

APPENDIX E

Gilbert, Ariz. General Order on
Contacts with Immigration and
Customs Enforcement


From General Order 1006 Mutual Aid, Rev. 10-22-2007:

L. U.S. Immigration and Customs Enforcement (ICE)

1. ICE (U.S. Immigration and Customs Enforcement) may be contacted when an officer has made contact with a person believed to be in violation of federal immigration laws and circumstances indicate involvement with:
 - a) Criminal activity (except non-hazardous or civil traffic offenses)
 - b) Gang activity
 - c) Human smuggling
 - d) Identity theft/fraudulent identification.
2. Officers will not make random contacts with people for the sole purpose of determining immigration status.
3. Supervisory approval will be obtained prior to making contact with ICE. If the person is the subject of an ICE detainer, the officer shall contact ICE to verify the detainer and whether they want the person held. When there is no detainer, ICE will determine immigration status. In either situation, if ICE advises the officer to hold a subject, the officer will stand-by with the subject and allow ICE a reasonable amount of time to respond. Officers will not transport subjects to ICE.
4. If a subject has been contacted and it is determined they have violated a state law, the officer will hold and/or book the subject on those offenses and notify ICE of the subject's detention location. If ICE has indicated they want the subject detained, the officer will place a hold on the subject and advise ICE of the detention location.
5. Officers will not effect an arrest if the person is the subject of an ICE civil warrant.
6. Officers have authority to arrest if the person is the subject of an ICE criminal warrant (after following procedures for verifying an arrest warrant). The procedures outlined above apply.
7. The superior courts are required to hold undocumented persons without bond when the charge is a class 1, 2, 3, or 4 felony, or is an aggravated DUI. The court must determine at the initial hearing whether probable cause exists to hold the person without bond. Officers shall complete the Form IV with specific details to assist the court in its determination. The officer shall write the booking number at the top of the Form IV to assist an MCSO deputy at the bond hearing.
8. A DR will be completed any time a person is turned over to ICE for an immigration violation. The DR will include the reason for the contact, the circumstances that led the officer to believe the person was in violation of immigration laws, the time ICE was contacted and the time they arrived.

APPENDIX F

Virginia Beach, Va.
Police Department
General Order Regarding
Enforcement of Immigration Laws

| | | | |
|---|--|---------------------------------------|---------------------------------------|
|  | Operational General Order | 11.10 Enforcement of Immigration Laws | PAGE 1 OF 3 |
| | Virginia Beach Police Department General Order Chapter 11 – Patrol Operations | | EFFECTIVE DATE 05/01/2007 |
| | DISTRIBUTION ALL | | ORIGINATOR/REVIEW Uniform Division |
| BY THE AUTHORITY OF THE CHIEF OF POLICE: | | | |

Purpose

To establish guidelines for sworn personnel regarding the enforcement of immigration laws.

Policy

The enforcement of the nation’s immigration laws is primarily the responsibility of the federal government. Accordingly, the Virginia Beach Police Department shall not undertake immigration-related investigations and shall not routinely inquire into the immigration status of persons encountered during police operations except as described below.

This prohibition does not preclude the Department from cooperating with federal immigration officials when requested, or from notifying those officials in serious situations where a potential threat to the public is perceived.

Inquiries into Immigration Status

A person’s right to file a police report, participate in police-community activities, or otherwise benefit from police services is not contingent upon citizenship or immigration status. Consequently, officers shall not question any person about his or her citizenship or immigration status or inform federal immigration authorities of the whereabouts or behavior of any immigrant or foreign visitor, unless that person:

1. Is physically arrested and not eligible for release on a summons
2. Has been convicted of any felony, regardless of whether that felony involved violence
3. Is reasonably suspected of involvement in terrorism and/or subversive activities
4. Is reasonably suspected of participating in an organized venture to bring or fraudulently assimilate undocumented foreigners into the country
5. Is reasonably suspected of participating in criminal street gang activity

Officers shall not request passports, visas, “green cards,” or travel documents in lieu of, or in addition to, driver’s licenses and similar standard forms of identification. Such documents shall only be requested when standard forms of identification are unavailable, or when the officer is proceeding under the conditions described above.

When any person is physically arrested, their Country of Citizenship should be ascertained and entered into the Adult Arrest / Juvenile Detention Worksheet (PD-180). Those persons who are physically arrested, and whose citizenship is other than the United States, may be questioned further as to their legal status in the United States. Any such person who acknowledges being in the United States illegally, or whom an officer suspects of being here illegally, may be screened through the ICE Law Enforcement Support Center (accessible via the E-911 Center) to determine if they can be detained as an illegal alien. Regardless of whether their status in the country is legal or illegal, consular notification applies as described below.

Original: 09-15-2005 - Effective: 05-01-2007 - Amends: 07-17-2006 - Review: 04-30-2007

No person shall be physically arrested in order to determine their legal status in the country if they would otherwise have been eligible for release on a summons. Additionally, no other person, including a victim or other person reporting a crime, nor any witness to a crime, shall be questioned regarding their status in this country absent a lawful physical arrest of such person for a crime or one of the other conditions enumerated above.

