Bernardino County	407,580	487,145
CA	Alameda County	403,662	223,619
CA	Tulare County	402,655	502,577
CA	Santa Barbara County	380,622	516,480
CA	Solano County	273,742	23,266
CA	Marin County	204,748	310,219
CA	Napa County	184,611	201,916
CA	San Joaquin County	181,990	193,916
CA	Santa Cruz County	173,291	212,435
CA	Stanislaus County	161,626	227,381
CA	Merced County	124,493	134,847
CA	El Dorado County	114,379	92,035
CA	Kings County	114,174	203,337
CA	San Luis Obispo County	94,654	140,418
CA	Mendocino County	76,388	55,543
CA	Placer County	71,636	89,111
CA	Imperial County	56,370	136,356
CA	Yolo County	55,703	94,262
CA	Nevada County	34,847	58,273
CA	Sutter County	34,570	39,722
CA	Tehama County	32,942	46,980
CA	Mono County	28,913	22,585
CA	Humboldt County	27,626	49,656
CA	City of Santa Ana	21,202	41,524
CA	Glenn County	16,559	19,235
CA	Yuba County	16,472	19,257
CA	City of Anaheim	16,259	33,306
CA	Colusa County	11,836	

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
CA	Inyo County	10,678	13,302
CA	Butte County	9,790	19,934
CA	Lake County	8,055	12,626
CA	Siskiyou County	7,823	7,117
CA	Tuolumne County	5,591	6,063
CA	Plumas County	4,595	2,437
CA	Madera County	2,785	8,209
CA	Calaveras County	1,558	5,331
CA	Amador County	733	2,754
CA	Shasta County		40,342
CO	State of Colorado	2,358,707	3,104,425
CO	Denver City & County	950,665	997,382
CO	Arapahoe County	389,607	332,753
CO	Boulder County	267,084	241,687
CO	Jefferson County	139,824	
CO	Weld County	127,640	217,172
CO	Adams County	115,259	128,316
CO	El Paso County	100,370	198,068
CO	Garfield County	100,232	88,553
CO	Eagle County	78,319	71,649
CO	Pueblo County	71,749	58,963
CO	Larimer County	64,679	46,613
CO	Douglas County	63,949	92,396
CO	Pitkin County	50,679	46,151
CO	Morgan County	49,935	66,802
CO	Mesa County	18,356	43,365
CO	Summit County	14,885	
CO	Delta County	12,964	9,606
CO	Lincoln County	9,442	7,374
CO	San Miguel County	8,625	33,548
CO	Moffat County	7,631	
CO	Sedgwick County	7,418	4,541
CO	Bent County	1,967	343
CO	Baca County		1,941
CT	State of Connecticut	779,697	900,356
DC	District of Columbia	81,762	44,472

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
DE	State of Delaware	132,951	131,263
FL	State of Florida	12,806,110	11,778,031
FL	Collier County	597,409	236,938
FL	Hillsborough County	233,499	248,223
FL	Pinellas County	194,285	180,266
FL	Lee County	186,685	142,645
FL	Sarasota County	148,472	60,064
FL	Martin County	145,025	130,554
FL	Orange County	139,138	173,276
FL	Osceola County	89,780	
FL	Seminole County	88,956	132,497
FL	Miami Dade County	78,587	140,309
FL	Broward County	75,320	171,361
FL	Brevard County	66,355	60,660
FL	Lake County	61,813	70,897
FL	Volusia County	55,833	79,046
FL	Indian River County	54,704	61,934
FL	St. Lucie County	50,793	5,771
FL	Okeechobee County	43,124	67,629
FL	Pasco County	32,848	46,722
FL	Polk County	31,815	84,703
FL	Leon County	31,721	47,624
FL	Palm Beach County	29,817	138,714
FL	DeSoto County	29,569	43,104
FL	Alachua County	26,783	18,252
FL	Clay County	24,970	10,585
FL	Hendry County	23,393	
FL	Hardee County	22,887	36,953
FL	Marion County	19,490	29,065
FL	Glades County	17,801	
FL	Highlands County	14,940	35,240
FL	Putnam County	13,111	
FL	Levy County	7,341	6,097
FL	Suwannee County	6,944	9,184
FL	Taylor County	3,012	
FL	Gilchrist County	1,661	2,483

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
FL	Bradford County	1,203	160
FL	Santa Rosa County		9,816
FL	Sumter County		8,596
FL	Madison County		146
GA	State of Georgia	1,393,149	1,885,056
GA	Cherokee County	113,614	41,410
GA	DeKalb County	79,948	
GA	Hall County	36,833	71,524
GA	Forsyth County	32,322	28,847
GA	Chatham County	31,561	42,292
GA	Houston County	25,028	14,342
GA	Cobb County	22,301	
GA	Augusta Richmond County	19,559	17,809
GA	Muscogee County	19,357	12,518
GA	Habersham	19,081	
GA	Floyd County	17,323	23,854
GA	Toombs County	13,811	25,454
GA	Walton County	9,028	1,813
GA	Newton County	8,684	4,081
GA	Carroll County	6,556	
GA	Gilmer County	5,359	5,250
GA	Monroe County	2,577	
GA	Lee County	2,104	8,487
GA	Crisp County	1,291	1,519
GA	Walker County	1,257	
GA	Grady County	1,209	
GA	Decatur County		5,790
GA	Kennesaw County		1,141
GU	Government of Guam	204,042	
HI	State of Hawaii	195,595	171,317
IA	State of Iowa	344,266	477,575
IA	Woodbury County	57,725	94,146
IA	Johnson County	22,293	21,568
IA	Polk County	16,332	23,040
IA	Story County	13,740	21,376
IA	Black Hawk County	8,844	13,792

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
IA	Crawford County	7,033	5,322
IA	Mahaska County	2,611	1,607
IA	Louisa County	2,178	3,642
IA	Davis County	1,673	764
IA	Jefferson County	362	163
IA	Wright County		10,319
ID	Idaho Department of Correction	258,458	350,299
ID	Canyon County	112,759	79,581
ID	Ada County	92,502	70,057
ID	Cassia County	25,601	30,238
ID	Madison County	20,508	17,841
ID	Blaine County	17,612	38,904
ID	Bonneville County	16,719	24,957
ID	Washington County	9,794	11,170
ID	Elmore County	9,273	10,222
ID	Bannock County	8,830	10,584
ID	Bingham County	8,076	19,041
ID	Gooding County	7,369	4,239
ID	Twin Falls County	7,103	9,091
ID	Jefferson County	6,191	11,821
ID	Power County	2,873	3,889
ID	Owyhee County	1,987	4,475
ID	Teton County	1,582	2,390
ID	Latah County		891
IL	State of Illinois	4,731,269	
IL	Cook County	1,926,114	1,957,320
IL	Lake County	262,713	497,325
IL	Kane County	189,347	187,952
IL	DuPage County	168,975	349,826
IL	McHenry County	129,710	119,588
IL	Winnebago County	32,827	76,726
IL	Will County	17,029	69,160
IL	DeKalb County	14,869	4,514
IL	Rock Island County	12,496	23,042
IL	Kendall County	10,870	6,455
IL	LaSalle County	7,208	10,580

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
IL	McLean County	7,007	5,986
IL	Tazewell County	6,784	
IL	Peoria County	5,321	3,378
IL	Champaign County	5,284	13,797
IL	Ogle County	4,506	1,165
IL	Henry County	4,180	
IL	Bureau County	1,253	
IL	Dewitt County	710	
IL	Jo Daviess County	442	1,030
IL	Livingston County	439	1,820
IL	Williamson County	250	
IL	Kankakee County		7,094
IL	Knox County		935
IL	Woodford County		568
IN	State of Indiana	263,919	423,469
IN	Marion County	74,287	
IN	Hamilton County	21,260	17,499
IN	St. Joseph County	9,261	
IN	Hendricks County	5,544	
IN	Johnson County	4,649	4,938
IN	Allen County	4,437	
IN	Porter County	3,868	4,301
IN	Grant County	3,686	3,048
IN	Monroe County	3,476	5,349
IN	Jackson County	3,426	8,049
IN	Clark County	1,520	3,079
IN	Cass County	527	1,918
KS	State of Kansas	290,269	378,600
KS	Johnson County	130,457	161,398
KS	Sedgwick County	85,691	105,520
KS	Wyandotte County	68,384	49,538
KS	Shawnee County	22,896	22,292
KS	Finney County	12,421	13,300
KS	Saline County	12,165	18,181
KS	Douglas County	5,946	8,962
KS	Butler County	1,572	

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
KS	Montgomery County	730	49
KY	Shelby County	113,902	100,320
KY	Lexington Fayette Urban County	69,269	54,531
KY	State of Kentucky	51,142	60,005
KY	Kenton County	1,605	12,875
KY	Carroll County	1,041	4,531
KY	Louisville Jefferson County		35
LA	State of Louisiana	106,834	143,000
LA	Bossier Parish	6,789	13,959
LA	Rapides Parish	6,462	5,223
LA	Orleans Parish	4,932	4,965
LA	Claiborne Parish	2,019	1,136
LA	Lincoln Parish Police Jury	417	1,424
LA	Avoyelles Parish		6,249
LA	St. Tammany Parish		4,007
LA	St. James Parish		40
MA	State of Massachusetts	4,728,549	5,362,497
MA	Suffolk County	790,048	455,191
MA	Middlesex County	703,111	29,084
MA	Plymouth County	517,480	466,190
MA	Bristol County	218,130	326,016
MA	Hampden County	130,922	160,323
MA	Barnstable County	121,844	107,802
MA	Norfolk County	27,531	84,051
MD	State of Maryland	985,416	1,122,300
MD	Montgomery County	964,401	1,356,919
MD	Prince Georges County	64,396	44,772
MD	Anne Arundel County	36,607	7,287
MD	Frederick County	27,527	42,616
MD	Washington County	5,197	10,561
MD	Charles County	4,693	2,778
MD	Carroll County	2,733	10,019
ME	State of Maine	36,840	37,955
ME	Cumberland County	18,539	5,831
ME	Lincoln County	6,611	
ME	York County	6,343	

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
ME	Piscataquis County	866	991
ME	Androscoggin County		3,405
ME	Aroostook County		2,494
MI	State of Michigan	884,639	1,059,552
MI	Oakland County	82,052	127,681
MI	Macomb County	66,873	45,536
MI	Ottawa County	46,670	63,786
MI	Wayne County	41,587	5,910
MI	Kent County	37,783	202,160
MI	Kalamazoo County	19,192	9,197
MI	Berrien County	15,920	18,908
MI	Calhoun County	15,582	20,042
MI	St. Clair County	13,977	18,011
MI	Chippewa County	12,345	9,131
MI	Allegan County	10,198	11,780
MI	Eaton County	9,897	11,764
MI	Lapeer County	9,348	
MI	St. Joseph County	8,909	10,742
MI	Muskegon County	7,942	16,513
MI	Saginaw County	7,339	12,254
MI	Jackson County	6,069	5,050
MI	Ionia County	5,429	17,343
MI	Branch County	4,806	5,362
MI	Lenawee County	4,155	3,568
MI	Van Buren County	3,697	1,428
MI	Cass County	3,613	
MI	Livingston County	3,520	6,299
MI	Shiawassee County	2,742	2,418
MI	Tuscola County	738	
MI	Sanilac County	605	1,361
MI	Gratiot County	170	1,693
MI	Ingham County		17,041
MI	Washtenaw County		14,964
MI	Huron County		343
MN	State of Minnesota	934,384	1,205,072
MN	Hennepin County	144,355	236,438

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
MN	Ramsey County	113,181	135,525
MN	Dakota County	44,959	47,095
MN	Stearns County	38,207	36,406
MN	Anoka County	19,342	34,444
MN	McLeod County	13,201	12,387
MN	Washington County	10,570	25,158
MN	Watonwan County	4,690	4,215
MN	Chippewa County	4,273	3,654
MN	Polk County	40	966
MN	Olmsted County		41,399
MO	State of Missouri	310,513	331,509
MO	Greene County	28,582	75,355
MO	Jackson County	25,070	17,219
MO	St. Charles County	24,795	19,518
MO	St. Louis County	8,145	17,411
MO	Pike County	4,582	237
MO	Newton County	4,279	1,789
MO	St. Louis Metropolitan	3,594	
MO	St. Francois County	3,079	9,173
MO	Platte County	2,383	2,431
MO	Phelps County	1,524	2,689
MO	Lafayette County		1,451
MO	Franklin County		566
MS	State of Mississippi	20,548	38,471
MS	Lauderdale County	2,580	687
MS	Pike County	2,451	1,002
MT	Yellowstone County	9,542	2,792
MT	Cascade County	1,832	
NC	State of North Carolina	2,527,797	2,380,105
NC	Mecklenburg County	255,020	281,159
NC	Wake County	143,724	5,402
NC	Guilford County	107,266	72,118
NC	Durham County	82,967	35,320
NC	Forsyth County	69,285	147,230
NC	Orange County	46,570	27,614
NC	Pitt County	44,896	35,338

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
NC	New Hanover County	36,132	33,922
NC	Cumberland County	31,780	48,623
NC	Buncombe County	30,113	27,476
NC	Rockingham County	25,132	24,190
NC	Alamance County	24,653	26,413
NC	Davidson County	24,586	25,197
NC	Gaston County	23,987	37,456
NC	Rowan County	19,730	8,989
NC	Sampson County	18,507	16,694
NC	Wilson County	17,520	11,585
NC	Henderson County	15,301	22,930
NC	Union County	14,723	23,851
NC	Lee County	14,497	10,584
NC	Duplin County	13,395	6,462
NC	Iredell County	12,445	21,923
NC	Randolph County	12,184	30,573
NC	Moore County	12,022	15,345
NC	Chatham County	9,588	9,926
NC	Wilkes County	9,476	14,693
NC	Stokes County	9,249	5,731
NC	Burke County	8,818	11,208
NC	Cleveland County	7,741	
NC	Catawba County	7,605	5,966
NC	Wayne County	7,465	23,716
NC	Surry County	5,601	
NC	Franklin County	4,424	6,772
NC	Vance County	4,279	136,328
NC	Davie County	4,175	5,673
NC	Robeson County	4,091	4,815
NC	Haywood County	3,578	4,658
NC	Lincoln County	2,664	
NC	Montgomery County	2,373	
NC	Pender County	2,130	1,869
NC	Jackson County	1,441	2,654
NC	Lenoir County	1,423	
NC	Washington County	1,376	1,788

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
NC	Beaufort County	1,315	9,238
NC	Watauga County	1,096	3,901
NC	Anson County	595	
NC	Bladen County	456	5,452
NC	Columbus County		1,963
NC	Cabarrus County		19,042
NC	Johnston County		17,950
NC	Scotland County		2,156
NC	Caldwell County		1,896
ND	Cass County	25,367	9,663
ND	State of North Dakota	11,560	15,682
NE	Douglas County	456,968	560,878
NE	State of Nebraska	354,507	315,258
NE	Lancaster County	54,585	56,168
NE	Sarpy County	42,219	34,424
NE	Saline County	18,762	13,958
NE	Dawson County	15,394	20,818
NE	Dakota County	12,407	18,713
NE	Platte County	8,930	26,858
NE	Phelps County	3,593	448
NE	Lincoln County	2,917	5,838
NE	Dixon County	2,667	4,968
NE	Buffalo County	2,337	10,086
NE	Gage County	954	4,410
NE	Thurston County	75	157
NH	State of New Hampshire	127,641	167,264
NH	Hillsborough County	34,162	15,365
NH	Grafton County	7,078	2,141
NH	Merrimack County	4,168	15,848
NH	Strafford County	929	7,103
NJ	State of New Jersey	3,472,389	4,061,667
NJ	Passaic County	1,224,817	1,203,054
NJ	Hudson County	321,758	416,468
NJ	Monmouth County	145,362	143,831
NJ	Union County	135,118	73,012
NJ	Essex County	129,745	346,587

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
NJ	Morris County	115,598	256,959
NJ	Burlington County	113,337	56,622
NJ	Somerset County	105,965	141,237
NJ	Atlantic County	103,295	105,337
NJ	Ocean County	95,431	101,591
NJ	Camden County	86,583	156,954
NJ	Middlesex County	82,747	692,327
NJ	Cape May County	27,591	20,307
NJ	Cumberland County	25,717	30,205
NJ	Warren County	19,759	26,837
NJ	Sussex County	12,362	26,203
NJ	Hunterdon County	10,241	11,764
NJ	Mercer County	8,303	30,660
NM	State of New Mexico	650,877	193,023
NM	City of Albuquerque	225,367	
NM	Dona Ana County	85,519	63,669
NM	Lea County	31,502	35,807
NM	Otero County	19,252	25,532
NM	Santa Fe County	15,897	19,813
NM	Rio Arriba County	15,520	22,264
NM	Chaves County	11,259	16,920
NM	Eddy County	7,542	
NM	Valencia County	5,618	18,650
NM	Luna County	4,914	4,549
NM	Roosevelt County	4,730	5,107
NM	Sierra	4,238	4,720
NM	Taos County	1,634	4,641
NM	Quay County	1,310	1,397
NM	Colfax County	1,009	5,556
NM	Bernalillo County		248,295
NM	Grant County		5,955
NM	De Baca County		1,759
NM	Hidalgo County		1,742
NV	State of Nevada	2,412,064	1,383,439
NV	Clark County	1,456,722	1,486,607
NV	Washoe County	286,440	477,898

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
NV	City of Las Vegas	70,837	55,835
NV	City of North Las Vegas	49,739	66,221
NV	Carson City County	19,866	31,104
NV	Elko County	15,765	21,463
NV	Nye County	12,601	9,612
NV	Douglas County	12,371	4,871
NV	Churchill County	11,816	12,465
NV	Humboldt County	5,121	18,506
NV	Lyon County	4,586	9,471
NV	Pershing County	2,464	6,790
NV	Esmeralda County	1,652	4,182
NV	Eureka County	1,025	3,240
NV	Mineral County	117	
NY	State of New York	24,022,356	30,859,709
NY	City of New York	15,893,255	20,667,392
NY	Nassau County	1,970,809	2,584,492
NY	Westchester County	366,356	489,256
NY	Rockland County	231,136	251,515
NY	Monroe County	65,079	46,565
NY	Dutchess County	37,346	65,050
NY	Ulster County	20,454	45,036
NY	Jefferson County	18,659	4,204
NY	Niagara County	18,531	27,469
NY	Erie County	17,697	54,067
NY	Franklin County	17,081	17,480
NY	Onondaga County	15,784	14,016
NY	Albany County	14,937	23,195
NY	Broome County	13,060	39,129
NY	Oswego County	11,045	8,306
NY	Schenectady County	9,621	38,668
NY	Wayne County	8,940	15,611
NY	Oneida County	7,553	9,014
NY	Greene County	7,422	10,278
NY	Rensselaer County	6,732	6,266
NY	Ontario County	6,724	15,237
NY	Chemung County	5,904	4,724

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
NY	Schuyler County	5,705	3,035
NY	Washington County	5,356	
NY	Putnam County	5,210	34,594
NY	Genesee County	4,098	2,614
NY	Herkimer County	2,859	145
NY	Yates County	1,588	1,301
NY	Chautauqua County	974	5,611
NY	Fulton County	785	
NY	Columbia County	764	
NY	Wyoming County	490	463
NY	St. Lawrence County	278	1,707
NY	Steuben County	225	2,222
NY	Livingston County		1,273
NY	Suffolk County		1,489,818
NY	Orange County		142,163
NY	Orleans County		6,699
NY	Clinton County		3,453
NY	Cayuga County		2,559
NY	Montgomery County		1,099
OH	State of Ohio	664,897	766,829
OH	Cuyahoga County	49,216	70,357
OH	Summit County	17,579	14,729
OH	Greene County	12,192	8,531
OH	Erie County	2,345	881
OH	Licking County	1,730	1,542
OH	Medina County		5,335
OK	State of Oklahoma	622,173	649,583
OK	Oklahoma County	65,864	84,623
OK	Texas County	34,926	44,741
OK	Tulsa County	6,843	21,120
OK	Kay County	4,737	2,526
OK	Cleveland County	3,744	2,912
OK	Caddo County	2,883	652
OK	Grady County	2,854	3,413
OK	Carter County	2,092	2,336
OK	Okfuskee County	1,507	270