Arrest for Immigration Law Violations

In accordance with the Code of Virginia, 19.2-81.6 officers may, in the course of acting upon reasonable suspicion that the individual has committed or is committing a crime, arrest the individual without a warrant upon confirmation from the Bureau of Immigration and Customs Enforcement that the individual:

1. Is an alien illegally in the United States
2. Has previously been convicted of a felony in the United States and
3. Has either been deported, or left the United States after such conviction

Consular Notification (CALEA 1.1.4)

Arrest and or Detention of Foreign Nationals

When a person of foreign citizenship is taken into custody to answer a criminal charge, the arresting officer may determine the arrestee's country of citizenship as required by arrest report portion of the Records Management System. Further inquiries into the arrestee's immigration status shall only be permitted as provided by this General Order. Upon identifying the arrestee's country of citizenship, the arresting officers shall make the appropriate and required consular notifications in accordance with the requirements of the U.S. Department of State. Upon determining that the arrested or detained person is a foreign national, officers shall follow the following procedure:

- Determine the foreign national's country. Normally, this is the country on whose passport or other travel document the foreign national travels.
- Determine if the foreign national's country is on the U.S. Department of State's list of mandatory notification countries.
- If the foreign national is **not** from a country requiring mandatory notification by the U.S. Department of State:
 - Offer without delay, to notify the foreign national's consular officials of the arrest / detention.
 - If the foreign national requests such notification be given, notify the nearest consular officials of the foreign national's country without delay.
- If the foreign national is on the list of mandatory notification countries (Appendix I or http://travel.state.gov/law/consular/consular_636.html):
 - Notify that country's nearest consular official without delay of the arrest/detention.
 - Advise the foreign national of the notification.

Deaths of Foreign Nationals

Upon the death of a foreign national within the jurisdictional limits of the City of Virginia Beach, the investigating or reporting officer shall report the death to the nearest consular official of the foreign national's country.

Accidents Involving Aircraft or Ships Registered in Foreign Countries

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In the event that an aircraft or ship registered in a foreign country crashes or wrecks within the jurisdictional limits of the City of Virginia Beach, the responding incident commander shall insure that notification is made without delay to the consular official of the country in which the aircraft or vessel is registered.

Notification Procedures

Notification shall be made via telephone or facsimile. All notifications will be made utilizing Department form PD-196. Completed forms documenting notification shall be forwarded to the office of the Deputy Chief –Operations, with copies retained for inclusion in case files (when applicable.) Refer to http://travel.state.gov/law/consular/consular_745.html#phone or the list maintained on the Virginia Beach Police Department Intranet for the contact points of the various consular officials.

Appendix I

Mandatory Notification Countries and Jurisdictions

| | |
|---------------------|---------------------------------------|
| Algeria | Malta |
| Antigua and Barbuda | Mauritius |
| Armenia | Moldova |
| Azerbaijan | Mongolia |
| Bahamas, The | Nigeria |
| Barbados | Philippines |
| Belarus | Poland (non-permanent residents only) |
| Belize | Romania |
| Brunei | Russia |
| Bulgaria | Saint Kitts and Nevis |
| China ¹ | Saint Lucia |
| Costa Rica | Saint Vincent and the Grenadines |
| Cyprus | Seychelles |
| Czech Republic | Sierra Leone |
| Dominica | Singapore |
| Fiji | Slovakia |
| Gambia, The | Tajikistan |
| Georgia | Tanzania |
| Ghana | Tonga |
| Grenada | Trinidad and Tobago |
| Guyana | Tunisia |
| Hong Kong | Turkmenistan |
| Hungary | Tuvalu |
| Jamaica | Ukraine |
| Kazakhstan | United Kingdom |
| Kiribati | U.S.S.R. |
| Kuwait | Uzbekistan |
| Kyrgyzstan | Zambia |
| Malaysia | Zimbabwe |

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APPENDIX G

Washington, D.C.
Metropolitan Police Department,
Statement by Chief Cathy L. Lanier
Clarifying MPD Policy with
Respect to Collaboration with
Federal Immigration Authorities

STATEMENT CLARIFYING MPD POLICY WITH RESPECT TO COLLABORATION WITH FEDERAL IMMIGRATION AUTHORITIES

The purpose of this statement is to re-affirm MPD's policy on the enforcement of civil immigration laws. I am issuing this statement because Latino community leaders have asked if MPD's policies have changed under my administration. I would like to state emphatically that MPD's policy has not changed.

MPD Policy

MPD's policy with respect to the enforcement of civil immigration laws is very clear: MPD officers are strictly prohibited from making inquiries into citizenship or residency status for the purpose of determining whether an individual has violated the civil immigration laws or for the purpose of enforcing those laws. In other words, the MPD is not in the business of inquiring about the residency status of the people we serve and is not in the business of enforcing civil immigration laws.

The reasoning behind this policy is straightforward: Our department is responsible for providing police services to everyone in the District of Columbia – equally, fairly, and justly. To help carry out that mission, we have adopted a strategy of community policing – of police and residents working together to fight crime in a partnership of cooperation, respect, and trust. If some of our residents are reluctant to interact with the police, because they fear we are there to enforce civil immigration laws, then all hopes for partnership and cooperation are lost, and what really suffers the most is the safety of entire communities.

MPD Collaboration with Federal Immigration Authorities

Criminal Enforcement Operations

While MPD's policy against inquiring about immigration status is clear and strong, our Department is obligated to provide limited support to federal immigration authorities when they conduct *criminal* law enforcement operations in the District of Columbia. This does not occur very often, as federal immigration authorities are mostly involved in the enforcement of civil immigration laws. But federal immigration authorities are sometimes involved in enforcing criminal laws that are related to immigration, such as those seeking to control the production and sale of falsified immigration documents and identification cards. When this occurs, and MPD assistance is requested, MPD normally provides the police support requested or needed by the federal agency. This support includes investigational support, traffic control, crowd control, and transportation support.

MPD recognizes that, when federal immigration officials are involved, even operations intended to serve as *criminal* law enforcement operations may involve a civil immigration enforcement component. In other words, once immigration officials are involved in arrests or a search or similar actions, they may make inquiries into immigration status and detain individuals purely on civil immigration violations. Thus, when MPD and immigration officials work collaboratively on criminal law enforcement operations that result in searches, arrests or other similar actions, taken within the jurisdiction of Washington, DC, MPD will take all necessary precautions to ensure that MPD does not become involved in the enforcement of civil immigration laws. Before any such action takes place, MPD will require that the exact nature of the action be specified and will set clear parameters for the role that MPD will take in the action. Specifically, MPD will ensure that it does not become directly involved in arrests, searches or other similar actions except where

absolutely necessary to the success of the criminal law enforcement objective. MPD will limit its support to traffic control, crowd control, and transportation support when the enforcement action is strictly on civil immigration laws.

Civil Immigration Enforcement Operations

In addition, the MPD is obligated to provide crowd and traffic control at any event that may attract a crowd of people or affect the flow of traffic in the District of Columbia. This includes public events such as protest marches or demonstrations, block parties and community festivals, and public safety operations, such as fires and major automobile accidents. It also includes crowd and traffic control when federal immigration authorities inform MPD that they will conduct an operation to enforce *civil* immigration laws. MPD's role in these actions is to ensure the safety of those who live in, work in, or visit the District of Columbia – it is not to facilitate or ensure the success of the civil law enforcement action.

For example, if federal immigration authorities request crowd and traffic control services from MPD because they will conduct an immigration raid on a District business property, MPD will provide the crowd and traffic control services. MPD will not be involved in identifying or arresting the targets of that operation, or in conducting or facilitating the operation itself in any way. MPD's role will be limited to protecting the public's safety while the operation is underway.

Communication

Because MPD takes very seriously its commitment to the community to avoid any actual or apparent involvement with immigration authorities in the enforcement of civil immigration laws, MPD will issue a media communication explaining the operation and the nature of MPD's role after any action that involves both MPD and immigration officials.

Conclusion

The MPD remains committed to its strong and consistent policy with respect to the enforcement of civil immigration laws. Officers are prohibited from making inquiries into citizenship or residency status for the purpose of determining whether an individual has violated the civil immigration laws or for the purpose of enforcing those laws. Any violations of that policy will not be tolerated.

MPD's collaboration with federal immigration authorities in the enforcement of *criminal* laws related to immigration, and in the provision of crowd and traffic control when they seek to enforce *civil* immigration laws, is not a violation of MPD policy. Such limited actions only reflect MPD's responsibility to enforce local and federal *criminal* laws, and to protect the safety and welfare of those who live in, work in, or visit the city. MPD remains steadfast in its commitment to serve everyone in the District of Columbia, regardless of their immigration status, and its commitment to prohibit the involvement of MPD personnel in the enforcement of civil immigration laws.



Cathy L. Lanier
Chief of Police

A P P E N D I X H

Indio, Calif.
Police Department Policy 428:
Immigration Violations

Immigration Violations

428.1 PURPOSE AND SCOPE

The immigration status of individuals alone is not a matter for police action. It is incumbent upon all employees of this department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of alien status. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community.

428.2 DEPARTMENT POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry, etc. When assisting ICE at their specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of Title 8, United States Code, §§ 1304, 1324, 1325 and 1326 this department may assist in the enforcement of federal immigration laws.

428.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

Persons wishing to report immigration violations should be referred to the local office of the U.S. Immigration and Customs Enforcement (ICE). The Employer Sanction Unit of the ICE has primary jurisdiction for enforcement of Title 8, United States Code.

428.31 BASIS FOR CONTACT

The fact that an individual is suspected of being an undocumented alien alone shall not be the basis for contact, detention, or arrest.

428.32 SWEEPS

The Indio Police Department does not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, socioeconomic status, or other group.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, sexual orientation, etc.

428.33 ICE REQUEST FOR ASSISTANCE

If a specific request is made by ICE or any other federal agency, this department will provide available support services, such as traffic control or keep-the-peace efforts, during the federal operation.

Members of this department should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for officer safety. Any detention by a member of this department should be based upon the reasonable belief that an individual is involved in criminal activity.

Indio Police Department

Immigration Violations

428.34 IDENTIFICATION

Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor, or felony), the investigating officer should take reasonable steps to determine the person's identity through valid identification or other reliable sources.

If an individual would have otherwise been released for an infraction or misdemeanor on a citation, the person should be taken to the station and given a reasonable opportunity to verify his/her true identity (e.g., telephone calls). If the person's identity is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

428.35 ARREST

If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation (see Vehicle Code § 40302a, and Penal Code § 836, if pertinent to the circumstances). A field supervisor shall approve all such arrests.

428.36 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

If a person is detained pursuant to the authority of Vehicle Code § 40302(a), for an infraction that person may be detained upon approval of a supervisor for a reasonable period not to exceed two hours for the purpose of establishing his/her true identity. Regardless of the status of that person's identity at the expiration of two hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction involved.

428.37 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

If an officer believes that an individual taken into custody for a felony is also an undocumented alien, after he or she is formally booked and there is no intention to transport to the County Jail, ICE may be informed by the arresting officer so that they may consider placing an "immigration hold" on the individual.