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
OK	Pottawatomie County	438	1,223
OK	Cimarron County	407	
OK	Harper County	175	5,304
OK	Lincoln County		619
OK	Ottawa County		596
OK	Delaware County		77
OR	State of Oregon	3,417,250	
OR	Multnomah County	290,987	444,322
OR	Lane County	201,052	224,088
OR	Marion County	172,017	
OR	Washington County	158,052	283,682
OR	Linn County	25,166	28,346
OR	Jackson County	23,373	50,619
OR	Malheur County	21,187	18,496
OR	Benton County	20,856	22,759
OR	Umatilla County	16,857	30,722
OR	Deschutes County	16,797	10,393
OR	Lincoln County	16,776	29,776
OR	Polk County	14,061	24,536
OR	Yamhill County	13,773	8,963
OR	Douglas County	12,827	3,389
OR	Clatsop County	12,620	21,368
OR	Hood River County	12,488	16,527
OR	Tillamook County	6,601	8,240
OR	Jefferson County	6,405	8,307
OR	Coos County	6,272	6,725
OR	Wasco County	4,610	7,800
OR	Columbia County	1,888	1,111
OR	Union County	1,688	13,473
OR	Gilliam County	596	842
OR	Clackamas County		75,733
OR	Sherman County		1,546
PA	Pennsylvania Department of Corrections	908,520	1,156,505
PA	City of Philadelphia	132,061	87,983
PA	Bucks County	119,894	109,352
PA	Lehigh County	43,199	87,135

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
PA	Dauphin County	35,147	35,406
PA	Lancaster County	32,861	28,366
PA	Luzerne County	29,323	37,074
PA	Lebanon County	23,099	20,484
PA	Berks County	22,396	43,246
PA	Monroe County	20,038	24,924
PA	Westmoreland County	10,357	653
PA	Franklin County	9,856	10,042
PA	Erie County	8,055	13,815
PA	Crawford County	2,763	1,215
PA	Pike County	1,852	3,430
PA	Beaver County	635	2,727
PA	Cambria County		20,479
PA	Schuylkill County		6,923
PA	Centre County		4,037
PA	Fayette County		116
PR	Commonwealth of Puerto Rico	319,429	158,903
RI	State of Rhode Island	863,995	760,584
SC	South Carolina Department of Corrections	283,452	323,486
SC	Horry County	30,754	29,503
SC	Lexington County	27,521	
SC	Charleston County	25,823	29,919
SC	York County	22,240	16,190
SC	Dorchester County	6,774	14,539
SC	Aiken County	5,173	1,969
SC	Colleton County	3,199	3,208
SC	Berkeley County	2,849	4,263
SC	Georgetown County	540	1,675
SC	Cherokee County	457	1,186
SC	Florence County		6,490
SD	Minnehaha County	51,927	41,493
SD	State of South Dakota	24,955	74,470
SD	Pennington County	6,332	8,553
TN	State of Tennessee	212,435	228,289
TN	Metropolitan Nashville & Davidson County	159,174	124,738

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
TN	Shelby County	57,152	104,153
TN	Hamilton County	15,404	
TN	Knox County	6,375	6,623
TN	Maury County	1,069	11,145
TX	State of Texas	18,582,484	17,126,820
TX	Harris County	2,693,977	2,795,228
TX	Hidalgo County	714,808	48,291
TX	Travis County	658,636	842,159
TX	Dallas County	636,166	
TX	Bexar County	547,366	640,506
TX	Tarrant County	403,123	535,507
TX	El Paso County	357,084	218,179
TX	Collin County	303,305	257,672
TX	Denton County	163,183	205,350
TX	Fort Bend County	118,802	117,111
TX	Williamson County	107,402	167,020
TX	Brazos County	87,090	63,854
TX	Galveston County	67,131	41,065
TX	Webb County	64,069	81,443
TX	Ellis County	54,735	49,537
TX	Montgomery County	44,935	64,333
TX	Hays County	44,497	53,830
TX	Nueces County	42,501	14,979
TX	Smith County	39,542	53,635
TX	Bell County	35,258	57,193
TX	Gillespie County	34,806	4,828
TX	Midland County	33,738	177,045
TX	Cameron County	29,936	460,229
TX	McLennan County	28,213	18,607
TX	Brazoria County	27,436	35,670
TX	Jefferson County	26,646	50,789
TX	Johnson County	26,433	27,273
TX	Rockwall County	22,703	25,888
TX	Ector County	21,859	32,311
TX	Maverick County	20,643	
TX	Moore County	20,582	26,638

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
TX	Nacogdoches County	20,239	
TX	Dallam County	18,909	
TX	Tom Green County	17,670	18,096
TX	Lubbock County	15,500	13,616
TX	Victoria County	12,915	25,053
TX	Navarro County	12,897	15,758
TX	Kaufman County	12,326	13,137
TX	Kerr County	11,376	11,983
TX	Hill County	11,342	10,155
TX	Grayson County	11,327	23,750
TX	Randall County	11,122	16,368
TX	Comal County	10,898	27,947
TX	Guadalupe County	10,469	9,578
TX	Hopkins County	10,020	
TX	Angelina County	9,959	
TX	Taylor County	8,902	12,614
TX	Wise County	8,476	12,639
TX	Andrews County	8,379	11,616
TX	Harrison County	8,015	9,753
TX	Henderson County	7,727	16,810
TX	Parker County	7,400	18,210
TX	Starr County	7,026	
TX	Val Verde County	6,713	7,138
TX	Limestone County	6,399	5,247
TX	Matagorda County	6,257	18,739
TX	Cherokee County	6,017	10,454
TX	Deaf Smith County	5,847	11,477
TX	Upshur County	5,514	6,279
TX	Comanche County	5,463	6,979
TX	Crane County	5,019	2,625
TX	Castro County	4,817	53
TX	Crockett County	4,438	10,784
TX	Caldwell County	4,335	4,915
TX	Hudspeth County	4,299	2,704
TX	Uvalde County	4,284	4,977
TX	Hutchinson County	4,123	3,760

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
TX	Wood County	3,967	4,201
TX	Milam County	3,912	947
TX	Parmer County	3,910	6,707
TX	Pecos County	3,870	
TX	Kinney County	3,795	462
TX	Van Zandt County	3,747	5,262
TX	Bowie County	3,600	2,991
TX	Walker County	3,504	3,715
TX	Zapata County	3,426	6,841
TX	Polk County	3,392	6,200
TX	Ochiltree County	3,356	5,497
TX	Burnet County	2,769	6,641
TX	Edwards County	2,610	
TX	Atascosa	2,476	
TX	Fayette County	2,326	3,872
TX	Calhoun County	2,251	1,033
TX	Lamar County	2,091	964
TX	Live Oak County	2,038	2,736
TX	Duval County	1,915	5,155
TX	Palo Pinto County	1,658	
TX	Fannin County	1,566	5,247
TX	Bosque County	1,195	
TX	Nolan County	1,154	2,349
TX	Lee County	1,069	1,701
TX	Lynn County	1,005	1,747
TX	Medina County	947	184
TX	Orange County	537	3,767
TX	Eastland County	391	945
TX	Atascosa County		3,122
TX	Brown County		2,346
UT	Salt Lake County	623,692	596,712
UT	State of Utah	368,037	460,181
UT	Davis County	139,849	151,106
UT	Utah County	65,608	46,737
UT	Weber County	35,784	58,075
UT	Cache County	24,986	38,177

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
UT	Washington County	16,032	21,234
UT	Box Elder County	9,867	5,416
UT	Sevier County	4,415	8,323
VA	Commonwealth of Virginia	1,011,172	1,300,673
VA	Fairfax County	708,545	618,920
VA	Prince William County	251,223	296,786
VA	Arlington County	235,996	223,125
VA	City of Alexandria	165,141	
VA	Rockingham County	65,030	55,401
VA	Chesterfield County	35,251	78,388
VA	Loudoun County	31,463	72,846
VA	City of Chesapeake	24,103	26,154
VA	Henrico County	16,860	17,340
VA	Albemarle County	12,386	
VA	City of Newport News	10,589	18,874
VA	Shenandoah County	8,226	13,696
VA	Henry County	7,862	7,023
VA	York County	4,763	15,427
VA	Stafford County	4,742	7,545
VA	City of Charlottesville	4,480	
VA	City of Hampton	3,528	4,912
VA	James City County	3,287	5,891
VA	City of Danville	2,458	7,401
VA	City of Martinsville	2,365	2,995
VA	Lunenburg County	1,478	730
VA	City of Fredericksburg	1,257	5,646
VA	Williamsburg County	1,059	
VA	City of Suffolk	907	3,109
VA	Spotsylvania County	658	3,573
VA	Nottaway County	594	519
VA	Nelson County		
VA	City of Portsmouth		2,581
VA	City of Virginia Beach		1,724
VA	King George County		1,450
VA	City of Williamsburg		582
VA	Isle of Wight County		54

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
VI	Virgin Islands	269,825	408,132
VT	State of Vermont	14,437	32,118
WA	State of Washington	1,723,823	2,206,930
WA	King County	812,270	971,560
WA	Pierce County	138,288	139,048
WA	Yakima County	116,702	126,711
WA	Snohomish County	92,252	84,953
WA	Franklin County	85,130	84,519
WA	Thurston County	59,461	51,904
WA	Benton County	53,641	52,208
WA	Whatcom County	51,368	67,618
WA	Grant County	47,635	51,790
WA	Chelan County	44,389	40,540
WA	Spokane County	38,004	39,990
WA	Cowlitz County	37,382	30,977
WA	Skagit County	35,484	42,272
WA	Lewis County	33,229	36,370
WA	Walla Walla County	25,095	15,569
WA	Douglas County	23,444	23,729
WA	City of Yakima	20,360	19,551
WA	City of Wapato	19,964	
WA	City of Wenatchee	16,325	22,516
WA	Grays Harbor County	12,947	27,962
WA	Kitsap County	10,640	12,782
WA	Okanogan County	10,623	25,186
WA	Kittitas County	10,458	7,749
WA	Adams County	8,320	7,626
WA	Mason County	6,202	16,833
WA	Clallam County	6,178	6,053
WA	City of Aberdeen	5,216	6,085
WA	Whitman County	1,944	1,370
WA	City of Sunnyside	1,329	1,504
WA	Clark County		78,530
WI	State of Wisconsin	1,243,892	1,473,682
WI	Dane County	96,180	105,253
WI	Milwaukee County	84,781	183,468

SCAAP Recipients – FYs 2005 and 2004			
		FY 2005	FY 2004
	Total	\$287,143,095	\$281,605,292
State	Jurisdiction	Amount	Amount
WI	Kenosha County	59,611	79,239
WI	Walworth County	59,177	8,240
WI	Sheboygan County	54,033	
WI	Brown County	49,206	63,337
WI	Waukesha County	46,060	56,222
WI	Jefferson County	31,723	19,426
WI	Racine County	29,192	19,895
WI	Rock County	23,700	37,951
WI	Outagamie County	23,121	43,449
WI	Sauk County	14,446	12,277
WI	Ozaukee County	11,278	10,323
WI	Manitowoc County	11,011	8,477
WI	Columbia County	9,346	3,568
WI	Waupaca County	8,480	6,693
WI	Calumet County	7,953	6,471
WI	Shawano County	6,890	5,136
WI	Winnebago County	6,133	30,203
WI	Waushara County	4,733	
WI	Dodge County	4,575	
WI	Portage County	3,317	2,292
WI	Green County	1,030	1,680
WI	Lafayette County	205	1,780
WI	Fond du Lac County		9,361
WI	La Crosse County		4,604
WI	Sawyer County		1,966
WV	State of West Virginia	6,495	5,824
WY	State of Wyoming	79,074	121,529

Source: OJP

APPENDIX IV

OIG Survey Recipients			
Green highlighted text indicates survey respondent. 99 jurisdictions with total SCAAP awards for FY 2005 totaling \$205,455,783 responded to our survey.			
	State	Jurisdiction	FY 2005 Total Amount
1	CA	State of California	\$ 85,953,191
2	NY	State of New York	24,022,356
3	TX	State of Texas	18,582,484
4	NY	New York City	15,893,255
5	FL	State of Florida	12,806,110
6	CA	County of Los Angeles	12,530,034
7	AZ	State of Arizona	12,139,791
8	CA	County of Orange	6,562,437
9	IL	State of Illinois	4,731,269
10	MA	State of Massachusetts	4,728,549
11	NJ	State of New Jersey	3,472,389
12	OR	State of Oregon	3,417,250
13	TX	County of Harris	2,693,977
14	NC	State of North Carolina	2,527,797
15	NV	State of Nevada	2,412,064
16	CO	State of Colorado	2,358,707
17	CA	County of San Diego	2,346,881
18	NY	Nassau County	1,970,809
19	IL	County of Cook	1,926,114
20	WA	State of Washington	1,723,823
21	CA	County of Santa Clara	1,616,147
22	NV	Clark County	1,456,722
23	GA	State of Georgia	1,393,149
24	AZ	Maricopa County	1,297,752
25	CA	County of Riverside	1,254,534
26	WI	State of Wisconsin	1,243,892
27	NJ	Passaic County	1,224,817
28	CA	City and County of San Francisco	1,087,199
29	CA	County of Fresno	1,045,772
30	VA	Commonwealth of Virginia	1,011,172
31	MD	State of Maryland	985,416
32	MD	Montgomery County	964,401
33	CA	San Mateo County	955,843
34	CO	City and County of Denver	950,665
35	MN	State of Minnesota	934,384
36	PA	Pennsylvania Department of Corrections	908,520
37	MI	State of Michigan	884,639
38	CA	Sacramento County	873,005
39	RI	State of Rhode Island	863,995
40	WA	King County	812,270
41	MA	County of Suffolk	790,048
42	CT	State of Connecticut	779,697
43	CA	County of Monterey	735,201
44	TX	County of Hidalgo	714,808
45	VA	County of Fairfax	708,545

OIG Survey Recipients			
Green highlighted text indicates survey respondent. 99 jurisdictions with total SCAAP awards for FY 2005 totaling \$205,455,783 responded to our survey.			
	State	Jurisdiction	FY 2005 Total Amount
46	MA	County of Middlesex	703,111
47	OH	State of Ohio	664,897
48	TX	Travis County	658,636
49	NM	State of New Mexico	650,877
50	TX	County of Dallas	636,166
51	UT	Salt Lake County	623,692
52	OK	State of Oklahoma	622,173
53	CA	County of Kern	613,980
54	CA	County of Sonoma	604,578
55	FL	Collier County	597,409
56	CA	Contra Costa County	592,346
57	CA	County of Ventura	564,332
58	TX	County of Bexar	547,366
59	MA	County of Plymouth	517,480
60	NE	Douglas County	456,968
61	CA	County of San Bernardino	407,580
62	AZ	County of Pima	407,301
63	NY	Westchester County	366,356
64	NC	Mecklenburg County	255,020
65	VA	County of Prince William	251,223
66	FL	County of Hillsborough	233,499
67	NY	County of Rockland	231,136
68	AZ	Yuma County	220,339
69	OR	Lane County	201,052
70	HI	State of Hawaii	195,595
71	FL	Pinellas County	194,285
72	IL	County of Kane	189,347
73	FL	County of Lee	186,685
74	CA	Napa County	184,611
75	CA	San Joaquin County	181,990
76	VA	City of Alexandria	165,141
77	FL	County of Sarasota	148,472
78	NC	Wake County	143,724
79	FL	Orange County	139,138
80	WA	County of Pierce	138,288
81	NJ	County of Essex	129,745
82	MA	Barnstable County	121,844
83	TX	County of Fort Bend	118,802
84	GA	County of Cherokee	113,614
85	CO	El Paso County	100,370
86	NJ	Ocean County	95,431
87	AZ	County of Yavapai	93,802
88	FL	County of Osceola	89,780
89	FL	Seminole County	88,956
90	NM	Dona Ana County	85,519
91	WA	County of Franklin	85,130
92	WI	County of Milwaukee	84,781

OIG Survey Recipients			
Green highlighted text indicates survey respondent. 99 jurisdictions with total SCAAP awards for FY 2005 totaling \$205,455,783 responded to our survey.			
	State	Jurisdiction	FY 2005 Total Amount
93	NC	County of Durham	82,967
94	MI	County of Oakland	82,052
95	DC	District of Columbia	81,762
96	GA	De Kalb County Georgia	79,948
97	FL	Miami Dade County	78,587
98	CO	County of Eagle	78,319
99	NC	Forsyth County	69,285
100	KY	Lexington Fayette Urban County Government	69,269
101	KS	Unified Government of Wyandotte County	68,384
102	VA	Rockingham County	65,030
103	TX	County of Webb	64,069
104	WI	County of Kenosha	59,611
105	IA	Woodbury County	57,725
106	CA	Imperial County	56,370
107	FL	County of Indian River	54,704
108	WI	County of Sheboygan	54,033
109	CO	County of Pitkin	50,679
110	WI	County of Brown	49,206
111	GA	Hall County	36,833
112	MD	County of Anne Arundel	36,607
113	NC	County of Cumberland	31,780
114	SC	County of Horry	30,754
115	NC	County of Buncombe	30,113
116	TX	County of Cameron	29,936
117	OR	County of Linn	25,166
118	UT	County of Cache	24,986
119	MO	County of St Charles	24,795
120	OR	County of Jackson	23,373
121	SC	County of York	22,240
122	IA	County of Polk	16,332
123	IL	De kalb County	14,869
124	NC	County of Duplin	13,395
125	IL	County of Rock Island	12,496
126	NC	Iredell County	12,445
127	NC	County of Randolph	12,184
128	TX	County of Hill	11,342
129	IL	County of Kendall	10,870
130	WA	Kittitas County	10,458
131	NJ	Hunterdon County	10,241
132	ID	Washington County	9,794
133	MT	County of Yellowstone	9,542
134	MI	County of St. Joseph	8,909
135	GA	County Of Newton	8,684
136	TX	County of Andrews	8,379
137	WA	Adams County	8,320
138	ID	County Of Bingham	8,076
139	ID	County of Twin Falls	7,103

OIG Survey Recipients			
Green highlighted text indicates survey respondent. 99 jurisdictions with total SCAAP awards for FY 2005 totaling \$205,455,783 responded to our survey.			
	State	Jurisdiction	FY 2005 Total Amount
140	FL	County of Suwannee	6,944
141	OK	County of Tulsa	6,843
142	NM	County of Valencia	5,618
143	NV	County of Humboldt	5,121
144	TX	County of Castro	4,817
145	NH	County of Merrimack	4,168
146	MI	Livingston County	3,520
147	TX	County of Zapata	3,426
148	NE	County of Lincoln	2,917
149	OK	Grady County	2,854
150	GA	County Of Monroe	2,577
151	TX	County of Atascosa	2,476
152	NV	County of Pershing	2,464
153	OH	Erie County	2,345
154	GA	County of Lee	2,104
155	OK	County of Carter	2,092
156	TX	County of Lamar	2,091
157	OK	County of Okfuskee	1,507
158	NM	Quay County	1,310
159	WI	Green County	1,030
160	VA	City of Suffolk	907
161	MI	County of Tuscola	738
162	KS	County of Montgomery	730
163	NC	County of Anson	595
164	NY	County of Wyoming	490
Total			\$264,776,153

Source: OIG and OJP data

APPENDIX V

Major Cities Chiefs of Police Statement

(From a document entitled *M.C.C. Immigration Committee Recommendations*, June 2006.)

D. M.C.C. NINE (9) 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 M.C.C., who are the 57 Chief Executive Officers of police departments located within a metropolitan area of more than 1.5 million population and which employs 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 mandated 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 DETAINEES FROM THE N.C.I.C. 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, M.C.C. strongly requests that the federal agencies cease placing civil immigration detainees on N.C.I.C. 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.

M.C.C. would encourage the federal agencies to seek federal criminal warrants for any person they have charged criminally with violations of immigration laws and submit those criminal warrants on the N.C.I.C. 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

M.C.C. 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.

APPENDIX VI

State of Oregon Policy

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Chapter 181 — State Police; Crime Reporting and Records;
Public Safety Standards and Training

2005 EDITION

181.850 Enforcement of federal immigration laws. (1) No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.

(2) Notwithstanding subsection (1) of this section, a law enforcement agency may exchange information with the United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services and the United States Bureau of Customs and Border Protection in order to:

(a) Verify the immigration status of a person if the person is arrested for any criminal offense; or

(b) Request criminal investigation information with reference to persons named in records of the United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services or the United States Bureau of Customs and Border Protection.

(3) Notwithstanding subsection (1) of this section, a law enforcement agency may arrest any person who:

(a) Is charged by the United States with a criminal violation of federal immigration laws under Title II of the Immigration and Nationality Act or 18 U.S.C. 1015, 1422 to 1429 or 1505; and

(b) Is subject to arrest for the crime pursuant to a warrant of arrest issued by a federal magistrate.

(4) For purposes of subsection (1) of this section, the Bureau of Labor and Industries is not a law enforcement agency.

(5) As used in this section, "warrant of arrest" has the meaning given that term in ORS 131.005. [1987 c.467 §1; 2003 c.571 §1]

APPENDIX VII

City of New York Policy



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EXECUTIVE ORDER No. 41

September 17, 2003

**CITY-WIDE PRIVACY POLICY AND AMENDMENT OF EXECUTIVE ORDER
NO. 34 RELATING TO CITY POLICY CONCERNING IMMIGRANT ACCESS TO
CITY SERVICES**

WHEREAS, it is the policy of the City of New York to promote the utilization of its services by all of its residents who are entitled to and in need of them; and

WHEREAS, individuals should know that they may seek and obtain the assistance of City agencies regardless of personal or private attributes, without negative consequences to their personal lives; and

WHEREAS, the obtaining of pertinent information, which is essential to the performance of a wide variety of governmental functions, may in some cases be difficult or impossible if some expectation of confidentiality is not preserved, and preserving confidentiality in turn requires that governments regulate the use of such information by their employees; and

WHEREAS, in furtherance of this policy, confidential information in the possession of City agencies relating to immigration status or other personal or private attributes should be disclosed only as provided herein;

NOW, THEREFORE, by virtue of the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. As used herein, "confidential information" means any information obtained and maintained by a City agency relating to an individual's sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in any individual's income tax records.

Section 2. No City officer or employee shall disclose confidential information, unless

- (a) such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
- (b) such disclosure is required by law; or
- (c) such disclosure is to another City officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; or
- (d) in the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any City agency; or
- (e) in the case of information relating to immigration status, (i) the individual to whom such information pertains is suspected by such officer or employee or such officer's or employee's agency of engaging in illegal activity, other than mere status as an undocumented alien or (ii) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, other than mere status as an undocumented alien or (iii) such disclosure is necessary in furtherance of an investigation of potential terrorist activity.

Agencies shall promulgate such rules as may be appropriate to detail circumstances in which confidential information may or may not be disclosed pursuant to this executive order. Any City officer or employee with a question relating to the disclosure of confidential information under this section shall consult with the general counsel of such officer's or employee's agency.

Section 3. Section 2 of Executive Order No. 34, dated May 13, 2003, is amended by adding a new subdivision d to read as follows:

d. "Illegal activity" means unlawful activity but shall not include mere status as an undocumented alien.

Section 4. Sections 3 and 4 of such Executive Order are amended to read as follows:

Section 3. Information respecting aliens.

- a. A City officer or employee, other than law enforcement officers, shall not inquire about a person's immigration status unless:
 - (1) Such person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of City services; or
 - (2) Such officer or employee is required by law to inquire about such person's immigration status.

Section 4. Law Enforcement Officers.

- a. Law enforcement officers shall not inquire about a person's immigration status unless investigating illegal activity other than mere status as an undocumented alien.
- b. Police officers and peace officers, including members of the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity.
- c. It shall be the policy of the Police Department not to inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance.

Section 5. This Order shall take effect immediately.


MICHAEL R. BLOOMBERG
MAYOR

APPENDIX VIII

San Francisco City Administrative Code



CHAPTER 12H: IMMIGRATION STATUS

Sec. 12H.1. City and County of Refuge.

Sec. 12H.2. Use of City Funds Prohibited.

Sec. 12H.2-1. Chapter Provisions Inapplicable to Persons Convicted of Certain Crimes.

Sec. 12H.3. Clerk of Board to Transmit Copies of This Chapter; Informing City Employees.

Sec. 12H.4. Enforcement.

Sec. 12H.5. City Undertaking Limited to Promotion of General Welfare.

Sec. 12H.6. Severability.

SEC. 12H.1. CITY AND COUNTY OF REFUGE.

It is hereby affirmed that the City and County of San Francisco is a City and County of Refuge.

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.2. USE OF CITY FUNDS PROHIBITED.

No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision. The prohibition set forth in this Chapter shall include, but shall not be limited to:

- (a) Assisting or cooperating, in one's official capacity, with any Immigration and Naturalization Service (INS) investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provisions of the federal immigration law.
- (b) Assisting or cooperating, in one's official capacity, with any investigation, surveillance or gathering of information conducted by foreign governments, except for cooperation related to an alleged violation of City and County, State or federal criminal laws.
- (c) Requesting information about, or disseminating information regarding, the immigration status of any individual, or conditioning the provision of services or benefits by the City and County of San Francisco upon immigration status, except as required by federal or State statute or regulation, City and County public assistance criteria, or court decision.
- (d) Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City and County of San Francisco any question regarding immigration status other than those required by federal or State statute, regulation or court decision. Any such questions existing or being used by the City and County at the time this Chapter is adopted shall be deleted within sixty days of the adoption of this Chapter.

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.2-1. CHAPTER PROVISIONS INAPPLICABLE TO PERSONS CONVICTED OF CERTAIN CRIMES.

CHAPTER 12H: IMMIGRATION STATUS

Nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying and reporting any person pursuant to State or federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws. In addition, nothing in this Chapter shall preclude any City and County department, agency, commission, officer or employee from (a) reporting information to the INS regarding an individual who has been booked at any county jail facility, and who has previously been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under State law; (b) cooperating with an INS request for information regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law; or (c) reporting information as required by federal or state statute, regulation or court decision, regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law. For purposes of this Section, an individual has been "convicted" of a felony when: (a) there has been a conviction by a court of competent jurisdiction; and (b) all direct appeal rights have been exhausted or waived; or (c) the appeal period has lapsed.

However, no officer, employee or law enforcement agency of the City and County of San Francisco shall stop, question, arrest or detain any individual solely because of the individual's national origin or immigration status. In addition, in deciding whether to report an individual to the INS under the circumstances described in this Section, an officer, employee or law enforcement agency of the City and County of San Francisco shall not discriminate among individuals on the basis of their ability to speak English or perceived or actual national origin.

This Section shall not apply in cases where an individual is arrested and/or convicted for failing to obey a lawful order of a police officer during a public assembly or for failing to disperse after a police officer has declared an assembly to be unlawful and has ordered dispersal.

Nothing herein shall be construed or implemented so as to discourage any person, regardless of immigration status, from reporting criminal activity to law enforcement agencies.

(Added by Ord. 282-92, App. 9/4/92; amended by Ord. 238-93, App. 8/4/93)

SEC. 12H.3. CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER; INFORMING CITY EMPLOYEES.

The Clerk of the Board of Supervisors shall send copies of this Chapter, including any future amendments thereto that may be made, to every department, agency and commission of the City and County of San Francisco, to California's United States Senators, and to the California Congressional delegation, the Commissioner of the INS, the United States Attorney General, and the Secretary of State and the President of the United States. Each appointing officer of the City and County of San Francisco shall inform all employees under her or his jurisdiction of the prohibitions in this ordinance, the duty of all of her or his employees to comply with the prohibitions in this ordinance, and that employees who fail to comply with the prohibitions of the ordinance shall be subject to appropriate disciplinary action. Each city and county employee shall be given a written directive with instructions for implementing the provisions of this Chapter.

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.4. ENFORCEMENT.

The Human Rights Commission shall review the compliance of the City and County departments, agencies, commissions and employees with the mandates of this ordinance in particular instances in which there is question of noncompliance or when a complaint alleging noncompliance has been lodged.

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.5. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Chapter, the City is assuming an undertaking only to promote the general welfare. This Chapter is not intended to create any new rights for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury. This section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person.

CHAPTER 12H: IMMIGRATION STATUS

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.6. SEVERABILITY.

If any part of this ordinance, or the application thereof, is held to be invalid, the remainder of this ordinance shall not be affected thereby, and this ordinance shall otherwise continue in full force and effect. To this end, the provisions of this ordinance, and each of them, are severable.

(Added by Ord. 375-89, App. 10/24/89)

APPENDIX IX

California Attorney General's Opinion #01-213

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION	:	No. 01-213
	:	
of	:	November 16, 2001
	:	
BILL LOCKYER	:	
Attorney General	:	
	:	
ANTHONY S. DA VIGO	:	
Deputy Attorney General	:	
	:	

THE HONORABLE LOU CORREA, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following questions:

1. Are the mandatory provisions of Penal Code section 834b concerning cooperation, verification, and notification with respect to persons arrested who are suspected of being present in the United States in violation of federal immigration laws subject to enforcement by local law enforcement officers?
2. May a local law enforcement officer, during a detention of a Spanish-speaking person for otherwise valid purposes, question the person as to his or her immigration status?
3. May an arrested person's immigration status be investigated by local law enforcement officers prior to arraignment?

CONCLUSIONS

1. The mandatory provisions of Penal Code section 834b concerning cooperation, verification, and notification with respect to persons arrested who are suspected of being present in the United States in violation of federal immigration laws are not subject to enforcement by local law enforcement officers.

2. A local law enforcement officer, during a detention of a Spanish-speaking person for otherwise valid purposes, may question the person as to his or her immigration status. However, a local officer may not question an individual as to immigration status solely because the individual speaks Spanish or other non-English language.

3. An arrested person's immigration status may be investigated by local law enforcement officers prior to arraignment.

ANALYSIS

The three questions presented for resolution concern the procedures under which local police officers may ascertain whether a person is in the United States in violation of federal immigration laws and the consequences that may arise with respect to such determination.

1. Mandatory Provisions of Penal Code Section 834b

The first inquiry is whether law enforcement officers in California must comply with the mandatory provisions of Penal Code section 834b¹ regarding persons who are suspected of being in the United States in violation of federal immigration laws. Section 834b states:

“(a) Every law enforcement agency in California shall fully cooperate with the United States Immigration and Naturalization Service regarding any person who is arrested if he or she is suspected of being present in the United States in violation of federal immigration laws.

“(b) With respect to any such person who is arrested, and suspected of being present in the United States in violation of federal immigration laws, every law enforcement agency shall do the following:

¹ All references hereafter to the Penal Code are by section number only.

“(1) Attempt to verify the legal status of such person as a citizen of the United States, an alien lawfully admitted as a permanent resident, an alien lawfully admitted for a temporary period of time or as an alien who is present in the United States in violation of immigration laws. The verification process may include, but shall not be limited to, questioning the person regarding his or her date and place of birth, and entry into the United States, and demanding documentation to indicate his or her legal status.

“(2) Notify the person of his or her apparent status as an alien who is present in the United States in violation of federal immigration laws and inform him or her that, apart from any criminal justice proceedings, he or she must either obtain legal status or leave the United States.

“(3) Notify the Attorney General of California and the United States Immigration and Naturalization Service of the apparent illegal status and provide any additional information that may be requested by any other public entity.

“(c) Any legislative, administrative, or other action by a city, county, or other legally authorized local governmental entity with jurisdictional boundaries, or by a law enforcement agency, to prevent or limit the cooperation required by subdivision (a) is expressly prohibited.”

The provisions of section 834b are mandatory and prohibitory. Local law enforcement officers are to “fully cooperate with the United States Immigration and Naturalization Service,” shall attempt to verify the legal status of certain arrested persons, and make certain notifications regarding violations of federal immigration laws.

Section 834b’s terms, however, have been declared preempted by federal law and their enforcement has been permanently enjoined by a federal court. (*League of United Latin American Citizens v. Wilson* (C.D.Cal. 1995) 908 F.Supp. 755, 771, 776, sub. opn. (C.D.Cal. 1997) 997 F.Supp. 1244, 1250, 1252, 1261.) Accordingly, the statute’s provisions are not subject to enforcement by local law enforcement officers.

Nevertheless, do the federal court’s rulings prohibit local law enforcement officers from *voluntarily* engaging in the conduct described in section 834b? In *League of United Latin American Citizens v. Wilson*, *supra*, 997 F.Supp. 1244, the court stated that not only *could* state and local government entities cooperate with federal immigration agents, federal law *required* them to do so and that “[n]othing in the Court’s decision should be interpreted to proscribe cooperation between state officials and the I.N.S. *pursuant to the*

[federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996].” (Id. at p. 1252, fn. 9; see City of New York v. U.S. (2d Cir. 1999) 179 F.3d 29, 31-33.)

Hence, local law enforcement officers are not prohibited from cooperating with federal agents in the discharge of their duties. (See 75 Ops.Cal.Atty.Gen. 270 (1992).) Federal statutes provide that state and local governments may not be prohibited from cooperating with the Immigration and Naturalization Service. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, noted by the court in the 1997 *Wilson, supra*, decision, provides in part:

“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 immigration status, lawful or unlawful, of an alien in the United States.” (8 U.S.C. § 1644.)

Similarly, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provides in 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.” (8 U.S.C. § 1373(a).)

In answer to the first question, we conclude that the mandatory provisions of section 834b concerning cooperation, verification, and notification with respect to persons arrested who are suspected of being present in the United States in violation of federal immigration laws are not subject to enforcement by local law enforcement agencies.

2. Questioning a Spanish-speaking Person’s Immigration Status

The second inquiry is whether a local law enforcement officer who has stopped a Spanish-speaking person for otherwise valid purposes, such as for a driving infraction, may inquire during the detention as to the person’s immigration status. We may assume that the stop was not made at or in the vicinity of a border station or known point of illegal entry. We do not consider it significant that the language spoken by the person is Spanish as distinguished from some other foreign language. The focus here is upon what a local peace officer may do during a lawful detention to ascertain the individual’s immigration status.

An officer making such an inquiry would be engaged in the exercise of a federal power. (*DeCanas v. Bica* (1976) 424 U.S. 351, 354.) This characterization, however, would not resolve, but merely raise, the issue of whether the exercise of such local authority would be preempted by federal law. (*Id.* at p. 355.) As previously noted, Congress has expressly recognized the authority of state and local officers “to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.” (8 U.S.C. § 1357(g)(10)(B).) Such provisions evince “a clear invitation from Congress for state and local agencies to participate in the process of enforcing federal immigration laws.” (*U. S. v. Vasquez-Alvarez* (10th Cir. 1999) 176 F.3d 1294, 1300.)

While Congress may invite local law enforcement officers to establish a person’s immigration status, may the inquiry be made during a detention for an unrelated purpose such as a traffic violation?² The Fourth Amendment to the Constitution of the United States provides: “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .” Ordinarily, a judicial warrant issued on probable cause is necessary to render either a search or seizure of one’s person or possessions reasonable. (*United States v. Place* (1983) 462 U.S. 696, 701.)³ This right of personal security is inherent in the concept of due process, and therefore applies as well to state officers through the Fourteenth Amendment. (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646, 652; *Elkins v. United States* (1960) 364 U.S. 206, 213; 80 Ops.Cal.Atty.Gen. 354, 355 (1997).)

In addition, section 1 of article I of the California Constitution, as amended by the 1972 “privacy initiative,” provides: “[a]ll people are by nature free and independent and have inalienable rights. Among these are . . . pursuing and obtaining safety, happiness, and privacy.” The state’s privacy guarantee operates separately and in addition to the Fourth Amendment’s protections against unreasonable searches and seizures. For our purposes, however, we need not distinguish between the state and federal constitutional guarantees. (See *In re Williams G.* (1985) 40 Cal. 3d 550, 557, fn. 4.)

² We do not have the issue of whether the stop itself may be justified because the person is heard speaking a foreign language. (See, e.g., *United States v. Cortez* (1981) 449 U.S. 411, 417; *State v. Kettlewell* (Vt. 1987) 544 A.2d 591; *Cheung Tin Wong v. United States Immigration & Nat. Serv.* (D.C. Cir. 1972) 468 F.2d 1123; *Hon Keung Kung v. District Dir., Immigration & Nat. Serv.* (E.D. Mo. 1973) 356 F.Supp. 571.)

³ The warrant clause of the Fourth Amendment states that “. . . no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The protections of the Fourth Amendment apply to brief investigatory stops made by law enforcement officers. In *United States v. Cortez* (1981) 449 U.S. 411, 417, the court observed:

“The Fourth Amendment applies to seizures of the person, including brief investigatory stops such as the stop of the vehicle here. [Citations.] An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity. [Citations.]” (Fn. omitted.)

Here, we have a valid stop and detention of a person who does not speak English. In *I.N.S. v. Delgado* (1984) 466 U.S. 210, 215-217, the court stated with regard to the questioning of persons as to their immigration status:

“The Fourth Amendment does not proscribe all contact between the police and citizens, but is designed ‘to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.’ [Citation.] Given the diversity of encounters between police officers and citizens, however, the Court has been cautious in defining the limits imposed by the Fourth Amendment on encounters between the police and citizens. As we have noted elsewhere: ‘Obviously, not all personal intercourse between policemen and citizens involves “seizures” of persons. Only when the officer, by means of physical force or show of authority, has restrained the liberty of a citizen may we conclude that a “seizure” has occurred.’ [Citation.] While applying such a test is relatively straightforward in a situation resembling a traditional arrest, [citation], the protection against unreasonable seizures also extends to ‘seizures that involve only a brief detention short of traditional arrest.’ [Citation.] What has evolved from our cases is a determination that an initially consensual encounter between a police officer and a citizen can be transformed into a seizure or detention within the meaning of the Fourth Amendment, ‘if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.’ [Citation]; see *Florida v. Royer*, 460 U.S. 491, 502 (1983) (plurality opinion).

“Although we have yet to rule directly on whether mere questioning of an individual by a police official, without more, can amount to a seizure under the Fourth Amendment, our recent decision in *Royer*, *supra*, plainly implies that interrogation relating to one’s identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure. In *Royer*, when Drug Enforcement Administration agents found that the respondent

matched a drug courier profile, the agents approached the defendant and asked him for his airplane ticket and driver's license, which the agents then examined. A majority of the Court believed that the request and examination of the documents were 'permissible in themselves.' [Citations.] In contrast, a much different situation prevailed in *Brown v. Texas*, 443 U.S. 47 (1979), when two policemen physically detained the defendant to determine his identity, after the defendant refused the officers' request to identify himself. The Court held that absent some reasonable suspicion of misconduct, the detention of the defendant to determine his identity violated the defendant's Fourth Amendment right to be free from an unreasonable seizure. [Citation.]

"What is apparent from *Royer* and *Brown* is that police questioning, by itself, is unlikely to result in a Fourth Amendment violation. While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response. [Citation.] Unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, one cannot say that the questioning resulted in a detention under the Fourth Amendment. But if the person refuses to answer and the police take additional steps—such as those taken in *Brown*—to obtain an answer, then the Fourth Amendment imposes some minimal level of objective justification to validate the detention or seizure. [Citations.]"

In *Delgado*, federal immigration agents questioned employees at a factory regarding their immigration status. During the survey, which lasted from one to two hours, the agents positioned themselves near the factory exits while others moved systematically through the factory, approaching employees and, after identifying themselves, asking the employees from one to three questions relating to their citizenship. Meanwhile, employees continued their work and were free to walk around within the factory. Certain employees, who were citizens or permanent resident aliens, contended that the surveys violated their rights under the Fourth Amendment. The employees argued that the element of surprise, the systematic questioning of individual workers, the stationing of agents near the exits of the factory, and the failure to inform workers that they were free to leave created an intimidating psychological environment which negated any reasonable impression that they were free to leave without answering the questions. Nevertheless, the United States Supreme Court ruled that the conduct of the immigration agents, consisting simply of questioning employees and arresting those they had probable cause to believe were unlawfully present in the United States, "should have given respondents no reason to believe that they would be detained if they gave truthful answers to the questions put to them or if they simply refused to answer." (*Id.* at p. 218.)

Here, we note that the authority of state and local law enforcement officers to investigate and arrest for violations of federal law is determined by reference to state law. (*U.S. v. Vasquez-Alvarez*, *supra*, 176 F.3d at pp. 1295-1296; *Gates v. Superior Court* (1987) 193 Cal.App.3d 205, 215; see, e.g., 8 U.S.C. § 1252c [“ . . . to the extent permitted by relevant State and local law, State and local law enforcement officials are authorized to arrest and detain an individual who . . . is an alien illegally present in the United States. . . .”].) In California, a local peace officer may make an arrest when an individual has committed a felony, or where reasonable cause exists to suspect that a person has committed a felony, whether or not a felony has been committed. (§ 836, subd. (2), (3).)⁴ Therefore, a local officer may arrest for a felony violation of federal immigration law any time the officer has reasonable cause to believe such a violation has occurred. (*Gates v. Superior Court*, *supra*, 193 Cal.App.3d at p. 215.) Inasmuch as a local law enforcement officer is authorized under state and federal law to make such an arrest, and to exchange information pertaining to immigration status with federal authorities (*id.* at p. 219), it follows that a local law enforcement officer may question an individual as to his or her immigration status.