Whenever an officer has reason to believe that any person arrested for any offense listed in Health & Safety Code §11369 or any other felony may not be a citizen of the United States, and the individual is not going to be booked into County Jail, the arresting officer shall cause ICE to be notified for consideration of an immigration hold.

In the event an individual, who is an undocumented alien, is taken to the County Jail for booking for a criminal charge, he/she will be automatically interviewed by an employee from ICE.

428.38 DETERMINATION OF IMMIGRANT STATUS

Determination of immigration status is primarily the jurisdiction of the U.S. Immigration and Customs Enforcement. Title 8, United States Code, § 1304(e), provides: "Every alien, 18-years of age and over, shall at all times carry with him and have in his or her personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than 30 days, or both."

Immigration Violations - 218

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Indio Police Department

Immigration Violations

428.4 CONSIDERATIONS PRIOR TO REPORTING TO ICE

The Indio Police Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any subject. Race, gender, religion, sexual orientation, age, occupation or other arbitrary aspects are of no bearing on the decision to arrest.

APPENDIX I

New Haven, Conn.
Department of Police Service
General Order 06-2,
Re. Disclosure of [Citizenship] Status:
Policies and Procedures

General Order

NEW HAVEN DEPARTMENT OF POLICE SERVICE

GENERAL ORDER 06-2

RE: DISCLOSURE OF STATUS INFORMATION: POLICIES AND PROCEDURES

I. PURPOSE

The purpose of this General Order is to establish New Haven Police Department policy and procedures concerning citizenship status, enforcement of federal immigration laws and the disclosure of confidential information.

II. IMMIGRATION STATUS

A. General

The City of New Haven is home to a diverse population. Many of its residents have emigrated here from other countries, and some are not citizens of the United States. The City and the Police Department are committed to promoting the safety and providing proactive community policing services to *all* who live here. Residents should know that they are encouraged to seek and obtain police assistance and protection regardless of their immigration status.

The department relies upon the cooperation of all persons, both documented citizens and those without documentation status, to achieve our goals of protecting life and property, preventing crime and resolving problems. Assistance from immigrant populations is especially important when an immigrant, whether documented or not, is the victim of or witness to a crime. These persons must feel comfortable in coming forward with information and in filing reports. Their cooperation is needed to prevent and solve crimes and maintain public order, safety and security in the entire community. One of our most important goals is to enhance our relationship with the immigrant community, as well as to establish new and ongoing partnerships consistent with our community policing philosophy.

B. Policy

The limited resources of the city; the complexity of immigration laws; limitations on authorities; risk of civil liability for immigration and enforcement activities; and the clear need to foster the trust and cooperation from the public, including members of immigrant communities are all factors that were taken into account when formulating this policy. A community member's potential status as an undocumented immigrant has no relation to the mission or goals of the New Haven Police Department.

C. Procedures

1. Police officers shall not inquire about a person's immigration status unless investigating criminal activity.
2. It shall be the policy of the department not to inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance.
3. Officers and other members of the New Haven Police Department shall continue to cooperate with federal authorities in investigating and apprehending illegal immigrants suspected of criminal activity.
4. No person shall be detained solely on the belief that he or she is not present legally in the United States, or that he or she has committed a civil immigration violation. There is no general obligation for a police officer to contact U.S. Immigration and Customs Enforcement (ICE) regarding any person, unless that person is arrested on a criminal charge.
5. Officers shall not make arrests based on administrative warrants for arrest or removal entered by ICE into the FBI's National Crime Information Center (NCIC) database, including administrative immigration warrants for persons with outstanding removal, deportation or exclusion orders. Enforcement of the civil provisions of U.S. immigration law is the responsibility of federal immigration officials.
6. The New Haven Police Department shall conduct all necessary training and education to ensure that its officers are knowledgeable about all provisions contained in this General Order. Referrals to medical or social service agencies will be made to undocumented immigrants in the same manner they are made to all other community members.

Nothing in this general order shall be construed to prohibit any officer or employee from cooperating with federal immigration authorities as required by law.

III. CONFIDENTIAL INFORMATION

A. Definition

As used herein, "confidential information" means any information obtained and maintained by the department 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, recipient of public assistance, or immigration status, and shall include all information contained in any person's income tax or other financial records, including but not limited to Social Security numbers.

General Order 06-2
Disclosure of Status Information: Policies and Procedures

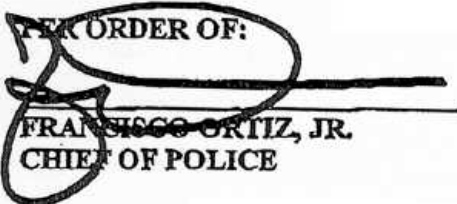
B. Disclosure

Obtaining pertinent information may in some cases be difficult or impossible if some expectation of confidentiality is not preserved, and preserving confidentiality in turn requires that the department regulate the use of such information by its employees.

In furtherance of this policy, confidential information relating to immigration status or other personal or private attributes should be disclosed only as provided herein. No department officer or employee shall disclose confidential information unless such disclosure:

- a. Has been authorized in writing by the individual to whom the information pertains, or by the parent or guardian of same if the individual is a minor or not legally competent; or
- b. Is required by law; or,
- c. Is relevant to another City officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; or,
- d. Is necessary to apprehend an individual suspected of engaging in criminal activity other than mere status as an undocumented immigrant; or
- e. Is necessary in furtherance of a criminal investigation of potential terrorism.

Any city officer or employee with a question relating to the disclosure of confidential information under this general order shall consult with his or her supervisor.