In answer to the second question, therefore, we conclude that a local law enforcement officer who has detained a Spanish-speaking person for otherwise valid purposes may question such person as to his or her immigration status. It is emphasized, however, that for purposes of the question here considered, the inquiry as to alienage was not posited *because* the individual spoke Spanish. A contrary supposition would produce an entirely different result. Thus, it has been held that ethnic appearance is not, in general, an appropriate factor in the reasonable suspicion calculus. (*United States v. Montero-Camargo* (9th Cir. 2000) 208 F.3d 1122, 1132.) While suspicion is not a constitutional prerequisite for inquiry as to alienage, such an inquiry directed selectively to individuals who speak a language other than English would be tantamount to an aspect of the practice commonly referred to as racial profiling, where sound is substituted for appearance or other indicia of ethnicity. It has been noted that primary language skill flows generally from one’s national origin. (*Berke v. Ohio Department of Public Welfare* (6th Cir. 1980) 628 F.2d 980, 981; *Yu Cong Eng v. Trinidad* (1926) 271 U.S. 500, 517.) In the context presented here, therefore, a non-English speaking classification is, for all practical purposes, a classification based on national origin. Such a selective enforcement would clearly violate the equal protection clause of the Fourteenth Amendment of the United States Constitution.

⁴ In the case of both felonies and misdemeanors, a California peace officer is further authorized to make an arrest either in obedience to a warrant, or without a warrant where the officer has probable cause to believe that a public offense has been committed in the officer’s presence. (Pen. Code, § 836, subd. (a), (a)(1).) Civil violations of immigration law are not cognizable under this formula.

3. Investigations of Arrested Persons Prior to Arraignment

The third inquiry is whether an arrested person’s immigration status may be investigated by local law enforcement officers prior to arraignment. This inquiry is based upon a federal program established by Congress in 1997. (Pub.L. No. 105-141 (Dec. 5, 1997) 111 Stat. 2647 [see note under 8 U.S.C.A. § 1226].) The legislation provides as follows:

“(a) . . . [T]he Attorney General shall establish and implement a program to identify, from among the individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges, those individuals who are within 1 or more of the following classes of deportable aliens:

“(1) Aliens unlawfully present in the United States.

“(2)

“(b) The program authorized by subsection (a) shall include -

“(1) the detail, to each incarceration facility selected under subsection (c), of at least one employee of the Immigration and Naturalization Service who has expertise in the identification of aliens described in subsection (a); and

“(2) provision of funds sufficient to provide for -

“(A) the detail of such employees to each selected facility on a full time basis, including the portions of the day or night when the greatest number of individuals are incarcerated prior to arraignment;

“(B) access for such employees to records of the Service and other Federal law enforcement agencies that are necessary to identify such aliens; and

“(C) in the case of an individual identified as such an alien, pre-arraignment reporting to the court regarding the Service’s intention to remove the alien from the United States.

“

”

We are not apprised as to the manner in which this federal program is being implemented by federal immigration agents at any particular local incarceration facility. It will be assumed, therefore, that the selection criteria are constitutionally sufficient. The actual arraignment of an individual on formal charges is clearly not a prerequisite for an otherwise proper investigation of immigration status under the federal law. In the case of an individual who is determined to be present in the United States unlawfully, the local magistrate will be apprised of the true identification of the person and will receive a report regarding the intention of the federal Immigration and Naturalization Service to remove the alien from the United States.

Consistent with our conclusions to questions one and two and in answer to the third question, we conclude that an arrested person's immigration status may be investigated by local law enforcement officers prior to arraignment.

APPENDIX X

JURISDICTIONS WITH MULTIPLE "NO" ANSWERS TO THE OIG SURVEY					
JURISDICTION	STATE [SENSITIVE INFORMATION REDACTED]	<i>If law enforcement officers from your jurisdiction arrest an individual on state or local charges, do they generally ask the subject about his or her immigration status?</i>	<i>If law enforcement officers from your jurisdiction have reason to believe that someone they arrest may be an undocumented alien, do they generally inform ICE that the individual is in their custody?</i>	<i>Do the detention facilities in your jurisdiction generally accept detainees from ICE for undocumented criminal aliens in their custody?</i>	<i>Do the detention facilities in your jurisdiction generally alert ICE prior to releasing any undocumented criminal aliens in their custody?</i>
[SENSITIVE INFORMATION REDACTED]		No	No		No
[SENSITIVE INFORMATION REDACTED]		No	No		No
[SENSITIVE INFORMATION REDACTED]		No	No	No	
[SENSITIVE INFORMATION REDACTED]		No	No		No
[SENSITIVE INFORMATION REDACTED]		No	No		No
[SENSITIVE INFORMATION REDACTED]		No	No		
[SENSITIVE INFORMATION REDACTED]		No			No
[SENSITIVE INFORMATION REDACTED]		No	No		
[SENSITIVE INFORMATION REDACTED]		No	No		
[SENSITIVE INFORMATION REDACTED]		No	No		
[SENSITIVE INFORMATION REDACTED]		No	No		No
[SENSITIVE INFORMATION REDACTED]		No	No		
[SENSITIVE INFORMATION REDACTED]		No	No		
[SENSITIVE INFORMATION REDACTED]		No	No		
[SENSITIVE INFORMATION REDACTED]		No	No		
[SENSITIVE INFORMATION REDACTED]		No	No		No

JURISDICTIONS WITH MULTIPLE "NO" ANSWERS TO THE OIG SURVEY					
JURISDICTION	STATE [SENSITIVE INFORMATION REDACTED]	<i>If law enforcement officers from your jurisdiction arrest an individual on state or local charges, do they generally ask the subject about his or her immigration status?</i>	<i>If law enforcement officers from your jurisdiction have reason to believe that someone they arrest may be an undocumented alien, do they generally inform ICE that the individual is in their custody?</i>	<i>Do the detention facilities in your jurisdiction generally accept detainees from ICE for undocumented criminal aliens in their custody?</i>	<i>Do the detention facilities in your jurisdiction generally alert ICE prior to releasing any undocumented criminal aliens in their custody?</i>
[SENSITIVE INFORMATION REDACTED]		No	No		
[SENSITIVE INFORMATION REDACTED]				No	No
[SENSITIVE INFORMATION REDACTED]		No			No

Source: Responses to OIG survey

The following explanatory comments were offered by respondents listed in this table. The respondents did not necessarily offer an explanation for each negative answer.

(1) *If law enforcement officers from your jurisdiction arrest an individual on state or local charges, do they generally ask the subject about his or her immigration status?*

- [SENSITIVE INFORMATION REDACTED] – “Generally, if an individual does not appear to be foreign they will not be asked. Now if an individual has no proper identification and it is apparent that they may be foreign then they will ask.”
- [SENSITIVE INFORMATION REDACTED] – “Not everyone arrested would prompt an arresting officer to inquire about a person's immigration status. It is unknown as to how many times a day an arresting officer would have cause to ask an arrestee about their immigration status.”
- [SENSITIVE INFORMATION REDACTED]a – “The [SENSITIVE INFORMATION REDACTED] does not generally ask immigration status. We may if need be, but not generally.”

- [SENSITIVE INFORMATION REDACTED] – “There is no local ordinance or regulation from the County's Board of Supervisors authorizing the Department of Correction to ask arrestees about their immigration status.”
- [SENSITIVE INFORMATION REDACTED] – “It is not the Police Department's policy to ask, however, some officers ask voluntarily. It is not the Police Department's policy to take proactive enforcement action against undocumented aliens. However, if an encounter with an undocumented alien yields a wanted status for an immigration violation listed by another agency, the Police Dept. will confirm extradition before arrest.”
- [SENSITIVE INFORMATION REDACTED] – “Since [SENSITIVE INFORMATION REDACTED] is a home rule city the Sheriff Dept doesn't ‘arrest’ persons as part of our normal duties. When persons are brought to us or we take someone into our custody we do ask for place of birth. Anyone who self reports as being born outside the USA is forwarded to ICE.”
- [SENSITIVE INFORMATION REDACTED] – “No means they don't generally ask, since their immigration status has no bearing on the local charge. Additionally, if they did ask and the defendant said he was illegal, who would we tell?”
- [SENSITIVE INFORMATION REDACTED] – “Not unless there is a reason to believe there would be an issue with the status.”
- [SENSITIVE INFORMATION REDACTED] – “Not Applicable.”
- [SENSITIVE INFORMATION REDACTED] – “We complete an NCIC check on all arrestees, and we report those with a history of deportation.”
- [SENSITIVE INFORMATION REDACTED] – “Ask where born but don't check immigration status.”
- [SENSITIVE INFORMATION REDACTED] – “Generally no, unless there is reason to believe individual has been involved in certain criminal activities such as: arrested for, or has been convicted of a felony, violent crime, etc.”
- [SENSITIVE INFORMATION REDACTED] – “Deputies working patrol within [SENSITIVE INFORMATION REDACTED] do not generally ask arrestees their immigration status.”

- [SENSITIVE INFORMATION REDACTED] – “Immigration status is determined during the Booking process.”
- [SENSITIVE INFORMATION REDACTED] – “Only if the investigation points to the fact that the individual(s) may be an undocumented alien.”

(2) If law enforcement officers from your jurisdiction have reason to believe that someone they arrest may be an undocumented alien, do they generally inform ICE that the individual is in their custody?

- [SENSITIVE INFORMATION REDACTED] – “Notification may occur in felony offenses, but not usually for minor offenses.”
- [SENSITIVE INFORMATION REDACTED] – “From my experience it is difficult to contact these agencies.”
- [SENSITIVE INFORMATION REDACTED] – “Unknown. However, the [SENSITIVE INFORMATION REDACTED] Custody Division is implementing an automated inquiry and notification process for consular notifications as part of the booking process.”
- [SENSITIVE INFORMATION REDACTED] – “ICE agents come into our facility on a regular basis and review our records of undocumented aliens.”
- [SENSITIVE INFORMATION REDACTED] – “There is no policy or local regulation from the County's Board of Supervisors that allows Department of Correction officers to inform ICE that an individual is in custody.”
- [SENSITIVE INFORMATION REDACTED] – “This is a Sheriff's [Department] function.”
- [SENSITIVE INFORMATION REDACTED] – “Our experience has shown that ICE is not going to respond anyway.”
- [SENSITIVE INFORMATION REDACTED] – “Not Applicable.”
- [SENSITIVE INFORMATION REDACTED] – “All arrestees in [SENSITIVE INFORMATION REDACTED] are brought to the [SENSITIVE INFORMATION REDACTED] County Jail; this is when the NCIC [check] is done.”

- [SENSITIVE INFORMATION REDACTED] – “Depends on nature of crime.”
- [SENSITIVE INFORMATION REDACTED] – “Law enforcement officers may contact ICE but jail staff do not. We have an ICE employee that regularly reviews inmate rosters.”
- [SENSITIVE INFORMATION REDACTED] – “No, unless certain conditions are met such as: if individual is reasonably suspected of participating in certain criminal activity, arrested for using a firearm during commission of a crime, involvement in violent crime. Etc.”
- [SENSITIVE INFORMATION REDACTED] – “Deputies working patrol within [SENSITIVE INFORMATION REDACTED] do not generally inform the DHS/ICE that the individual they have in custody may be undocumented. However, on occasion deputies will advise the 287(g) Officers of the undocumented arrestee.”
- [SENSITIVE INFORMATION REDACTED] – “Past history has shown that they will rarely pick the subjects up for transport.”
- [SENSITIVE INFORMATION REDACTED] – “Sheriff’s Deputies do not inform ICE. Detention staff will notify ICE if information obtained from a criminal history rap sheet or information obtained from our local database alerts [this] Department of previous contacts with ICE (releases to ICE or previously deported criminal alien).”

(3) Do the detention facilities in your jurisdiction generally accept detainees from ICE for undocumented criminal aliens in their custody?

- [SENSITIVE INFORMATION REDACTED] – “ICE does not bring people (inmates) to our facility.”
- [SENSITIVE INFORMATION REDACTED] – “The [SENSITIVE INFORMATION REDACTED] has a contract to have ICE inmates.”

(4) Do the detention facilities in your jurisdiction generally alert ICE prior to releasing any undocumented criminal aliens in their custody?

- [SENSITIVE INFORMATION REDACTED] – “[No.] Unless ICE asks us to.”

- [SENSITIVE INFORMATION REDACTED] – “In most cases we are unaware of status.”

APPENDIX XI

Bureau of Justice Assistance Response to the Draft Audit Report

MEMORANDUM TO: Glenn A. Fine
Inspector General
United States Department of Justice

THROUGH: Guy K. Zimmerman
Assistant Inspector General for Audit
Office of the Inspector General
United States Department of Justice

FROM: Regina B. Schofield
Assistant Attorney General

SUBJECT: Response to Office of the Inspector General's Draft Audit Report, *Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States*

This memorandum responds to the Office of the Inspector General's (OIG's) draft audit report entitled "*Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States.*" The draft report does not contain any recommendations. The Office of Justice Programs has reviewed the draft audit report and does not have any comments.

Thank you for the opportunity to review and respond to the draft audit report. If you have any questions regarding this response, please feel free to contact me on (202) 307-5933, or LeToya Johnson, Director, Program Review Office, on (202) 514-0692.

cc: Beth McGarry
Deputy Assistant Attorney General
for Operations and Management

Domingo Herraiz
Director, Bureau of Justice Assistance

LeToya A. Johnson
Director, Program Review Office

Richard P. Theis
DOJ Audit Liaison

EXHIBIT 4

U.S. Department of Justice



*United States Attorney
Southern District of New York*

*86 Chambers Street, 5th Floor
New York, New York 10007*

July 22, 2005

BY FEDERAL EXPRESS AND FACSIMILE

Omar Jadwat, Esq.
ACLU Immigrants' Rights Project
125 Broad Street
New York, NY 10004

Re: National Council of La Raza v. Department of Justice
Dkt. No. 04-5474-cv

Dear Mr. Jadwat:

In accordance with the mandate issued today by the Second Circuit and the district court's Memorandum Opinion dated October 14, 2004, enclosed please find a copy of document 28 on the Department of Justice's Vaughn index. The document has been redacted consistent with the district court's opinion.

Very truly yours,

DAVID N. KELLEY
United States Attorney

By: 

NEIL M. CORWIN
Assistant United States Attorney
Tel.: (212) 637-2707

Encl.



U.S. Department of Justice
Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

April 3, 2002

DISCLOSE

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Non-preemption of the authority of state and local law enforcement officials to arrest aliens for immigration violations



DISCLOSE

We explain in Part I below that the authority to arrest for violation of federal law inheres in the States, subject only to preemption by federal law. In Part II, we reconsider advice rendered by this Office in 1996, shortly before the enactment of section 1252c. We concluded at that time that although the INA does not preclude

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state police from making arrests for violations of its criminal provisions, it does preclude them from arresting aliens on the basis of civil deportability. We now determine that our 1996 advice was mistaken and that it should not provide the background against which section 1252c is assessed. We conclude in Part III that section 1252c does not preempt state arrest authority in any respect.

DISCLOSE

We assume for purposes of this memorandum that any arrests by state police comply with Fourth Amendment restrictions. We further assume that States have conferred on state police the necessary state-law authority to make arrests for violation of the federal immigration laws, but note that the existence and extent of such authority is a question of state law.

Except as otherwise noted, this memorandum does not address, and should not be read as limiting, the ability of state police to exercise federal arrest authority pursuant to federal authorization, including, for example, pursuant to the authority of the Attorney General to enter into agreements with States under which state officers or employees perform immigration officer functions subject to the direction and supervision of the Attorney General. See 8 U.S.C. § 1357(g) (2000).

I.

We first address whether, in the absence of any affirmative authorization under federal law, States have inherent power (subject to federal preemption) to make arrests for violation of federal law. Otherwise stated, may state police, exercising state law authority only, lawfully make arrests for violation of federal law, or do they have power to make such arrests only insofar as they are exercising delegated federal executive power?

We believe that the answer to this question rests ultimately on the States' status as sovereign entities. The Declaration of Independence proclaims that the States are "FREE AND INDEPENDENT STATES . . . and that as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do." (Emphasis added.) The United States Constitution conferred on Congress only the powers "herein granted," U.S. Const. art. I, § 1, and "reserved to the States respectively, or to the people," the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States," *id.* amend. X. Thus, although the Constitution did impose some disabilities on the States, it did not purport to confer, or otherwise be the source of, their affirmative authority. See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 801 (1995) ("The 'plan of the convention' as illuminated by the historical materials, our opinions, and the text of the Tenth Amendment draws a basic distinction between the powers of the newly created Federal Government and the powers retained by the pre-existing sovereign States. As Chief Justice Marshall explained, 'it was neither necessary nor proper to define the powers retained by the States. These powers proceed, not from the people of America,

DISCLOSE

but from the people of the several States; and remain, after the adoption of the constitution, what they were before, except so far as they may be abridged by that instrument.”) (quoting *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193 (1819)); *The Federalist No. 32*, at 200 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) (“[T]he plan of the [Constitutional] Convention aims only at a partial Union or consolidation, the State Governments would clearly retain all the rights of sovereignty which they before had and which were not by that act *exclusively* delegated to the United States”). The original States that ratified the Constitution instead obtained their authority from state constitutions or charters that preceded the federal Constitution. And States that entered the Union after 1789 did so on “equal footing” with the original States and thus enjoy the same sovereign status as the original States. See *Coyle v. Smith*, 221 U.S. 559, 573 (1911) (“when a new State is admitted into the Union, it is so admitted with all of the powers of sovereignty and jurisdiction which pertain to the original States”).

We therefore do not believe that the authority of state police to make arrests for violation of federal law is limited to those instances in which they are exercising delegated federal power. We instead believe that such arrest authority inheres in the States’ status as sovereign entities. In the same way that police in Canada do not exercise delegated Article II power when they arrest someone who has violated U.S. law and turn him over to U.S. authorities, state police, too, need not be exercising such federal power when they make arrests for violation of federal law. Instead, the power to make such arrests inheres in the ability of one sovereign to accommodate the interests of another sovereign.

Case law reflects this same conclusion. No act of Congress has authorized state police to arrest for federal offenses when they act without an arrest warrant. Nonetheless, in *United States v. Di Re*, 332 U.S. 581 (1948), the Supreme Court, in the course of holding that “in absence of an applicable federal statute the law of the state where an arrest without warrant takes place determines its validity,” *id.* at 589, implicitly adopted the position that States have inherent authority to authorize their police to make warrantless arrests for federal criminal violations. See *id.* at 589-90; see also *Miller v. United States*, 357 U.S. 301, 305 (1958) (citing *Di Re* for proposition that “the lawfulness of the arrest without warrant is to be determined by reference to state law”); *Johnson v. United States*, 333 U.S. 10, 15 n.5 (1948) (“State law determines the validity of arrests without warrant”) (citing *Di Re*). Similarly, in *Marsh v. United States*, 29 F.2d 172 (2d Cir. 1928), Judge Learned Hand’s opinion for the Second Circuit construed a New York statute to authorize state police to make warrantless arrests for violation of federal law. *Id.* at 174. In so doing, Judge Hand specifically rejected the argument that the existence of a federal statute governing state arrests *pursuant to warrant* for federal offenses (the predecessor to current section 3041 of title 18) should be understood to preempt state officers from making *warrantless* arrests for federal offenses: “it would be unreasonable to suppose that [the United States] purpose was to deny to itself any help that the states may allow.” *Id.* Judge Hand’s analysis is plainly premised on the understanding that states have inherent authority to make arrests for federal offenses, subject only to federal preemption.

More recent cases in the specific context of federal immigration law embody this same understanding. In *Gonzales v. City of Peoria*, 722 F.2d 468 (9th Cir. 1983), the Ninth Circuit, stating that the "general rule is that local police are not precluded from enforcing federal statutes," *id.* at 474, engaged in a preemption analysis to determine whether Congress had precluded state police enforcement of the criminal provisions of federal immigration law. *See id.* The Tenth Circuit has similarly opined that a "state trooper has general investigatory authority to inquire into possible immigration violations," *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301 n.3 (10th Cir. 1984), and has applied preemption analysis to determine whether a federal statute "limit[s] or displace[s] the preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws," *United States v. Vasquez-Alvarez*, 176 F.3d 1294, 1295 (10th Cir. 1999).