PER ORDER OF:

FRANCISCO ORTIZ, JR.
CHIEF OF POLICE

DISTRIBUTION: All Personnel
DISTRIBUTED: 12/12/2006
EFFECTIVE: 12/21/2006 (via paycheck)

References:

- M.C.C. Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Police Agencies (adopted by Major Cities Chiefs, June 2006)
- Issue in Brief: Immigration Law Enforcement by State and Local Police (National Immigration Forum, January 2006)
- The IACP Policing Document on the Role of State, Local and Tribal Police in Enforcing Immigration Laws (International Association of Chiefs of Police)

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rev. 9.22.06

APPENDIX J

Seattle

Police Department Directive:
Inquiries into Immigration Status

Seattle Police Department

DIRECTIVES



Date: DECEMBER 4, 2003

Directive: D 03-57

INQUIRIES INTO IMMIGRATION STATUS

This directive was originally published in 2002. It is being reissued as a reminder of guidelines for officers.

It is the intent of the Seattle Police Department to foster trust and cooperation with all people in our City. Complainants, witnesses and victims are encouraged to communicate with Seattle Police officers without fear of inquiry regarding their immigration status. Being an undocumented person in this country, barring any criminal activity, is a Federal civil violation not enforced by the municipal police department. Only INS can enforce federal laws relating to illegal entry and residence within the United States.

NOTE: This policy is consistent with past training and procedures first promulgated by SPD in 1991.

The following is presented as a guideline for officers with their street contacts:

1. Request for specific documents for the sole purpose of determining someone's civil immigration status is not permitted. However, if offered by the person and not specifically requested by the officer, it is permissible to rely on immigration documents to establish someone's identity in response to a general request for identification.
2. Seattle police officers shall not initiate police action based solely on an individual's civil immigration status, nor shall they ask for identification or documents pertaining to the individual's status.
3. Per Seattle city ordinance, SMC section 4.18.010, the Seattle Police Department will assist Federal agencies as resources allow and while considering the enforcement priorities of the Department. Designated officers will be assigned to assist Federal agencies from time to time to arrest previously deported aliens who are currently involved in criminal activity. Any joint patrol with a federal agency will be with the express approval of the employees' commanding officer.

Requests for documents relating to someone's civil immigration status during street contacts applies whether officers are talking to victims, witnesses, suspects or persons of interest to another agency (such as the subject of an outstanding warrant). Under ordinary circumstances a general request for adequate identification as part of a criminal investigation is all that is necessary or appropriate. Questions concerning this issue should be directed to Leo Poort, Department Legal Advisor.


R. Gil Kerlikowske
Chief of Police

APPENDIX K

Garden Grove, Calif.
Police Department,
General Order 17.3:
Immigration Violations

GARDEN GROVE POLICE DEPARTMENT

GENERAL ORDER 17.3

Effective Date: June 15, 2005
Last Amended: January 4, 2007

Index as: Immigration violations

IMMIGRATION VIOLATIONS

PURPOSE

The purpose of this policy is to establish guidelines when dealing with individuals who have violated the immigration laws of the United States

The trust that members of the community enjoy with the City and the Police Department is of paramount importance. It is incumbent upon all members of this Department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of alien status.

POLICY

The United States Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, U.S. Code dealing with illegal entry, etc. When members of the Garden Grove Police Department are requested by the ICE to provide immediate assistance, or when suspected criminal violations are discovered as a result of any investigation, based upon probable cause, not originating from violations of Title 8, U.S. Code, §~ 1304, 1324, 1325, and 1326, members of the Garden Grove Police Department may assist in the enforcement of federal immigration laws.

IMMIGRATION COMPLAINT PROCEDURES

Persons wishing to report immigration violations should be referred to the United States Immigration and Customs Enforcement (ICE), 34 Civic Center Plaza, 9th floor, Santa Ana, CA (714) 972-4100. The Employer Sanction Unit of the ICE has primary jurisdiction for enforcement of Title 8, U.S. Code.

The fact that an individual is suspected of being an undocumented alien alone shall not be the basis for contact, detention, or arrest.

Members of the Garden Grove Police Department shall not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

G.O. 17.3 page 1 of 3

When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, socioeconomic status, or other group. While discretionary, the disposition of each contact should not be affected by such factors as race, ethnicity, sexual orientation, etc.

If the ICE or any other federal agency makes a specific request for assistance, members of the Garden Grove Police Department will provide available support during the federal operation. Members of the Department should not participate in such federal operations as part of any detention team unless it is in response to an immediate, yet temporary request for assistance or for officer safety. Any detention by a member of this Department should be based upon the reasonable belief that an individual is involved in criminal activity, other than those related to citizenship status.

ARREST AND IDENTIFICATION

Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor, or felony), the investigating officer should take the necessary steps to identify the person. This may include valid government issued identification or other reliable sources.

If an officer believes that an individual taken into custody for a felony is an undocumented alien, the arrestee should be booked into Orange County Jail without consideration for immigration status.

If an officer believes that an individual taken into custody for a misdemeanor is an undocumented alien, and that person would have otherwise been released on a written promise to appear, the person should be given a reasonable opportunity to verify their true identity (e.g., telephone calls, etc.). If the person's identity is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

If members of the Department arrest an individual who is unable to reasonably establish his or her true identity, the individual may be booked at the appropriate jail (refer to Vehicle Code § 40302a, and Penal Code § 853.6, if applicable).