Indeed, the only contrary suggestion of which we are aware is contained in a footnote in a 1989 opinion of this Office. In that footnote, after stating that "it is not clear under current law that local police may enforce non-criminal federal statutes" and that any exercise of authority granted under state law "would necessarily have to be consistent with federal authority," we opined that "unlike the *authorization* for state and local involvement in federal criminal law enforcement, we know of no similar *authorization* in the non-criminal context." Memorandum for Joseph R. Davis, Assistant Director, Federal Bureau of Investigation, from Douglas W. Kniec, Assistant Attorney General, Office of Legal Counsel, *Re: Handling of INS Warrants of Deportation in relation to NCIC Wanted Person File* at 4 & n.11 (Apr. 11, 1989) ("1989 OLC Opinion") (emphasis added): We did not further examine or explain the suggestion arising from our use of the word "authorization." Indeed, the contrast that the 1989 OLC Opinion posits between the criminal and non-criminal contexts is belied by its own citations to the *Di Re* case and 18 U.S.C. § 3041 (1994), *see* 1989 OLC Opinion at 9 n.18: the Supreme Court in *Di Re* did not understand state authority to make arrests for federal offenses to be limited to the arrests pursuant to warrant that were authorized (or at least governed by) the predecessor to 18 U.S.C. § 3041. Moreover, the fact that the 1989 OLC Opinion elsewhere applies preemption analysis to the question of state police authority to arrest for federal offenses, *see* 1989 OLC Opinion at 4-5, indicates that the "authorization" language in this footnote should not be regarded as reflecting a considered view of this Office that state arrest authority is dependent on federal authorization.

Beyond lacking any legal support, the contrary conclusion – i.e., that States, through their police, may exercise only the arrest power that Congress has affirmatively authorized – would dramatically upset settled practices. Under such a conclusion, state police would not have any authority to make warrantless arrests for federal offenses. In Judge Hand's words, we would have to "say that there is no means of securing offenders caught in flagrante, a result which would so impair the execution of the laws that it seems to us incredible it should have been intended." *Marsh*, 29 F.2d at 174. Nor is it clear that Congress could delegate such unsupervised authority to the States. *See Printz v. United States*, 521 U.S. 898, 922-23 (1997) (federal executive power may not be delegated to individuals not subject to "meaningful Presidential control").

DISCLOSE ←

II.

In 1996 this Office opined that state police lack the authority to arrest aliens on the basis of civil deportability. See Memorandum for Alan D. Bersin, United States Attorney, Southern District of California, from Teresa Wynn Roseborough, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Assistance by California Police in Apprehending Illegal Aliens 6-7* (Feb. 5, 1996) ("1996 OLC Opinion"). Section 1252c was enacted two months after we rendered this advice. Because section 1252c of title 8 must be understood against the backdrop of existing law, we consider it appropriate to re-examine whether the understanding of the law expressed in the 1996 OLC Opinion was accurate. For the reasons explained below, we determine that our 1996 advice was mistaken and that we should instead have concluded that federal statutory law posed no obstacle to the authority of state police to arrest aliens on the basis of civil deportability.

A.

The genesis of this Office's 1996 advice lies in the 1983 ruling in *Gonzales*, where the Ninth Circuit held that local police officers have the authority to arrest an alien for a violation of the criminal provisions of the INA if such an arrest is authorized under state law. In that case, a group of persons of Mexican descent challenged a policy of the City of Peoria, Arizona, that instructed local police to arrest and detain aliens suspected of illegally entering the United States in violation of the criminal prohibitions of section 1325 of title 8. See 722 F.2d at 472-73. Observing that local police generally are not precluded from enforcing federal statutes and that concurrent enforcement authority is authorized where local enforcement would not impair federal regulatory interests, see *id.* at 474 (citing, inter alia, *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963)), the court engaged in a preemption analysis to determine whether Congress had precluded local enforcement of federal immigration law. See *id.* In addressing whether the city possessed "the power to enforce the criminal provisions of federal immigration laws," see *id.*, the Ninth Circuit expressly "assume[d] that the civil provisions of the [INA] . . . constitute . . . a pervasive regulatory scheme" that evidenced a congressional intent to preempt local enforcement, *id.* at 474-75. By contrast, the Ninth Circuit found that the criminal provisions of the INA were "few in number and relatively simple in their terms," *id.* at 475, and were "not, and could not be, supported by a complex administrative structure," *id.* Therefore, the court concluded, the federal government had not preempted local enforcement of the criminal provisions of the INA. See *id.*

The Ninth Circuit then turned to whether state law granted the local police the affirmative authority to make arrests under the criminal provisions of the INA. After ascertaining that Arizona law permitted such arrests, the court "emphasize[d] . . . that this [state law] authorization is limited to criminal violations," and noted that local police had failed to distinguish between civil and criminal violations by using the term "illegal alien" to refer both to an alien who had illegally entered the country (a criminal violation) and an alien who was "illegally present" in the United States (a civil violation). *Id.* at 476.

DISCLOSE

This Office first addressed *Gonzales* in the 1989 OLC Opinion, in which we advised the Federal Bureau of Investigation ("FBI") that the existence of an outstanding warrant of deportation for an alien provided an insufficient basis for entering the alien's name into its National Crime Information Center ("NCIC") Wanted Person File. See 1989 OLC Opinion at 1. FBI policy provided that only persons who could be arrested by any law enforcement officer with the power to arrest could be included in the NCIC Wanted Person File. Discussing *Gonzales* at length, we concluded that *Gonzales* "makes clear that local police may enforce criminal violations of the [INA]." 1989 OLC Opinion at 5. By contrast, we opined that "it is not clear under current law that local police may enforce non-criminal federal statutes." *Id.* at 4 & n.11. Citing *Gonzales*, we stated that "the pervasively federal nature of immigration control may preempt a state role in the enforcement of civil immigration matters." *Id.* at 4 n.11. Because the issuance of a warrant of deportation did not necessarily indicate that a criminal law had been violated, we concluded that the mere existence of a warrant of deportation for an alien did not, under FBI policy, justify inclusion of the alien's name in the NCIC Wanted Person File.

B.

The 1996 OLC Opinion directly addressed the circumstances in which state police could assist the INS in enforcing the federal immigration laws. In that opinion, we relied on *Gonzales* for the proposition that federal law does not preclude state police from enforcing the criminal provisions of the INA. See *id.* at 4. We concluded, by contrast, that state police "lack recognized legal authority to stop and detain an alien solely on suspicion of civil deportability." *Id.* at 7 (emphasis omitted). Our conclusion rested on five authorities. First, we stated that in *Gonzales* "the Ninth Circuit held that the authority of state officials to enforce the provisions of the INA 'is limited to criminal violations,'" *id.* at 6. Second, we cited a California appellate court case, *Gates v. Superior Court*, 193 Cal. App. 3d 205 (1987), that we understood to support the same proposition. Third, we relied on the 1989 OLC Opinion. Fourth, we stated that 8 U.S.C. § 1357(a)(2) "imposes substantial restrictions even upon the authority of federal officers to make warrantless arrests for purposes of civil deportation." 1996 OLC Opinion at 7. Fifth, we cited a Ninth Circuit case, *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216 (9th Cir. 1995), that applied 8 U.S.C. § 1357(a)(2). See 1996 OLC Opinion at 6-7.

We construe our statement in the 1996 OLC Opinion that state police "lack recognized legal authority to stop and detain an alien solely on suspicion of civil deportability" as an affirmative conclusion that state police lack the authority to arrest aliens on the basis of civil deportability. *Id.* at 7 (emphasis added and emphasis omitted). Any possibility that we may have crafted the peculiar phrase "lack recognized legal authority" in order to remain agnostic on the question whether state police possess that authority is foreclosed by our follow-on opinion a mere two weeks later, in which we read the 1996 OLC Opinion to establish "the disability of state police to enforce the civil, as opposed to criminal, provisions of the federal immigration laws." Memorandum for Alan D. Bersin, United States Attorney, Southern District of California, from

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Richard L. Shiffrit, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: State Assistance in Apprehending Illegal Aliens – Part II* at 1 (Feb. 21, 1996).

C.

On re-examination, we believe that the authorities we cited in the 1996 OLC Opinion provide no support for our conclusion that state police lack the authority to arrest aliens solely on the basis of civil deportability. First, our assertion that “the Ninth Circuit [in *Gonzales*] held that the authority of state officials to enforce the provisions of the INA ‘is limited to criminal violations,’” *id.* at 6, confuses the court’s *holding* on the state-law question of what authority the State of Arizona has conferred on its police officers with the court’s mere *assumption in dictum* that the civil provisions of the INA preempt state enforcement. Second, the language that the 1996 OLC Opinion cites from the state appellate court ruling in *Gates* is that court’s summary of the trial court’s conclusion of law. The *Gates* court itself did not address a contested question, as “[n]either side disputes the exclusive authority of the federal government to enforce the civil provisions of the INA.” *Gates*, 193 Cal. App. 3d at 214-15. Third, the 1989 OLC Opinion, notwithstanding its apparent confusion over the need for affirmative federal authorization for state arrests for federal offenses, goes no further than to conclude that “it is *not clear* under current law that local police may enforce non-criminal federal statutes,” 1989 OLC Opinion at 4 (emphasis added) – a conclusion that falls well short of the 1996 OLC Opinion’s conclusion that it is *clear* that local police may *not* enforce non-criminal federal statutes. Finally, the restrictions imposed on INS employees by section 1357(a)(2) of title 8 (and recited by the Ninth Circuit in *Mountain High Knitting*) apply equally to warrantless arrests for criminal violations as to warrantless arrests for civil violations. We therefore fail to see how section 1357(a)(2) bears in any way on the question whether state police may arrest aliens for civil deportability.

We note further that the 1996 OLC Opinion failed to take account of the Tenth Circuit’s contrary conclusion in its 1984 ruling in *Salinas-Calderon*. There, a defendant who had been arrested for the criminal violation of transporting aliens claimed, *inter alia*, that a state trooper did not have the authority to detain the transported passengers while he asked them about their immigration status. In rejecting this claim, the Tenth Circuit held that a “state trooper has general investigatory authority to inquire into possible immigration violations.” 728 F.2d at 1301 n.3. The court did not differentiate between criminal and civil violations. Indeed, because there is no indication in the opinion that there was any reason to believe that the alien passengers had committed any criminal violations, the court’s statement appears to apply fully to civil as well as criminal violations.

More fundamentally, we believe that the 1996 OLC Opinion failed to appreciate the extremely limited and unusual nature of the preemption question posed with respect to state arrests for violation of federal law. Unlike the typical preemption scenario, this question does *not* involve an attempt by States to enact *state* laws, or to promulgate regulations pursuant to state laws, that arguably conflict with federal law or intrude into a field that is reserved to Congress or that federal law has occupied. What this question instead presents is whether States

can assist the federal government by arresting aliens who have violated *federal* law and by turning them over to federal authorities. In this context, we believe that the question posed in dictum by the Ninth Circuit in *Gonzales* – whether the civil provisions of the INA constitute a pervasive regulatory scheme – was entirely misplaced. We instead believe that the principle governing our construction of federal law in this context should have been that voiced by Judge Learned Hand in *Marsh*: that “it would be unreasonable to suppose that [the United States] purpose was to deny to itself any help that the states may allow.” 29 F.2d at 174. Consistent with this principle, we believe that the 1996 OLC Opinion should have applied a strong presumption *against* preemption of state arrest authority. Had it done so, it should have concluded that federal law did not preempt state police from arresting aliens on the basis of civil deportability.

We therefore withdraw the 1996 OLC Opinion’s advice that federal law precludes state police from arresting aliens on the basis of civil deportability.

III.

We now address whether section 1252c preempts state arrest authority. We first present the legislative history of section 1252c and the Tenth Circuit’s interpretation of section 1252c in *Vasquez-Alvarez*. We then explain why we agree with the Tenth Circuit that section 1252c does not in any respect preempt the inherent authority of the States to make arrests for violations of the immigration laws.

A.

On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (“AEDPA”). Section 439 of the AEDPA, entitled “Authorizing state and local law enforcement officials to arrest and detain certain illegal aliens,” *id.* Title IV, § 439(a), 110 Stat. at 1276, is codified as section 1252c of title 8.

Section 1252c was proposed by Representative Doolittle as a floor amendment to H.R. 2703, 104th Cong. (1996), an earlier version of the AEDPA. See 142 Cong. Rec. 4619 (Mar. 13, 1996) (comments of Rep. Doolittle). The only legislative history of the provision is the floor debate that accompanied Representative Doolittle’s introduction of the amendment. Representative Doolittle explained that his amendment was intended to address the problem of aliens who had been deported following criminal convictions but who return to the United States and commit more crimes:

In California alone, the INS deports thousands of illegal immigrants every year who have committed felonies in our State, and every year thousands of those same criminal aliens return back again. In fact, the California Department of Justice recently reported that 98 percent of all immigrants who are deported for

committing felonies in California will eventually return to the State, and of those, 40 percent will commit crimes again.

Unfortunately, this epidemic is not unique to urban areas, but has started to infest rural America as well. Just a few years ago, in the small rural community of Lincoln, [California,] which is located in my district, an illegal alien was found guilty of a driveby shooting, which was the first driveby shooting ever in that area. After spending a short time in prison, the criminal alien was deported out of the country by the INS. Now, despite his deportation, he returned to the area after only 1 week and, without hesitation, committed another crime.

With such a threat to our public safety posed by criminal aliens, one would think that we would give law enforcement all the tools it needs to remove these criminals from our streets, but unfortunately just the opposite is true. In fact, the Federal Government has tied the hands of our State and local law enforcement officials by actually prohibiting them from doing their job of protecting public safety. I was dismayed to learn that the current Federal law prohibits State and local law enforcement officials from arresting and detaining criminal aliens whom they encountered through their routine duties.

Mr. Chairman, you will be interested to know that shortly before my district was victimized for the second time by this criminal alien I spoke of earlier, an area police officer actually stopped him for a traffic violation. With my amendment the police officer would have been able to put him in jail for being back in the country illegally until the INS could take him into Federal custody. Without it, the officer had to release him, and our area became the victim of yet another crime.

[M]y amendment is very narrow and only covers situations in which the State or local officer encounters criminal aliens within his routine duties. In addition, the subject can only be held if the State or local police have obtained appropriate confirmation from the INS of the illegal status of the individual. Only confirmed criminal aliens are at risk of being taken into custody.

142 Cong. Rec. 4619. The Senate adopted the new provision without discussion. See 142 Cong. Rec. 7433-67 (Conference Report on S. 735, 104th Cong. (1996)).

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B.

The only case to address whether section 1252c preempts state arrest authority is the Tenth Circuit's 1999 decision in *Vasquez-Alvarez*.¹ In that case, Oklahoma police arrested the defendant because he was an "illegal alien." *Vasquez-Alvarez*, 176 F.3d at 1295. It was later discovered that the alien had illegally reentered the country after deportation, in violation of section 1326 of title 8, a criminal violation. When the government indicted the defendant, he moved to suppress his post-arrest statements, fingerprints, and identity, arguing that he was arrested in violation of section 1252c. The defendant contended that state and local police officers could arrest an illegal alien only in accordance with the restrictions set forth in section 1252c and that his arrest did not comport with that provision and was therefore unauthorized.

The Tenth Circuit concluded, however, that section 1252c "does not limit or displace the preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws. Instead, section 1252c merely creates an additional vehicle for the enforcement of federal immigration law." *Vasquez-Alvarez*, 176 F.3d at 1295. Citing its earlier decision in *Salinas-Calderon*, the court observed that it had "held that state law-enforcement officers have the general authority to investigate and make arrests for violations of federal immigration laws." *Vasquez-Alvarez*, 176 F.3d at 1296. The court noted that in addition to this general background authority, Oklahoma law permitted local law enforcement officers to make arrests for violations of federal law.

The Tenth Circuit found no congressional intent in the text of section 1252c to preempt existing state authority to enforce federal immigration laws. *See id.* at 1297-98. The court further opined that the legislative history of section 1252c supported its conclusion. Citing the comments of Representative Doolittle reproduced *supra*, the court stated that "the purpose of § 1252c was to displace a perceived federal limitation on the ability of state and local officers to arrest aliens in the United States in violation of Federal immigration laws." *Id.* at 1298-99. The court noted that Representative Doolittle, the defendant, the government, and the court had not "identif[ied] any pre-§ 1252c limitations on the powers of state and local officers to enforce federal law." *Id.* at 1299 n.4. The court concluded that the "legislative history does not contain the slightest indication that Congress intended to displace any preexisting enforcement powers already in the hands of state and local officers." *Id.* at 1299.

The court also relied on the fact that after enacting section 1252c, "Congress passed a series of provisions designed to encourage cooperation between the federal government and the states in the enforcement of federal immigration laws." *Id.* at 1300 (citing 8 U.S.C. §§ 1103(a)(9), (c), 1357(g) (2000)). The court noted that section 1357(g)(10)(B) states that no formal agreement is necessary for state and local officers "to cooperate with the Attorney General

¹ The only other published opinion that cites section 1252c is *United States v. Villa-Velazquez*, 282 F.3d 553, 555-56 (8th Cir. 2002), in which the Eighth Circuit ruled that a local officer had authority to arrest an alien for a criminal violation.

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in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." 8 U.S.C. § 1357(g)(10)(B). The court concluded that these provisions "evinced a clear invitation from Congress for state and local agencies to participate in the process of enforcing federal immigration laws." *Vasquez-Alvarez*, 176 F.3d at 1300. The court acknowledged that "it might be argued that [the court's] interpretation of § 1252c leaves the provision with no practical effect," *id.*, but the court said that this reason alone was insufficient grounds for the court to find that the provision preempted state law. *See id.*

C.

We agree with the Tenth Circuit that section 1252c has no preemptive effect. For the reasons explained above, we begin with a strong presumption against construing a federal statute "to deny to [the INS] any help that the states may allow." *Marsh*, 29 F.2d at 174. Nothing in the text of section 1252c undercuts this presumption. On the contrary, section 1252c, by its terms, does not purport to override any pre-existing state arrest authority. Rather, it accepts state arrest authority as a given by providing federal "authoriz[ation]" only "to the extent permitted by relevant State and local law." 8 U.S.C. § 1252c(a). And it purports only to override any federal law ("Notwithstanding any other provision of law") that would deprive state police of the ability "to arrest and detain an individual who—(1) is an alien illegally present in the United States; and (2) has previously been convicted of a felony in the United States and deported or left the United States after such conviction." *Id.* Thus, in context, the federal *authorization* that section 1252c provides ("State and local law enforcement officials *are authorized* to arrest and detain") is expressly redundant of, and dependent on, existing state authority. *Id.* (emphasis added). It is true that section 1252c proceeds to specify two conditions that state police operating pursuant to it must satisfy—namely, obtaining prior confirmation from the INS of the individual's immigration status and transferring such individual promptly into federal custody. But these two conditions apply only to the federal authorization under section 1252c; they do not, by their terms, apply to an exercise of state arrest authority.

It might be objected that our reading of section 1252c would appear to render it meaningless. We think not, for at least two reasons. First, section 1252c provides a limited safeguard against any other provision of federal law (current or future) being construed or applied to preempt state arrest authority for immigration violations that involve illegal presence. If, for example, a court were otherwise inclined (per the Ninth Circuit's assumption in dicta in *Gonzales*) to misconstrue the provisions of the INA as preempting state authority to arrest for civil deportability, section 1252c would operate to ensure that state police at least retained the authority to make such arrests of aliens who had previously been convicted of a felony and had been deported or had left the United States after such conviction. Second, there could well be reasons why state police would choose to operate pursuant to section 1252c with respect to such aliens (and might even operate as though section 1252c applied with respect to non-felon aliens), rather than pursuant to their unrestricted state-law authority. For example, state police might believe that doing so would foster a mutually beneficial relationship of trust and cooperation with the INS and thereby deter the INS from exercising its regulatory authority to preempt state arrest

authority.²

We further note that if section 1252c were somehow to be read to preempt state arrest authority, it would appear that the preemptive effect would have to extend to all state arrests for violations involving illegal presence in the United States. In other words, for all such violations, state police would be able to arrest only those aliens who were felons and who had left the United States after being convicted. Because such aliens are not readily identifiable visually, this would mean "that there is no means of securing offenders caught in flagrante" – whether they were felons or not – "a result which would so impair the execution of the laws that it seems to us incredible it should have been intended." *Marsh*, 29 F.2d at 174. The fact that nothing in the legislative history of section 1252c remotely suggests such an intent confirms our rejection of such a reading.