If a person is detained pursuant to the authority of Vehicle Code § 40302a, for an infraction, that person may be detained for a reasonable period not to exceed two hours, for the purpose of establishing his or her true identity. Regardless of the status of that person's identity at the expiration of two hours, he or she shall be released on his/her signature with a written promise to appear in court for the Vehicle Code infraction involved.

NOTIFICATION OF IMMIGRATION AND NATURALIZATION SERVICE

If an officer detains an individual who meets the criteria, as defined in Section 1227, Title 8 U.S.C., Deportable Aliens, which includes prior convictions for crimes of moral turpitude, controlled substances, domestic violence, and violation of courts protection orders, the individual can be taken into custody for violation of this Federal statute if:

- a. The officer has obtained a copy of the individuals Criminal History Index indicating one of the listed offenses,
- b. The officer has obtained approval from the Watch Commander prior to the arrest,
- c. Written notification to the Chief of Police, via the chain of command, must be provided prior to the conclusion of the officer's duty shift.

The United States Customs and Border Protection (CBP) should be notified of the arrest by calling (619) 662-7321. The arrestee should be transported to the San Onofre Border Checkpoint and released to the custody of the United States Customs and Border Protection (CBP). The arresting officer shall indicate the disposition of the arrestee on the Arrest Face Page and in the arrest narrative.

This Department will not book undocumented aliens based solely on immigration status unless a warrant is confirmed through the ICE and they are willing to pick up the individual.

DETERMINATION OF IMMIGRANT STATUS

Determination of immigration status is primarily the jurisdiction of the United States Immigration and Customs Enforcement (ICE). Title 8, U.S. Code § 1304 (e), provides: "Every alien, eighteen years of age and over, shall at all times carry with him and have in his/her personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100.00 or be imprisoned not more than thirty days, or both."

APPENDIX L

Milwaukee
Police Department
Immigration Enforcement Policy

- C. Upon departure, the Department will request that law enforcement issue a warrant for the person's arrest so that the name will be entered in NCIC.

3/130.25 RACIAL PROFILING POLICY

A. DEFINITION

Racial profiling is any police-initiated action that relies upon the race, ethnicity, or national origin of an individual rather than the behavior of that individual, or information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

B. POLICY

It shall be the policy of the Milwaukee Police Department that police members, during the performance of their duties, shall not engage in the practice of racial profiling. Police members shall not use racial or ethnic stereotypes as factors in selecting whom to stop and whom to search. Police members may use race or ethnicity to determine whether a person matches a specific description of a particular suspect.

3/130.30 IMMIGRATION ENFORCEMENT

A. POLICY

It shall be the policy of the Milwaukee Police Department to implement an immigration enforcement strategy that is consistent with the mission of reducing the levels of crime, fear, and disorder in the City of Milwaukee. However, this strategy must also be in balance with the jurisdictional responsibilities of the federal government and the corresponding jurisdictional limitations of local law enforcement. The following procedures not only achieve that balance but also comply with the Wisconsin Attorney General's law enforcement guide to immigration enforcement.

With a policing philosophy that is community-based, problem-oriented, and data-driven, we are committed to ridding the city's streets of violent offenders regardless of whether such offenders are in the United States legally or illegally. We are also committed to facilitating safe, sustainable communities where citizens are encouraged to report crime and provide the police with useful information and intelligence. However, proactive immigration enforcement by local police is inherently detrimental to our mission and policing philosophy when doing so ultimately deters some citizens from participating in their civic obligation to assist the police. It is therefore expected that each police member follow the procedures set forth below regardless of one's personal opinion or political ideology on the issue of immigration.

- B. Enforcement of the nation's immigration laws is the responsibility of the federal government, particularly the United States Bureau of Immigrations and Customs Enforcement (ICE). Accordingly, the Milwaukee Police Department shall not unilaterally undertake immigration-related investigations and shall not routinely inquire into the immigration status of persons encountered during police operations. This prohibition does not preclude the Department from cooperating with federal immigration officials when requested, or from notifying those officials in serious situations where a potential threat to the public is perceived.

Note: Most immigration violations are civil and fall under the jurisdiction of the federal government. As such, local law enforcement officers have no right of arrest in these matters.

- C. A person's right to file a police report, participate in police-community activities, or otherwise benefit from police services is not contingent upon their immigration status. Consequently, Department members shall not question any person about his or her immigration status unless that person is reasonably believed to be involved in one or more of the activities identified in (F) below.
- D. Department members shall not request passports, visas, "green cards," or other documents relating to one's immigration status in lieu of, or in addition to, standard forms of identification such as a driver's license, state identification card, etc. Immigration related documents shall only be requested when standard forms of identification are unavailable, or when the member is proceeding under (F) below.
- E. Police members shall not contact, detain, or arrest a person solely for a suspected immigration violation unless such contact, detention, or arrest is in cooperation with and at the direction of federal immigration officials.
- F. Police members shall not inform federal immigration officials of the whereabouts or behavior of any suspected illegal immigrant or foreign visitor, except when the immigrant or foreign visitor:
1. Is arrested for a felony
 2. Is arrested for a misdemeanor involving the possession or use of a dangerous weapon
 3. Is arrested for a terrorism-related offense, or is otherwise reasonably suspected of involvement in terrorism and/or subversive activities
 4. Is arrested for any offense involving the entry or fraudulent assimilation of undocumented foreigners into the country, or is reasonably suspected of participating in an organized venture to bring or fraudulently assimilate undocumented foreigners into the country
 5. Is a previously deported felon
 6. Is reasonably suspected of participating in criminal street gang activity

- G. In the event a police member needs to contact ICE, they shall first attempt to contact the local office at (414) 297-1571. If the local office is closed or if an agent is unavailable, the police member shall contact the ICE Law Enforcement Support Center (LESC) at 1-802-872-6050.
- H. Only federal immigration officials can determine a person's immigration status; therefore, citizens wishing to report immigration violations shall be referred to the local office of ICE at (414) 297-1571.


EDWARD A. FLYNN
CHIEF OF POLICE

EAF:gjg

A P P E N D I X M

Chilling Effect and the
Enforcement of Immigration Law

By Collier County, Fla. Sheriff Don Hunter

CHILLING EFFECT AND THE ENFORCEMENT OF IMMIGRATION LAW

Philosophically, all who enforce the laws have adopted by oath the proposition that we will honor the "rule of law"¹ by enforcing the law consistently without prejudice and in defiance and denial of external influences. This dispassionate enforcement of law is taught at every American law enforcement academy.

This idea of dispassionate application of law elevates to the highest plane the preservation of the public's interest for justice and reinforces the notion that the application of law will not be subordinated to the interests of any person(s). "Lady Justice" is intentionally blind to external influence and has come to epitomize the concept of our system of laws.

SITUATIONAL DISCRETION VS. WHOLESALE COMPASSION

Some have suggested that application of law in the immigration arena should combine both the rule of law and compassion and that both could co-exist. If the definition of compassion in this context is identical to the common usage² there is a natural inconsistency in use of the terms "compassion" and "rule of law" together in the wholesale application of law. While situational discretion (compassion) remains an attribute of professional law enforcement, permitting compassion in the enforcement of law for an entire population of people (all illegally present aliens) would violate the rule of law as it is commonly understood. If application of law (i.e., enforcement) may be altered by influences who suggest that by enforcing law we chill relations with the population violating our laws then there is no "rule" of law, by definition; there is instead a perversion of form to one of negotiated enforcement advancing favoritism and benefits to those otherwise subject to enforcement. No other entire population of violators of law (whether traffic law violators, "deadbeat" dads, burglars and all others) has been granted such consideration in deference to the strict enforcement of law. The beneficiaries of such exceptional consideration go beyond the patent population of immigration law violators to other purveyors of external influence such as the employers of illegally present foreign nationals and organizations that profit by the presence of the illegal foreign national. I believe that such a quid pro quo formulation of enforcement (that we will receive greater reporting of crime in return for not enforcing immigration laws) is a slippery slope in the destruction of meaningful trust. Permitting external influence to determine our role in the enforcement transaction is a corruption of principled enforcement inviting cynicism in law enforcement professionals as well as the public we serve.

Dura Lex Sed Lex (The law is harsh, but it is the law)

Unbiased, unprejudiced and influence free enforcement of law is a keystone principle of professional U.S. law enforcement; an ideal inviolate. Principled enforcement sets the U.S. apart from other nations where corruption is incipient and palpable.

Dispassionate and consistent enforcement of law sans wholesale discretion (compassion) creates a clear and bright line expectation of certainty in the public we serve and the criminal

¹ "The rule of law, sometimes called "the supremacy of law", provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application." Black's Law Dictionary, sixth edition, page 1332.

² "Compassion" ... sympathetic consciousness of others' distress **together with a desire to alleviate it**". (emphasis added). Webster's New Collegiate Dictionary, Anniversary Edition.

element we intend to deter. "Certainty" in the enforcement realm is as relevant as "certainty" and "swiftness" is in the formulation of effective punishment.

The alleged "chilling effect" of immigration law enforcement has been offered as a putative apology for the wholesale application of discretion. In effect, this notion is that if we enforce immigration law then the illegally present foreign national will refuse to report their personal victimization to law enforcement for fear of deportation/removal.

I disagree. Trust is not inspired in the idea that certain crimes will not be enforced by law enforcement. The reverse is true. Trust is built on a foundation of predictability; consistent application of law creates predictability which inspires trust. Our Law is codified purposefully to further predictability. Codification of law permits all to view the law while minimizing mis-interpretation and manipulation of meaning.

Certainty is a derivative of consistency and in the final formulation of our enforcement / prevention model deterrence is the result. Had immigration law enforcement been properly performed there would not be a vast resident population of illegal aliens. In the absence of this vast population of illegal aliens there would be no discussion now discouraging the application of law on that population. "Chilling effect" would revert to the more proper application of the phrase. In every other enforcement discussion "chilling effect" is nothing more than deterrence; the ultimate goal of law enforcement. Had we been successful in applying current law at the borders, wet and dry, there would be no discussion underway about how to manage the vast population of illegals, no potential perversion of the "rule of law" and no revisionism in the use of chilling effect as a term that should be reserved as a synonym for deterrence.

Although the idea of a chilling effect is intuitively appealing I believe that those who allege the effect carry the burden of proving that such an effect exists. How would we go about proving the negative, that crime will not be reported if law is enforced? We are unlikely to prove that a specific crime will not be reported if we enforce immigration law just as we cannot demonstrate that we prevented a specific crime in our most recent patrol tour. We can make assumptions from cumulated data but we cannot specifically demonstrate a cause and effect relationship. Confusion of which laws to enforce and which to ignore grants a theoretical toehold to those who would exploit the indecisiveness of an equivocal position in an otherwise unassailable American policing tradition. Equivocating subjectivity in law enforcement breeds contempt of the law, a sense of empowerment to those violating it and a belief that the law is subject to bargain. This quid pro quo formulation of equivocation is a contradiction to our professional philosophy and a direct challenge to ethics.