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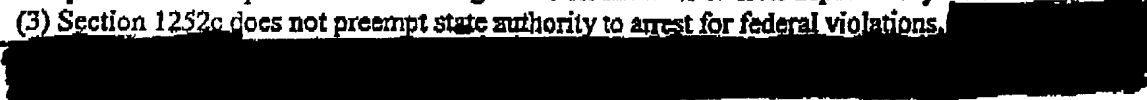
² Insofar as state police choose to operate pursuant to section 1252c, we believe that section 1252c does not constitute an unconstitutional delegation of federal executive authority to state police. Under section 1252c, the role played by state police is limited to arrest and detention and is clearly under the direction of federal authorities: among other things, state and local officers may arrest an individual only after "obtain[ing] appropriate confirmation from the [INS] of the status of such individual and only for such period of time as may be required for the [INS] to take the individual into Federal custody." 8 U.S.C. § 1252c. We therefore believe that state police acting pursuant to section 1252c are subject to "meaningful Presidential control." *Printz v. United States*, 521 U.S. 898, 922-23 (1997).

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V.

We summarize our conclusions: (1) States have inherent power, subject to federal preemption, to make arrests for violation of federal law. (2) Because it is ordinarily unreasonable to assume that Congress intended to deprive the federal government of whatever assistance States may provide in identifying and detaining those who have violated federal law, federal statutes should be presumed not to preempt this arrest authority. This Office's 1996 advice that federal law precludes state police from arresting aliens on the basis of civil deportability was mistaken. (3) Section 1252c does not preempt state authority to arrest for federal violations.



DISCLOSE

Jay S. Bybee
by M. Edward Walker, III
 Jay S. Bybee
 Assistant Attorney General

DISCLOSE

EXHIBIT 5

THE UNITED STATES OF AMERICA

No. 00000000

CERTIFICATE OF



NATURALIZATION

Personal description of holder as of date of naturalization

U.S. Registration

We the People



PASSPORT



United States of America



TRAVEL DOCUMENT



Guide to Selected U.S. Travel and Identity Documents

Prepared by the Forensic Document Laboratory



U.S. Immigration and Customs Enforcement

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This guide is intended to assist those tasked with examining travel and employment authorization documents. It contains color photographs of the most commonly used documents, but it is not comprehensive. There are earlier valid revisions of some illustrated documents and other less common documents that are not illustrated here.

Because the attachments are reproductions, the exact size and color may deviate from the original. Do not make identifications based on size and/or color alone.

For any questions regarding the authenticity of the documents shown in this guide, please contact the nearest office of U.S. Immigration and Customs Enforcement (ICE).

General Information On Alien Status

In accordance with the 14th amendment to the U.S. Constitution, any person born in and subject to the jurisdiction of the United States is a citizen of the United States at birth. U.S. citizenship may also be acquired through **DERIVATION** from a U.S. citizen parent when children are born abroad or through **NATURALIZATION** after meeting the necessary residency requirements. All persons not citizens or nationals of the U.S. are aliens, who are generally classified as **PERMANENT RESIDENTS** (immigrants), **NON-IMMIGRANTS** or **UNDOCUMENTED ALIENS**.

PERMANENT RESIDENT ALIENS enjoy almost all the same rights as U.S. citizens. This status may be obtained through a number of different procedures and, unless taken away administratively, is granted for life. Aliens with permanent residency must carry evidence of their status.

NON-IMMIGRANT ALIENS are admitted to the U.S. for a temporary period of time and for a specific purpose, most often as tourists. There are different categories of non-immigrants and they are identified through letter/number symbols (such as "B-2"). Non-immigrants are also required to present evidence of their lawful status in the U.S. to officers of ICE. This will usually consist of a passport containing a visa and an Arrival/Departure Record (Form I-94 or CBP I-94A).

UNDOCUMENTED ALIENS are those who may have crossed the border illegally and/or been smuggled into the interior of the U.S. or those who have violated their non-immigrant status by accepting unauthorized employment, remaining longer than permitted or committing some other violation. Some of these aliens purchase counterfeit documents or assume another person's identity by using fraudulently obtained genuine documents.



The Emergency Passport booklet looks similar to the E-Passport, but it does not contain a chip and is only issued for a limited period of validity.



Older versions of the U.S. passport remain valid until the expiration dates printed in the passport booklet.

The current version of the CERTIFICATE OF NATURALIZATION, now issued by U.S. Citizenship and Immigration Services (USCIS), is similar to the previous version issued by the Immigration and Naturalization Service. It contains a gold embossed Great Seal of the United States in the top center portion. The watermark design, visible when the document is held up to a strong light, contains the emblem of the Department of Homeland Security (DHS).



DHS watermark

Older versions of the certificate of naturalization continue to serve as valid evidence of U.S. citizenship. The last version issued by the INS was similar to the current DHS certificate. It too bore a gold embossed Great Seal of the United States in the top center portion. The watermark design contained the the Department of Justice seal and the letters “USA.”



Department of Justice watermark

Earlier versions of the certificate had gray or beige background designs and did not contain the embossed seal. Original certificates of naturalization were printed on watermarked paper.

Forms I-151 and I-551 are issued to aliens who have been granted permanent resident status in the United States. They retain this status while in this country. The bearer is required to have this card in his/her possession at all times.

The first **ALIEN REGISTRATION RECEIPT CARD**, Form I-151, was introduced in 1946. Through 18 years of various revisions, it remained primarily green in color, causing it to become known as a “Green Card.” This term is still used commonly, although the cards have not been green since 1959. The I-151 cards contained no expiration date and were only required to be renewed if the recipient was under the age of 14 at the time of issuance or if the card was lost or stolen. As of March 20, 1996, the Form I-151 is no longer acceptable as evidence of permanent residence.



Form I-151

The **RESIDENT ALIEN CARD**, Form I-551, was introduced in January 1977 and phased in over a period of time. In addition to the photograph, the I-551 contains the bearer's signature and fingerprint. As with the older I-151 cards, this version I-551 generally does not contain an expiration date.



Form I-551 (1977)

This **EMPLOYMENT AUTHORIZATION DOCUMENT**, Form I-688B, was introduced in November 1989 and issued to aliens who were granted permission to be employed in the U.S. for a specific period of time. The card was produced with a Polaroid process and had interlocking gold lines across the front.



Form I-688B

In January 1997, INS began issuing a new **EMPLOYMENT AUTHORIZATION CARD**, Form I-766. The front of the card bore the photograph, fingerprint and signature of the bearer. The reverse contained a standard bar code, magnetic strip and a two-dimensional bar code which contains unique card, biographic and biometric data.

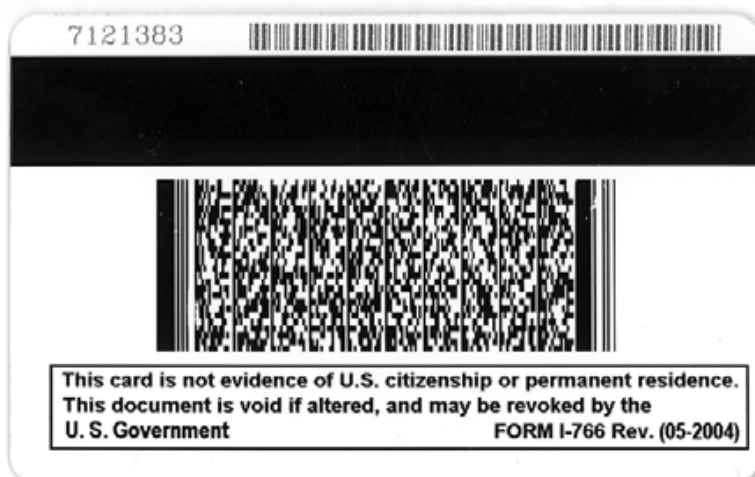


Form I-766 (1997)

The EMPLOYMENT AUTHORIZATION CARD, Form I-766 was updated in May 2004. It incorporated the DHS seal but is otherwise similar to the previous version, with a photograph, fingerprint and signature of the bearer beneath a holograph film. The reverse side displays a standard bar code, magnetic strip and a two-dimensional bar code containing encoded data. The card was revised again in August 2004, using a full frontal face photograph instead of the three quarter face position. The reverse continues to bear the revision date of 05-2004.



Form I-766 (2004)



Reverse

There are four types of NON-IMMIGRANT VISAS. The non-machine readable visa is printed with a multicolored ribbon while the machine readable visas are stickers which are applied to the passport page. Visas are used for entry purposes and must be valid on the date of entry into the U.S. It is not necessary for the visa to be valid after entry.



When an alien has been granted admission into the U.S. by a U.S. Customs and Border Protection (CBP) Officer at an authorized Port of Entry, he/she will be issued an **ARRIVAL/DEPARTURE RECORD**, Form I-94, the bottom portion of which is stapled to a page in the alien's passport. This document shows how long the bearer may remain in the U.S. and the terms of admission. The I-94, not the non-immigrant visa, serves as evidence of legal status.

Departure Number: 626633123 12

OMB No. 1651-0111

I-94 Departure Record

DEPARTMENT OF HOMELAND SECURITY U.S. CUSTOMS AND BORDER PROTECTION
ADMITTED
ATL
JUN 25 2006
 Civ. Unit: L-1
 April 23, 2009

14 Family Name: **SAMPLE**

15 First (Given) Name: **JANE**

16 Birth Date (Day/Mo/Yr): **23 03 68**

17 Country of Citizenship: **NEW ZEALAND**

See Other Side

CBP Form I-94 (1004)

STAPLE HERE

Form I-94

Nationals of some countries can enter the United States without a visa under the Visa Waiver Program. They are given a green I-94W and permitted to remain in the United States up to 90 days.

Departure Number: 695349308 12

OMB No. 1651-0113

DEPARTMENT OF HOMELAND SECURITY
 U.S. Customs and Border Protection
VISA WAIVER

DEPARTMENT OF HOMELAND SECURITY U.S. CUSTOMS AND BORDER PROTECTION
ADMITTED
ATL
JUN 25 2006
 Civ. Unit: WT
 Sept. 24, 2006

14 Family Name: **SAMPLE**

15 First (Given) Name: **JOHN**

16 Birth Date (Day/Mo/Yr): **19 07 72**

17 Country of Citizenship: **UNITED KINGDOM**

See Other Side

CBP Form I-94W (1004)

Staple Here

Form I-94W

Some immigrants may have an impression of an ADIT stamp as proof of permanent residence without an immigrant visa. This stamp serves as evidence of immigrant status until the bearer receives a Permanent Resident Card.



The current USCIS stamp is shown above. ADIT stamps in other formats may also be encountered. Similar stamp impressions are used to demonstrate refugee or asylum status.

Although **SOCIAL SECURITY CARDS** are not immigration documents, they are mentioned here because they are often used as identification and to establish employment authorization.

Social Security cards have been issued since 1936 and have been revised more than 20 times. Originally, the Social Security card contained the seal of the Department of Health, Education, and Welfare. In May 1980, the seal changed to that of the Department of Health and Human Services. In April 1995 the seal was changed again to that of the Social Security Administration. Some counterfeiters have failed to notice these changes.

In October 1983, security features were added to the card. All Social Security cards issued since October 1983 have been printed with raised (intaglio) printing and the signature line consists of microline printing of the words “**SOCIAL SECURITY ADMINISTRATION**” in a repeating pattern.



This card belongs to the Social Security Administration and you must return it if you look for it.

If you find a card that isn't yours, please return it to:
Social Security Administration
P.O. Box 33008, Baltimore, MD 21290-3008

For any other Social Security business/information, contact your local Social Security office. If you write to the above address for any business other than returning a found card you will not receive a response.

Social Security Administration
Form SSA-3000 (11-2006)

F 15532006

To order copies of this document,
“Form M-396; Guide to Selected U.S. Travel and Identity Documents,”
please complete the appropriate form and mail or fax to:

Customs and Border Protection

National Distribution Center

P.O. Box 68912

Indianapolis, IN 46268

Fax: 317-290-3046

For government requests, please use **Form CBP-3039**.

All other requests should use **Form CBP-262**.

Links for these forms may be found in the

Forensic Document Laboratory fact sheet

posted on ICE's Web site:

www.ice.gov



U.S. Immigration
and Customs
Enforcement

Form M-396
4/2008

EXHIBIT 6

U.S. Department of Homeland Security



U.S. Immigration
and Customs
Enforcement

January 21, 2005

Contact: Office of Public Affairs
(202) 514-2648

Fact Sheet

ICE Law Enforcement Support Center (LESC)

The Law Enforcement Support Center (LESC) is a national enforcement operations facility administered by U.S. Immigration and Customs Enforcement (ICE). It is the single national point of contact that provides timely immigration status and identity information to local, state, and federal law enforcement agencies on aliens suspected, arrested, or convicted of criminal activity.

Located in Williston, Vermont, the LESL operates 24 hours a day, 365 days a year, to supply real-time assistance to law enforcement officers who are investigating or have arrested foreign-born individuals involved in criminal activity. The primary users of the LESL are state and local law enforcement officers seeking information about aliens encountered in the ordinary course of their daily enforcement activities. The LESL receives queries from federal, state, and local correctional and court systems seeking information about individuals in custody or encountered elsewhere in a criminal justice system. Law Enforcement officers have immediate access to alien records entered in the NCIC (National Crime Information Center) and immigration information from every alien file maintained by the Department of Homeland Security – approximately 93 million records – by accessing the IAQ (Immigration Alien Query) database through the NCIC.

Some accomplishments in fiscal year 2004 include:

- From FY 2003 to FY 2004, the LESL saw a 100 percent increase in the number of new records entered in the NCIC. In FY 2004, 51,754 records were entered compared to FY 2003, where 24,599 records were entered.
- The LESL experienced a 100 percent increase in the number of deported felons and absconders identified and located by ICE through the NCIC database from FY 2003 to FY 2004. In FY 2003, 3,310 individuals were identified and located; 6,122 criminal and wanted aliens were identified and located in FY 2004. ICE detainees were lodged by the LESL against all positively confirmed NCIC hits. The LESL saw an unprecedented and improved response time to calls; the LESL responds within 10 minutes to all requests for hit confirmations on NCIC records it maintains.

- In FY 2004, the LESC showed a 200 percent increase in the number of absconders identified and located through NCIC, totaling more than 1,800 as compared to FY 2003 where 488 absconders were identified and located.
- The LESC's number of queries processed for the Secret Service in connection with screening potential White House visitors increased by 40 percent in FY 2004. The LESC assisted in the screening of 43,400 potential visitors in FY 2004 compared to 27,977 in FY 2003.
- The LESC has fielded more calls than ever before and continues to thrive as the centerpiece of ICE's information sharing efforts. In FY 2004, the ICE tip-line (1-866-DHS-2ICE) was fully integrated into ICE and LESC operations. The LESC answered 27,671 calls to the tip-line in FY 2004. The tip-line receives an average of 175 phone calls a day on a broad range of topics. Information is analyzed and leads are immediately transmitted to the local ICE office with jurisdiction over the area from which the call was initiated.

In addition to providing immigration and identity information on suspected criminal aliens, the LESC offers other vital services, including:

- **National Crime Information Center (NCIC)** – The LESC administers and controls immigration-related cases in this nationwide law enforcement consortium and criminal databases for ICE.
- **Investigative Services** – The LESC provides support to a host of ongoing multi-agency investigative initiatives. Working in concert with ICE field units, task forces, and other local, state, and federal investigators, the LESC gathers, analyzes, and responds to thousands of query requests.
- **Special Response Unit (SRU)** – The LESC's Special Response Unit is the central point of contact for a number of special information requests. For example, the LESC conducts "Brady Checks" for the FBI's National Instant Criminal Background Check System (NICS) program, screening all foreign-born applicants for firearm permits for immigration status before being authorized to purchase or possess a weapon. The SRU also handles queries related to national security employment issues (e.g. nuclear industry employment and commercial drivers with hazardous materials clearance).
- **Law Enforcement Training** – To help officers in the field make better use of information the LESC provides, the center offers a training program that provides instruction on how to access LESC information and on ICE's role and responsibilities. Training has most recently been provided to federal, state, and local officers in Alabama, Arkansas, Arizona, California, Florida, Georgia, Idaho, Maryland, Minnesota, Mississippi, Nevada, New York, Texas, and Washington, D.C.

EXHIBIT 7



U.S. Customs and Border Protection

July 08, 2010

Contact: Tucson Sector

Communications Division

520-748-3210

Media Informational

TUCSON, Ariz. — Following is a rundown of activities that occurred over the last week in the Tucson Sector. This is only a thumbnail of each incident and an invitation to contact the Tucson Sector Communications Division for more information.

Significant Arrests

(NGL) Agents assigned to the Nogales Station arrested an illegal alien last Friday who admitted to gang affiliation with the Clicka Pesada. Record checks through the Integrated Automated Fingerprint Identification System (IAFIS) showed that he had been arrested for burglary, theft, and criminal damage. The man was held for prosecution.

(AJO) Ajo Station agents arrested an illegal alien Friday with tattoos showing his affiliation with the Brown Pride gang. Agents also identified the man as a criminal alien after viewing record checks through IAFIS. His arrests included inflicting injury on his spouse, battery, terrorizing, sexual intercourse with a minor, and transporting a controlled substance. The man was held for further processing.

(NGL) Nogales Station agents arrested an illegal alien Saturday who admitted to being a member of the Sureno gang. The man was held for further processing.

(DGL) Douglas Station agents arrested an illegal alien Saturday whose criminal history was discovered by agents using IAFIS. His arrests include rape and sexual abuse. The man was held for prosecution.

(AJO) Agents assigned to the Ajo Station arrested an illegal alien Saturday. IAFIS revealed that he had been convicted for aggravated rape. The man was held for prosecution.

(DGL) Agents assigned to the Douglas Station arrested an illegal alien Saturday. After enrollment into IAFIS, agents discovered that he had been arrested for first degree murder, kidnapping, and false imprisonment. The man was held for prosecution.

(DGL) Agents assigned to the Douglas Station arrested an illegal alien Sunday. Agents identified the man as a criminal alien after records from IAFIS showed he had been arrested for lewd and lascivious acts with a child under 14 and attempted rape by force. The man was held for prosecution.

(NCO) Agents assigned to the Naco Station arrested two illegal aliens Monday who admitted to affiliation with the Crazy Devils gang. The men were held for further processing.

- 2 -

(AJO) Agents assigned to the Ajo Station arrested an illegal alien Tuesday who agents identified as a member of the MS-13 gang. The man was held for further processing.

(DGL) Douglas Station agents arrested an illegal alien Tuesday who admitted to membership in the Best Known Surenos gang. Record checks through IAFIS also revealed that he had been convicted of identification theft. The man was held for further processing.

(TUS) Agents from the Tucson Station arrested an illegal alien Wednesday. Agents discovered that the man had been convicted for sex with a minor after reviewing records from IAFIS. The subject was held for prosecution.

(TUS) Agents from the Tucson Station arrested an illegal alien Wednesday. Record checks through IAFIS showed that the man had prior arrests for sexual conduct with a minor, burglary, theft, and possession of marijuana. The man was held for prosecution.

Criminal aliens, including gang members and sex offenders, are among the dangerous individuals who attempt to enter the United States illegally. Technology, such as IAFIS, helps the Border Patrol quickly identify criminals and bring them to an appropriate law enforcement resolution.

Rescues

(AJO) Border Patrol agents assigned to the Border Patrol Search, Trauma, and Rescue (BORSTAR) Unit rescued an illegal alien Friday. BORSTAR agents provided treatment for dehydration.

(CAG) Agents assigned to the Casa Grande Station rescued nine illegal aliens Saturday. All of the individuals were transported to a local hospital for treatment.

(WCX) Agents assigned to the Willcox Station rescued two illegal aliens Sunday. One woman was severely dehydrated, vomiting, and slipping in and out of consciousness. The woman was transported to a local hospital for treatment.

(CAG) Border Patrol agents assigned to the BORSTAR Unit rescued seven illegal aliens Tuesday who were lost and without water. Several were treated for dehydration. After all were deemed in good health, the group was transported for processing.

(CAG) Casa Grande Station agents rescued an illegal alien Wednesday suffering from dehydration and kidney failure. The man was transported to a local hospital for treatment.

(AJO) Agents assigned to the Ajo Station responded to an illegal alien call for help Wednesday. The agents rescued five individuals, all of whom were lost. After the aliens were determined to be in good health, they were transported for processing.

(CAG) Agents from the Casa Grande Station rescued an illegal alien Wednesday. A Border Patrol agent trained as an Emergency Medical Technician (EMT) treated the man for dehydration and then transported him to a local hospital for further treatment.

(CAG) Agents from the Casa Grande Station rescued an illegal alien suffering from dehydration and a diabetic emergency. The man was transported to a local hospital for treatment.

- 3 -

Tucson Sector has more than 200 agents trained as EMTs and more than 3,200 agents ready to respond to emergency situations. Although agents in the Tucson Sector stand ready to provide humanitarian assistance to anyone encountered in need, the summer heat continues to be a threat to human health. Individuals who fall ill are often left behind by smugglers and can become victims of the desert.

*To report illegal activity anytime and remain anonymous, call **1-877-USBP-HELP**. U.S. Customs and Border Protection is the unified agency within the Department of Homeland Security charged with managing and protecting our nation's borders at and between official ports of entry. CBP is charged with keeping terrorists and terrorist weapons out of the country while also enforcing hundreds of U.S. laws.*

~CBP~

EXHIBIT 8

Testimony of

JANICE L. KEPHART

Director of National Security Policy

Center for Immigration Studies, Washington D.C.

Before the

House Committee on Homeland Security
Subcommittee on Border, Maritime and Global
Counterterrorism

On

***“ENHANCING DHS’ EFFORTS TO DISRUPT ALIEN
SMUGGLING ACROSS OUR BORDERS”***

July 22, 2010

10:00 a.m.

311 Cannon Office Building

Testimony of

Janice Kephart, Director of National Security Policy, Center for Immigration Studies,
Washington D.C.

House Committee on Homeland Security

Subcommittee on Border, Maritime and Global Counterterrorism

On

“ENHANCING DHS’ EFFORTS TO DISRUPT ALIEN SMUGGLING ACROSS OUR BORDERS”

I am currently the Director of National Security Policy at the Center for Immigration Studies (CIS) and a former counsel to the 9/11 Commission, where I co-authored the monograph *9/11 and Terrorist Travel* alongside recommendations that appear in the *9/11 Final Report*. Prior to 9/11, I was counsel to the U.S. Senate Judiciary Subcommittee on Technology and Terrorism where I specialized in foreign terrorist activity in the United States and worked on oversight issues pertaining to border security and counterterrorism with the legacy Immigration and Naturalization Service, as well as gained unanimous consent in both Houses of Congress for the federal criminal redress system in place today for identity theft. Today I focus on all issues pertaining to border security and its nexus to national security. This is my 11th testimony before Congress, and I am privileged to be here before you today.

Last year, after becoming increasingly alarmed at a growing silence about the southwest border, and particularly Arizona, where Operation Gatekeeper in the late 1990s had successfully pushed much of the illegal crossings into Arizona, I began a series of documentary films. I was especially concerned about the interest of terrorist groups like Hezbollah and Al Qaeda’s in seeking anonymous entry of their operatives along the southwest and northern border. There were documented cases of both terror organizations pursuing this type of travel strategy, an issue that I had testified to in prior years before Congress.

At the time, I was concerned that the administration was not taking the threat as seriously as it could. It decided not to construct new fencing on the southern border; it had not announced a replacement program for the Secure Border Initiative; budget proposals reflected reduced numbers of Border Patrol agents; and requests for a National Guard presence by Arizona’s new Governor, Jan Brewer, were ignored despite the success the National Guard had helped the Border Patrol achieve in 2006 in the Yuma Sector as active ‘boots on the ground.’

During this same period, about a year and a half ago, I began receiving anonymous emails with hidden camera footage from the southwest border. Over time, this footage captured hundreds of illegal aliens crossing federal lands over and into Arizona, with few ever stopped or apprehended by the Border Patrol despite occasional chases. To my mind, this footage portrayed a very different reality than Washington’s conventional wisdom, which was reiterating that illegal alien apprehension numbers were down. How could we know numbers were down when the only way to know the real activity was not from federal government apprehensions, but private citizen hidden cameras?

The apparent absence of the Border Patrol was also striking. This was federal land with known illegal trails that caused environmental devastation as well. How could it be that the federal lands seemed less protected by federal law enforcement than private property?

“Hidden Cameras on the Arizona Border 2: Drugs, Guns, and 850 Illegal Aliens” is the CIS’ second web-based film on the impact of illegal alien activity in Arizona. This new 10-minute mini-documentary—which I produced, directed, wrote, and narrated—features footage of both illegal-alien entry as well as alien and drug-smuggling. It is based on two sources of hidden camera footage [SecureBorderIntel.org (Nogales/Casa Grande footage) and BorderInvasionPics.com (Coronado footage)], 10 months worth of Freedom of Information Act requests including Memos of Understanding between the federal government entities that own and patrol these lands, and a June 2010 border trip I took to southeast Arizona, the Coronado National Forest, and the Casa Grande sector highlighted in the film. The film is on the CIS website at <http://cis.org/Videos/HiddenCameras2>. Upon conducting document and ‘on the ground’ research, alongside review of many reels of hidden camera footage, it was hard to avoid the conclusion that illegal alien activity is causing severe consequences for Arizona.

The mini-documentary was released at a press conference with Rep. Rob Bishop (UT-1) on July 15, 2010. Its views already exceed 100,000 just on youtube.com. The film was featured for two days on FOX News and its news affiliates and has been subject of radio interviews and print articles. It appears to be receiving a large and grassroots interest, and substantial support, for its substantive appraisal of the current status of illegal activity in Arizona.

The Center's first video on the subject, “Hidden Cameras on the Arizona Border: Coyotes, Bears, and Trails,” (<http://www.cis.org/videos/hiddencameras-illegalimmigration>) was released on July 14, 2009 and has received over 60,000 views to date. A blog as to the federal government response to that video can be found at <http://www.cis.org/Kephart/HiddenCamerasUpdate>. This film focuses primarily on the environmental destruction caused by illegal activity on federal lands, highlighting in more detail waste and threat to wild animal life.

Among the lessons learned from Hidden Cameras 2 is that illegal activity and violence in Arizona is escalating. Moreover, the federal government, including the Department of Interior, which owns about 12.5 million Bureau of Land Management acres in Arizona, as well as numerous national parks and wildlife refuges, and the Department of Agriculture’s Forest Service, which owns the Coronado National Forest, has long known the devastating effect of illegal alien activity on its land. (See the 2009 Fact Summary Bureau of Land Management-Southern Arizona Project FY 2009 Fact Sheet¹). Yet there is minimal federal law enforcement on these lands, exacerbating the environmental and public safety issues while encouraging alien and drug smugglers to use them as a playground for travel and waste. Featured in the film is a 2004 federal government PowerPoint showing the near-complete devastation of Organ Pipe National Monument due to illegal-alien activity, an Arizona borderland national park.

¹ http://www.blm.gov/pgdata/etc/medialib/blm/az/pdfs/undoc_alien.Par.57669.File.dat/09-SAZ-Proj.pdf

My FOIA requests also yielded PowerPoints from subsequent years on the Buenos Aires National Wildlife Refuge and reports on the Coronado National Forest that reiterate the 2004 PowerPoint. Even in 2001, a report submitted by the Department of Interior to Congress outlined in great detail the issue of increasing illegal activity. The Department of Interior knew the extent of devastation from illegal activity on its lands, but instead of putting programs in place to work with federal law enforcement or request line-item budgets for law enforcement to help curtail the illegal activity itself, the problems have continued to deteriorate these lands, making them increasingly unsafe and hurting habitats. Two key quotes, which begin the mini-documentary, are as follows:

Thousands of new trails and roads have been created on Federal lands by undocumented aliens.

Certain federal lands in southeast Arizona can no longer be used safely by the public or Federal employees due to the significance of smuggling undocumented aliens and controlled substances into the US.

Some key facts highlighted by my research and the hidden camera footage shown in Hidden Cameras 2 include:

- **In sum**, on a total three trails in 60 days between February and March 2010, we counted about 850 illegal aliens, 9 drug mules, 3 guns, and a jeep with drugs careening through the desert.
- **Coronado trail facts.** 735 of the illegal aliens in the film are found on one trail, located in the Tucson Border Patrol sector, 15 miles north of Nogales within the Coronado National Forest. They crossed just one hidden camera in 39 days between February and March 2010 during all hours and in all weather. Not one Border Patrol agent is seen on this trail in 39 days. The illegal men and women travel in groups of 7 to 19. Also found on this trail are burlap remnants and water jugs painted black - evidence of drug smuggling. These cameras were placed purposely close to layup areas, where the illegal aliens await trucks and vans that will smuggle them further into the U.S. The layup, shown in the film, is cluttered with tons of trash left behind by those utilizing this one trail. It is estimated that 8 to 16 million tons of trash has been left behind in wildlife reserves like this one.

Extrapolated out, this one trail, uninterrupted, would yield nearly 7,000 aliens illegally entering the U.S. over the next year. Extrapolate that number out over the thousands of illegal trails government already knows exists. That could mean there are hundreds of thousands of entries that are never recorded and never make any government statistic.

- **Casa Grande trail facts.** A MAC-10 and two assault rifles are carried on foot, along with seven drug couriers carrying packs of sixty pounds or more, and one jeep, all caught on hidden camera video on two cameras located 70 to 80 miles north and west of Nogales. The footage was obtained in January 2010.

The federal land area where this footage was captured is west on the I-8 corridor between Tucson and Phoenix, in the Casa Grande Border Patrol sector. This area is known as Table Top, another wildlife-designated area north of the Tohono O'odham Indian Reservation, the Barry Goldwater Firing Range, in the Sonora Desert. In this same area, on April 30, 2010, Pinal County Deputy Sheriff is shot while in hot pursuit of drug cartels. The deputy sheriff survived after a two-hour search to find him.

The hidden cameras also picked up about half a dozen load trucks, which are run deep into the desert carrying anywhere between 20 to 35 individuals at a time in areas further west on I-8 in March and April 2010, near a large federal land area known as the Lower Sonora Desert. These loads are weighted down in human cargo, load after load, obvious and unstopped. (My sources tell me that Bureau of Land Management personnel have seen stand up loads trucks with illegals in the back with numbers up to 50.)

Federal government awareness. The boots on the ground—the Border Patrol agents, Forest Service and National Park law enforcement agents, the state and local cops—all have known how bad the situation is for years, and are dedicated to their mission. There is no doubt about that. However, through a tedious series of Freedom of Information Act requests, I learned the disconnect between the reality of the Arizona border and Washington rhetoric.

PowerPoints and reports were obtained that show in intense detail the immense destruction to federal lands caused by illegal activity. The devastation to Organ Pipe National Monument, about 100 miles west of Nogales, is shown to be near 100 percent. The destruction shown is from illegal alien activity that includes fires and vegetation cutting; water pollution and human waste; horse, bicycle, vehicle and foot tracks; rest sites; and trash. Similar reporting was obtained on Buenos Aires National Wildlife Refuge, also west of Nogales, and multiple reports exist on the Tohono O'odham Reservation and Coronado. In fact, there is no place on the Arizona border that does not report extensive destruction from unstopped illegal activity.

A federal law enforcement officer that helps patrol public land told me during a recent visit that his agency only has nine law enforcement officers to cover three million acres.

- **The threat to public safety today.** Shortly after the Pinal County Deputy Sheriff Louie Puroll was shot on April 30, 2010, in the exact same area, two Latino males were shot to death in what is strongly suspected to be drug cartel feuding. (There is reporting this past week that the heavily violent drug cartel “Zetas” are blaming Americans for the deaths of their couriers, and have put out a threat that any armed American found in these federal lands will be shot.) Nogales’ police chief reports that drug cartels are threatening his cops, telling them to look the other way if they are off-duty, or they will be targeted by “sniper or other means.”

Moreover, Arizona citizens are not just being threatened, but shot at as well. Within the last few months a grandfather and his grandson were dove hunting off of the I-8 corridor near at mile marker 124 when a truck loaded with illegal aliens came at them at a high

rate of speed. The truck began firing guns at the grandfather and grandson. Other citizens report to BLM personnel, according to my sources, that there have been other U.S. citizens chased by people with AK 47 semi-machine guns in that area. In total there have been 13 confirmed shootings in the I- 8 area this year to date.

Border enforcement solutions. History provides a guide to help determine what federal law enforcement can be successful on federal lands, and what cannot. First, the Border Patrol needs access that is relatively free of preapproval to operate on these lands. It can do so while embracing environmental stewardship. A recent successful model is provided by the Yuma Sector.

According to the Border Patrol, in January 2004 the Yuma sector border lands owned by the Department of Interior and located in far western Arizona experienced a huge surge in illegal entries. There was no fence. Agents were assaulted with rocks and weapons daily and outnumbered 50 to 1. In 2005, more than 2,700 load trucks full of aliens and drugs illegally breached that sector. Smugglers were leading masses through the desert, leaving the sick and wounded to die. The smugglers did not stop for agents when in hot pursuit of vehicles. There were many crashes and deaths. By 2005, 138,500 illegal aliens were apprehended, and the numbers were still increasing. Today, the Yuma sector is clean relative to its past, and the Border Patrol can do its job. Apprehensions are down 94 percent to 8,500 in 2008.

Why and how? In May 2006, President Bush announced **Operation Jumpstart**, deploying more than 5,000 National Guard Citizen-Soldiers and Airmen to assist the Border Patrol in securing the boundary with Mexico. For the first time in three years, the numbers of illegal entries began to decrease. Governor Napolitano's 2006 Arizona Department of Emergency and Military Affairs Annual Report describes the National Guard's contribution to the operation as follows.

Operation JUMP START, JTF-AZ Border: The Arizona National Guard, as well as the other Southwest Border States, was tasked to support Operation Jump Start in coordination with US Department of Homeland Security and the US Customs and Border Patrol (CBP). The Arizona National Guard is supporting CBP with up to 2,400 Guardsmen to gain operational control of the border.

Since July 2006, the Arizona Army National Guard has provided over 5,489 Guardsmen to support missions along the international border with Mexico.

The Arizona National Guard is in support of the Border Patrol sectors of Yuma and Tucson. The missions tasked to National Guard soldiers and airmen include: 1) surveillance; 2) camera operations; 3) vehicle maintenance support; 4) aviation support; 5) border infrastructure/fencing; and 6) Entry Identification Teams along the 389 miles of the international border between Arizona and Mexico.

According to the Border Patrol, in the first six months of Operation Jumpstart, Guard members provided surveillance, border infrastructure, and aviation support, and also helped the Border Patrol save lives of those left to die by smugglers, deal with crash sites where there were high

speed chases of smugglers, as well as interdict illegal drugs. The Guardsmen were not just repairing fences; they were boots on the ground, too.

With administration support in Washington and the National Guard's help on the ground, between 2007 and 2008, unprecedented amounts of tactical infrastructure arrived as well, including: seven miles of 'floating fence' in Yuma sand dunes; 13 miles of access and vehicular fencing along the Colorado River; nine miles of secondary fencing along the San Luis POE; and 68 miles of pedestrian and vehicular fence along the Sonoran desert. By the time the operations were complete, all of Yuma's 126 miles of border had natural or manmade barriers of some kind. Environmental assessments were conducted to assure preservation. In addition, there are two new BP stations in Yuma, and mobile surveillance sensors with ground radar as well. All of this personnel and tactical infrastructure were backed up by criminal prosecutions of illegal entrants known as **Operation Streamline**.

Operation Stonegarden still funds localities to help assist border security, as well, helping Arizona local law enforcement back up federal law enforcement as need be. On July 19, 2010, the administration announced \$48 million to the southwest border for Stonegarden.

Conclusion. Our nation needs to own up to the real dangers to public safety and the environmental degradation highlighted by Hidden Cameras 2. Multiple deaths, the threats to Nogales off duty police by drug cartels and cross-border feuds; the millions of tons of trash and complete devastation of wildlife and forest reserves by the illegal trails and the illegal alien and drug smugglers that use them; and the lack of adequate federal law enforcement on federal land all point to the need for an urgent, strong, and steadfast solution.

However, new fencing has stopped, even though there is a 26-mile stretch of desert between Naco and Nogales where there are nearly no barriers to hundreds of illegal trails in the Coronado. Technology upgrades has stopped with rare replacements. The administration is not prosecuting illegal aliens for illegal entry unless they are previously associated with violent crime. Guns are being stopped going south but we have no land EXIT/departure system in place, nor a plan for one. Local officials, as in Arizona, are discouraged from supporting federal immigration law enforcement.

Yet despite these facts, the July 19, 2010 "DHS Weekly Report" states that "The Administration has pursued a new border security strategy over the past year and half, making historic investments in personnel, technology and infrastructure." The DHS Weekly Report also states that 524 National Guard are to be deployed to Arizona on August 1, 2010 to "provide support for intelligence surveillance and reconnaissance, and counternarcotics enforcement." What was not said was this National Guard deployment is significantly curtailed in numbers and duties compared to a successful 2006 Operation Jumpstart.

Like terrorists, alien and drug smugglers must travel across a border in some manner. The most critical strategy to curtail their travel across our borders, especially in the southwest, requires an "all hands on deck" approach to border security that does not relent until the escalating threats are under control and the border secured. All elements—personnel, infrastructure, legal support, a plan for a departure system, and policies supporting federal law enforcement on federal lands, should be the starting point, not the last point, for border enforcement against illegal alien and

drug smuggling. A multi-layered approach such as was done in the Yuma Sector assuring strong border presence in personnel and infrastructure, a legal system to prosecute illegal entry, and support for localities supporting a federal enforcement approach, can together discourage brazen alien and drug smuggling and reverse recidivism and criminal activity that threatens our environment and public safety. We can make it so, with American political resolve, and the programs and resources to back it up the way Americans rightfully expect for their homeland.

ARIZONA BORDER EVENTS CHRONOLOGY

ADDENDUM TO

Testimony of

Janice Kephart, Director of National Security Policy, Center for Immigration Studies, Washington D.C.

House Committee on Homeland Security

Subcommittee on Border, Maritime and Global Counterterrorism

On

“ENHANCING DHS’ EFFORTS TO DISRUPT ALIEN SMUGGLING ACROSS OUR BORDERS”

The following addendum is designed to be a helpful guide on many (not all due to insufficient space) Arizona-related border events, in chronological order up until June 2010. Much of this information I utilized in the *Hidden Cameras on the Arizona Border 2: Guns, Drugs and 850 Illegal Aliens* mini-documentary. The information is sorted into five categories, by date: Arizona, Deaths/Violence, Drug Smuggling, Alien Smuggling, and Money.

Arizona

May 2010: Nearly one in every three Arizona children is an immigrant or a native-born son or daughter of immigrants; an estimated 61% of Arizona children age 6 and under have foreign-born parents.

The Arizona Hospital and Healthcare Association says that state institutions lose about \$24 million annually, after federal compensation, for treating undocumented immigrants.
<http://morrisoninstitute.asu.edu/publications-reports/2010-illegal-immigration-perceptions-and-realities-1>
(1)

April 25, 2010: About \$2 million of drug money passes from Arizona into Mexico each day — one of several indicators that illegal drug trafficking is flourishing, according to Anthony Coulson of the U.S. Drug Enforcement Administration.
<http://www.eacourier.com/articles/2010/04/25/news/doc4bd23aa6e6feb251879518.txt> (2)

April 23, 2010: President Obama harshly criticizes Arizona for bringing forward a bill that would make illegal entry and embedding in the state a crime and enable police officers to ask immigration status, stating that legalization of undocumented aliens is the answer while supporting a decrease in Border Patrol agents, the stoppage of both virtual and physical fencing, and the disintegration of programs that enable state police officers to garner immigration status.
http://online.wsj.com/article/SB10001424052748703709804575202110136576160.html?mod=WSJ_latesheadlines (3)

April 1, 2010: KGUN9 News in Tucson obtains a response from the White House on Arizona Governor Brewer’s request to add National Guard to the patrol ranks in her state, promising no help other than to “monitor” the situation. After five written requests by the Governor over the past year and a half to the President and her predecessor as governor, Secretary Napolitano, Governor Brewer has not received a response.

By the end of the business day, the reporter was able to obtain this carefully worded statement from White House spokesman Adam Abrams: "The President is firmly committed to ensuring our borders are secure. It is why the Administration has taken important steps – including deploying additional law enforcement resources to reduce illegal flows across the border and supporting Mexico's efforts against drug trafficking organizations. We are carefully monitoring the situation and will continue to ensure that we are doing everything necessary to keep communities along the Southwest border safe."
<http://www.kgun9.com:80/Global/story.asp?S=12244731> (4)

March 17, 2010: The Project 28, a pilot of virtual fence for the Southwest border comes to a halt. To the west, in Organ Pipe National Monument—nearly half of it closed because it is both unsafe and disseminated by illegals, DOI Secretary Salazar praises the state of border security and discusses the value of completing a virtual fence similar to the one frozen by Secretary Napolitano the day before.

March 16, 2010: Secretary Napolitano calls the Secure Border Initiative (SBI) "plagued" and freezes all assets to maintain SBI, orders another review, and then redirects \$50 million to a whole new process of deploying commercially available technologies. Senator McCain praises the action.

February 2010: In fiscal year (FY) 2008, U.S. Customs and Border Protection (CBP) officers along the U.S.-Mexico border discovered 16 subterranean tunnels, the majority of which were in the Tucson Sector, which encompasses a border area of 262 miles from the New Mexico state line to Yuma County, Arizona. In FY2009, authorities discovered 26 subterranean tunnels, 20 of which were in the Tucson Sector, primarily in the area of Nogales.
<http://www.justice.gov/ndic/pubs38/38661/> (5)

January 28, 2010: With its numbers right behind Mexico City, Phoenix is the number two kidnapping capital of the world.

Some officials have commented that all the Phoenix kidnappings are connected to illegal immigration. However, the actual numbers (359 in 2007, a 10-year high, 366 in 2008, and 302 for the first 11 months of 2009) account for just one-third of the reported kidnappings taking place in the metropolitan area. People are just not reporting all the kidnappings.
<http://www.drugaddictiontreatment.com/addiction-news/drug-crimes/phoenix-number-two-kidnapping-capital-as-drug-cartel-wars-intensify/> (6)

October 22, 2009: "Right now, the volume of marijuana that will be seized in southern Arizona will be approximately, we predict, 1.4 million pounds [700 tons] by the end of this calendar year. That is beyond what we've ever seized before," Coulson said.

While that number is staggering and can be credited to effective and coordinated law enforcement efforts, agents said, it only represents an estimated 20 percent of all the marijuana that will enter the U.S. through Arizona this year. That means another 7 million pounds (3,500 tons) is being smuggled into the U.S. undetected through this state alone.

The DEA estimates that the drug cartels generate about \$10 billion annually from the sale of drugs which pass through Arizona alone.

Another technique involves the use of specially designed trucks with ramps built in the back and front. These trucks pull up next to the barbed-wire border fence and lower one of the ramps over to the U.S. side, while the other ramp slides down the back of the vehicle. Smugglers in SUVs loaded with drugs then drive across these mobile truck-bridges into Arizona without ever touching the fence. From there

they race north across the desert to offload their contraband.

http://www.msnbc.msn.com/id/33433955/ns/us_news-crime_and_courts/ (7)

October 2009: Border Patrol arrests Mexican and El Salvadorean gang members in Willcox AZ, matching their fingerprints to criminal databases.

<http://willcoxrangeneews.com/articles/2009/10/22/news/news01.txt> (8)

August 2009: In response to our July release of our Hidden Cameras on the Arizona border video, Border Patrol mounts a 24/7 operation to close off alien access to prevent alien foot traffic from the border to the mountains where borderinvasionpics.com hides cameras. Agents tell our sources the effort will be permanent and it includes an increase in agents patrolling the area south of the mountains 24/7, scope trucks, quads. Further north where we showed photos and footage from other hidden cameras and pollution, agents are setting up tent cities and catching illegals there. Campgrounds are closed too, because the alien trash is attracting bears, and the bears are apparently more of a menace than the drug movers. At least temporarily, the video is working.

Meanwhile, in Washington, the National Drug Intelligence Center does a special report on Arizona's Tohono O'odham Reservation's 75 mile border with Mexico, noting that it is only protected by vehicle barriers, and wire gates, and as a result is one of the heaviest human smuggling and marijuana, heroin and methamphetamine smuggling corridors in the country, where pedestrians, horses and load vehicles easily pass through its remote regions.

April 2009: DHS Secretary Napolitano announces \$400 million that is slated for Americans who have lost their jobs and homes must instead be redirected to securing the southwest border for better technologies at ports of entry. She also moves 360 Border Patrol from the northern border, but then cut the number of agents across the board eight months later. She realigns teams working on violent criminals, but does not seek more resources for the immigration and customs agents assigned to these teams to fight violent criminals, drugs, arms and cash smuggling. She provides an extra \$10 million to the four U.S.-Mexico Border States, Arizona, California, New Mexico, and Texas, but ignores requests for National Guard support.

March 2009: DHS Secretary Napolitano states in a press conference when asked about finishing the physical fencing in the southwest, that she will only "complete the sections that had already been begun and for which there already were appropriations." A year later, she will kill the virtual fencing project in Arizona as well.

December 2008: Law enforcement agencies in the Nogales, Arizona area continue to receive information regarding the use of subterranean tunnels to transfer both narcotics and undocumented migrants from Nogales, Sonora, Mexico into the United States. The tunnels usually tie into the drainage system and at least 30 tunnels have been discovered between 1990 and 2008.

http://www.justice.gov/dea/pubs/state_factsheets/arizona.html (9)

September 2006: A federal report's statistics show that primary fences such as those built in San Diego beginning in 1990 caused a drop in illegal apprehensions by 74 percent, smugglers rerouted to Arizona where there were few barriers, and apprehensions there increased 591 percent. Department of Homeland Security Secretary Michael Chertoff seeks to address the Arizona issue, announcing the Secure Border Initiative. But the initiative only begins with a virtual fence of 28 miles. Other varieties of fencing are to cover other parts of Arizona, but as it remains incomplete, illegal smuggling continues, pushing into the more remote regions shown by these hidden cameras.

But this is no different than in 2001, when a joint report to Congress by the Departments of Justice, Interior and Agriculture shortly after 9/11 states that "certain federal lands in southeast Arizona can no longer be used safely by the public or Federal employees due to the significance of smuggling undocumented aliens and controlled substances into the US" noting that "thousands of new trails and roads have been created on Federal lands by undocumented aliens" which destroys the sensitive desert environment. Those doing so also burglarize, destroy property, kidnap, leave tons of trash and high concentrations of human waste, vandalize and set wildfires. In the past three years alone, it is estimated that 8 million to 16 million tons of trash has been left behind.

Deaths/Violence

June 23, 2010: The overtime cutback comes at a time that violence against the agents, according to Department of Homeland Security records, is up 31 percent this fiscal year.

<http://www.washingtontimes.com/news/2010/jun/23/reduced-overtime-stymies-border-patrol/> (10)

June 14, 2010: Some 23,000 people have died since 2006 as drug cartels vie for control in places such as Juárez and Tijuana along the U.S. border.

In 2009, the Department of Justice declared Mexican cartels to be the "greatest organized crime threat to the United States." Today, they have a presence in 230 U.S. cities (up from 50 in 2006), from Little Rock, Ark., to Anchorage, Alaska.

<http://www2.macleans.ca/2010/06/07/to-a-suburb-near-you/> (11)

April 13, 2010: A U.S. surveyor looking for stone monuments that mark the US-Mexico border near Nogales, Arizona has a rifle pulled on him by a drug runner. The surveyor pulls his 9 mm but holds fire. The drug runner walks away then hears voices and has six shots fired at him. He "hit the deck," according to the incident report and returned seven shots.

March 31, 2010: Texas Gov. Rick Perry orders a multiagency task force to Fort Hancock, Texas, where Mexican residents of the town El Porvenir 860 yards south of the U.S border are being left notes to leave within hours or their children will be killed, even threatening to come across the border and murder children in school unless ransoms are paid up front. About 30 flee across the border, requesting political asylum in Fort Hancock, Texas. The town's mayor and his son have already been murdered.

<http://www.foxnews.com/us/2010/03/31/texas-town-high-alert-mexican-town-border-braces-cartel-gun-battle/> (12)

March 28-29, 2010: A longtime Arizona rancher Robert Krentz is shot in the back on his own property about 25 miles northeast of Douglas, which sits on the border. The killer is thought to be an illegal on foot—perhaps a drug runner-- who got away despite his distance from the border.

March 27, 2010: The assistant police chief in Nogales, Sonora, and his bodyguard were killed in a barrage of gunfire from a Ford pickup truck opened fire with AK-47s about 3 miles south of the US border.

March 13, 2010: U.S. consular employee Lesley A. Enriquez, 35, who was four months pregnant, and her husband, Arthur H. Redelfs, 34, were gunned down as they were leaving the birthday party of a child of a U.S. Consulate employee. Their 7-month-old daughter is found wailing in the back of the vehicle.

February 16, 2010: Nogales, an Arizona border town, is ravaged by 98 murders in two months, more than 2006 and 2007 combined, apparently as a powerful drug cartel tries to seize the drug corridor through Nogales. As of February, Mexican Nogales is averaging more than one killing a day and nearly nine per week.

February 2010: Assaults against U.S. Border Patrol (USBP) agents increased 46 percent from 752 incidents in FY2006 to 1,097 incidents in FY2008. Contributing most to this increase were rocking assaults, which rose 77 percent from 435 incidents in FY2006 to 769 incidents in FY2008.

Mexican DTO members or associates acquire thousands of weapons each year in Arizona, California, and Texas and smuggle them across the border to Mexico. (National Drug Threat Assessment 2010)
<http://www.justice.gov/ndic/pubs38/38661/> (5)

January 2010: A 17 year old US citizen from a well-known Tijuana family who attended Catholic high school in California is assassinated, shot six times with an assault rifle.
<http://www.foxnews.com/story/0,2933,582345,00.html?test=latestnews> (13)

Early 2010: A classified report provided by the government to Senators estimated 22,743 people have died since President Felipe Calderon declared war on Mexico's drug cartels in December 2006, the press reported.

The most violent year of Calderon's presidency, according to the report, was 2009, when 8,928 people were killed. The classified report estimates the death toll so far this year at 2,904. More than 70,000 suspected drug traffickers, mainly from the Gulf, Sinaloa and Los Zetas cartels, have been arrested since Calderon took office. <http://www.laht.com/article.asp?ArticleId=355373&CategoryId=14091> (14)

December 2009: In December, a California assistant school principal, Augustin Salcedo, was killed after he was abducted from a restaurant along with five other men while he and his wife were visiting her hometown of Gomez Palacio, in the northern state of Durango. The motive for the mass abduction remains unclear.

August 2009: The Tucson sector accounts for half of all bodies found along the U.S.-Mexico border, making it the deadliest stretch on the southwest border, calls in an additional 209 agents to the already 3,300. The total number of deaths and the rate of death are both up sharply.

July 2009: Former Border Patrol officers release a series of homicide reports from Mexico that show that drug cartel fighting has set a new homicide record in the country, with 53 deaths in a 24 hour period, including a police commander.

May 2009: Tania Lozoya, 15, of El Paso, Texas, is killed by a stray bullet at her aunt's house across the border in Ciudad Juarez in May 2009, after gunfire broke out when two men chased another man into her aunt's backyard.

2007: This report (Arizona's 2008-2011 State Strategy: Drug, Gang and Violent Crime Control) has statistics on the number of drug seizures and arrests through 2007. Unfortunately, these numbers are not the most up-to-date.
[http://www.azcjc.gov/ACJC.Web/pubs/home/2008-2011DGVCrimeControlStrategy_Final\(4\).pdf](http://www.azcjc.gov/ACJC.Web/pubs/home/2008-2011DGVCrimeControlStrategy_Final(4).pdf) (15)

Drug Smuggling

April 12, 2010: A Homeland Security report leaks warning that Mexican drug smugglers are cloning Border Patrol vehicles to bypass law enforcement, some of whom were likely trained by US military. DHS warns that assaults against agents are up "16 percent compared to last year."
<http://gvnews.com/articles/2010/04/13/news/69surveyor0414.txt> (16)

April 6, 2010: A global intelligence report estimates that narcotics profit margins in Mexico are about 80 percent, or a \$32 billion profit on an \$8 billion investment. The Mexican government has an interest in maintaining this high profit margin, to some degree, because the cartels do invest their profits in legitimate, money-making business.

February 10, 2010: Immigration agents are given a tip about an abandoned trailer at a warehouse in just north of the border in Nogales, Arizona. Upon obtaining a search warrant, they find 3,470 pounds of marijuana with an estimated street value of \$7.6 million.
<http://www.ice.gov/pi/nr/1002/100210nogales.htm>

February 2010: Without a significant increase in drug interdiction, seizures, arrests, and investigations that apply sustained pressure on major DTOs, availability of most drugs will increase in 2010, primarily because drug production in Mexico is increasing. The most recent drug production estimates show sharp increases in heroin and marijuana production in Mexico and greatly reduced efforts to eradicate drug crops in that country.

Marijuana production increased in Mexico, resulting in increased flow of the drug across the Southwest Border, including through the Tohono O'odham Reservation in Arizona. Mexican DTOs have also expanded their marijuana cultivation operations into the United States, an ongoing trend for the past decade.

The amount of marijuana produced in Mexico has increased an estimated 59 percent overall since 2003. 13,500 metric tons estimated in 2003 to 21,500 metric tons estimated in 2008, all from Mexico.

Increased production for heroin in Mexico from 17 pure metric tons in 2007 to 38 pure metric tons in 2008, according to U.S. Government estimates.

From 2004 through 2008, heroin production estimates for Mexico increased 342 percent, from 8.6 metric tons pure to 38 metric tons pure.

Methamphetamine availability increased as the result of higher production in Mexico using alternative, less-efficient precursors.

As methamphetamine production declined in Mexico in 2007 and early 2008 as a result of precursor chemical restrictions, methamphetamine availability declined in the United States. By late 2008, however, Mexican DTOs had adapted their operating procedures in several ways including the smuggling of restricted chemicals via new routes, importing non-restricted chemical derivatives instead of precursor chemicals, and using alternative production methods.

A combination of factors, including increased law enforcement efforts in Mexico and the transit zones, decreased cocaine production in Colombia, high levels of cartel violence, and cocaine flow to non-U.S. markets likely contributed to decreased amounts being transported to the U.S.-Mexico border for subsequent smuggling into the United States.
<http://www.justice.gov/ndic/pubs38/38661/> (5)

June 2009: A National Southwest Border Counternarcotics Strategy is announced, with the goal of "substantially reduc(ing) the flow of illicit drugs, drug proceeds, and associated instruments of violence across the Southwest Border." The National Drug Intelligence Center estimates that Mexican and Colombian Drug Trafficking organizations generate, remove, and launder between \$18 and \$39 billion in proceeds per year.

<http://www.wilsoncenter.org/news/docs/SWB%20Fact%20Sheet1.pdf> (17)

May 20, 2009: More than 60% of the illegal drugs in the United States enter the country through Arizona. It is estimated that 95% of the Mexican drug cartels' weapons come from the United States. There are more than 6,600 licensed gun dealers on the US-side of the border with Mexico.

<http://www.24-7pressrelease.com/press-release/mexican-drug-cartel-violence-spills-over-border-100729.php> (18)

March 17, 2009: The smuggling of marijuana, however, has increased in the past two years, according to the DEA, to meet an increased demand in the U.S. This is evidenced by the record seizures of the drug reported by the U.S. Border patrol in southern Arizona.

The Tucson Sector Border Patrol has seized more than 500,000 pounds of marijuana since Oct. 1, a 22% increase over the same period last year. Meanwhile, they have seized only 53.13 ounces of heroin, 65.25 pounds of cocaine and 6.39 pounds of meth.

"Since Monday we have had five cases of children age 17 and younger attempting to smuggle drugs into the U.S. from Mexico," said William Molaski, CBP El Paso port director. "On the other end of the spectrum, we had two people age 60 and over caught smuggling marijuana yesterday. This confirms that traffickers will employ any and all types of people in their drug smuggling attempts."

<http://alcoholism.about.com/b/2009/03/17/border-drug-seizures-hit-record-levels.htm> (19)

Early 2009: The U.S./Mexico border is the primary point of entry for cocaine shipments being smuggled into the United States. According to a recent interagency intelligence assessment, approximately 65 percent of the cocaine smuggled into the United States crosses the Southwest border.

http://www.justice.gov/dea/pubs/state_factsheets.html (9)

2008 Federal Drug Seizures in Arizona

Cocaine: 1,905.8 kgs. – thru Mexico

Heroin: 152.8 kgs. – thru Mexico

Methamphetamine: 263.4 kgs – thru Mexico and locally produced

Marijuana: 351,992.4 kgs. – thru Mexico

Hashish: 6.4 kgs

MDMA: 0.0 kgs/47 du

Meth Lab Incidents: 10 (DEA, state, and local)

http://www.justice.gov/dea/pubs/state_factsheets/arizona.html (9)

October 16, 2007: An estimated 90% of cocaine entering the United States transits Mexico.

<http://ftp.fas.org/sgp/crs/row/RL34215.pdf> (20)

September 2007: U.S. federal law enforcement launches two major operations over the next year on Mexico-based cartels. In two years it will yield 600 arrests in the United States and Mexico, including leadership, the confiscation of 20 metric tons of cocaine and similarly caches of marijuana and methamphetamine, and the seizure of hundreds of firearms and \$76 million in cash.

Alien Smuggling

April 19, 2010: An alien smuggler who held 31 illegal aliens hostage at a Tucson drop house, demanding ransoms in addition to fees already paid, is found guilty in federal court.

April 15, 2010: 800 federal agents and Arizona state police bust a massive human smuggling ring that goes to every major US city, using seeming legitimate shuttle van services catering to illegals from Mexico, Central America and China. The bust originates in Arizona, with 47 arrests in Phoenix, Tucson, and Nogales. ICE believes it will take a good deal of time for so sophisticated an operation to be put in place again.

<http://www.foxnews.com/us/2010/04/15/ice-busts-massive-human-smuggling-ring-stretches-length/?test=latestnews> (21)

May 18, 2010: The desert around the hamlet of Sasabe, a smuggling way-station of a few dozen houses, is a drug trafficking corridor used by the Sinaloa cartel. Migrants and Mexican officials say heavily armed drug traffickers have been demanding fees since at least 2007 to allow migrants to pass.

http://www.salon.com/news/2010/05/18/lt_mexico_us_illegal_immigration (22)

May 2010: The Arizona Department of Corrections reports that about 15% of inmates are “criminal aliens.” A recent estimate from the Maricopa County Jail system — by far the state’s largest — is that about 19% of suspects are undocumented.

<http://morrisoninstitute.asu.edu/publications-reports/2010-illegal-immigration-perceptions-and-realities-1> (1)

March 28-29, 2010: Over the weekend of March 28, 29, three trucks carrying about 90 illegals unload about 45 miles south of Phoenix.

March 12, 2010: Fox News reports on San Diego University professors that have created a GPS cell phone application that helps illegal aliens avoid Border Patrol in the area while playing poetry. The app was created using government monies. [America Live with Megan Kelly](#), FOX News, Washington D.C. 13 Mar 2009. <http://www.youtube.com/watch?v=kZExWCBR9cg> (23)

November 2009: Secretary Napolitano cites lower illegal immigration numbers, 600 miles of fencing, — much of it vehicular barriers and not pedestrian—and the hiring of nearly 20,000 Border Patrol sufficient security to seek “immigration reform.” She does not mention that there are still 400 miles of completely open, unobstructed border.

http://74.125.93.132/search?q=cache:Hrc3faBMLZwJ:www.msnbc.msn.com/id/33912609/ns/politics-white_house/+napolitano+%27border+is+secure%27+immigration+reform&cd=5&hl=en&ct=clnk&gl=us (24)

September 2009: A federal government watchdog agency states that SBInet, the technology component of a CBP program known as SBI, which is to help secure the nation’s borders and reduce illegal immigration through physical infrastructure (e.g., fencing), surveillance systems, and command, control, communications, and intelligence technologies, is fully operational along 28 miles of Arizona’s border. For those 28 miles, the cost has been about a billion dollars. Meanwhile, in the prior year, three Arizona counties have picked up 250,000 illegal aliens.

Money

April 25, 2010: From a local AZ newspaper: the price of methamphetamines is increasing in Mexico and in Arizona, Anthony Coulson of the U.S. Drug Enforcement Agency said. For example, Arizona meth prices ranged from \$8,000 to \$12,600 a pound in 2007. In 2009, the price was \$14,000 a pound.

In Mexico, the wholesale price of meth ranged from \$3,000 to \$4,000 a pound in 2006. This year, that same pound of meth costs between \$14,000 and \$14,500, Coulson said.

<http://www.eacourier.com/articles/2010/04/25/news/doc4bd23aa6e6feb251879518.txt> (2)

February 2010: Mexican DTOs smuggled bulk cash drug proceeds totaling tens of billions of dollars from the U.S. through the Southwest Border and into Mexico. Much of the bulk cash (millions each week) was consolidated by the DTOs in several key areas, including Atlanta, Chicago, Los Angeles, New York City, and North Carolina, where it was prepared for transport to the U.S.-Mexico border and then smuggled into Mexico.

<http://www.justice.gov/ndic/pubs38/38661/> (5)

July 9, 2009: Mexican and Colombian DTOs generate, remove and launder between \$18 billion and \$39 billion in wholesale drug proceeds in the United States annually... a large portion of which is believed to be smuggled in bulk across the border back into Mexico.

<http://www.justice.gov/dea/pubs/cngrtest/ct070909.pdf> (25)

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