CHILLING THE FROZEN RELATIONSHIP?

The frozen relationship between law enforcement and communities of people from emerging and developing nations is well documented. Cultural predilection opposed to reporting crime and cooperating with American law enforcement is apparent in communities with strong first generation populations from the "third world". In emerging nations, corruption of law enforcement is a given or strongly believed to exist by the people living there. We can't undo these cultural predilections by practicing favoritism and equivocation in law enforcement. The majority of illegally present aliens come from countries with suspected corruption in law enforcement.

Though counter-intuitive I believe that the trust relationship built on unequivocal enforcement of all law is more durable and authentic because it is founded on our traditions and because we

become predictable. In this way the illegal alien population is guided to law compliance by our steady and consistent application of law, thereby causing the alien population to orient themselves to U.S. law and custom rather than orienting U.S. law to the illegally present foreign national. In my view this outcome is superior.

Federal law and policy currently provides 230 visa varieties for virtually every condition found in the non-immigrant populations, at least two of which were created for victims of crime³. Clearly adjustment of status for cooperating victims of crime is a feature of current practice and a possible antidote to the alleged "chilling effect".

I question whether we are building a case against enforcement when we might be more fruitful in reminding those who come here legally and illegally that to become a part of the social fabric of the nation civic responsibility must be exercised. In other words, the non-immigrant, whether legal or otherwise has a duty while present to report crime in some fashion.

Whether the report is made direct to law enforcement or by anonymous means, civic duties must include shared protection of the public by vigilance from all present. This is a basic ingredient in the execution of law enforcement duties as we all know that the unreported crime will go largely undetected; the undetected crime will likely not be solved.

Law enforcement agency-heads must answer two critical questions:

1. Is the current immigration law (Immigration and Nationality Act – INA) valid law? Or, conversely, has the current INA been found to be unconstitutional in whole or in part?
2. Would the enforcement of current immigration law have a reasonable expectation of identifying and/or obviating the efforts of a Mohammed Atta, a terror cell, organized crime groups and violent street gangs composed in part or wholly of illegally present foreign nationals?

Current law is valid law and I would answer the succeeding question in the positive; we could have a positive effect on organized crime groups (terror related or otherwise) by removing operational elements of the groups by incarceration or deportation.

I would also add that the most recent National Intelligence Estimate (NIE) clearly demonstrates that though "only a handful of individuals" have been discovered in the U.S. with ties to al-Qa'ida leadership, the expectation is that "al-Qa'ida will intensify efforts to put operatives here"; i.e., immigrate here⁴. Under such circumstance, unequivocal enforcement of immigration law becomes the very front line of defense.

³ The "T" visa provides a path to legal permanent resident (LPR) status for persons who are victims of human trafficking who agree to cooperate in the prosecution of the violators. The "U" visa provides a path to LPR status to victims of violent / serious crime.

⁴ "National Intelligence Estimate; The Terrorist Threat to the US Homeland; July 2007".

"Key Judgments:

We assess (al-Qa'ida) has protected or regenerated key elements of its Homeland attack capability, including: a safehaven in the Pakistan Federally Administered Tribal Areas (FATA), operational lieutenants, and its top leadership. Although we have discovered only a handful of individuals in the United States with ties to al-Qa'ida senior leadership since 9/11, we judge that al-Qa'ida will intensify its efforts to put operatives here."

Under the informal contract created in "sanctuary" cities the illegally present foreign national is encouraged to report crime and reassured that violations of law – especially immigration law - will not be enforced against them. From a practical aspect the quid pro quo "contract" created in this arrangement between law enforcement and the illegal alien population does not appear to hold much promise. A review of Uniform Crime Reports and victimization surveys suggests crime is under-reported during an era that supports "sanctuary" jurisdictions.

In calendar year 2005 the total number of part 1 crime victimizations was 23.44 million. In that year, only 41.3% of these crimes were reported to the police (only 39.6% of the property crimes were reported). Whether the person was illegally present or not, almost 58% of all crime was not reported (sanctuary laws were well under way by 2005)⁵ and almost 60% of property crime was not reported.

Of the 23.44 million victimizations, 77% were property crimes (18M) and 23% were personal (5.4M); the clearance rates for these classifications were 16.3% and 45.5% respectively, in 2005. The composite clearance rate is calculated to be 23.9% for both crime classifications. If we assume that crime victimizations are smoothly distributed across all population groups (the illegally present foreign national population is either no more or no less likely to be victims of crime) the illegally present foreign national population suffered victimization in property crimes of at most 1.2M (upper population magnitude calculation of 20 million present) and 362k personal crimes (see attached Graph 1). If we solve only 155k (23.9% clearance rate) of these 1.5M crime victimizations occurring to illegal aliens, our total loss in crimes cleared to total victimizations nationwide would be less than 1% (see attached Chart 1).

Thus for a potential loss of not more than one percent (0.7%) of crimes solved we would suffer the lost potential of finding and incapacitating or removing terror cells and serious organized crime and sacrifice both our domestic security and the "rule of law"⁶.

Said in a different way, even though each victim of crime is a priority to us, we lose very little by the theoretical chilling of crime reporting by the illegally present foreign national. The illegally present would appear to be a small fraction of victims of crime and crime is significantly under-reported today across all ethnic and racial groups. Trust will be built with predictability. Through unequivocal enforcement we would stand to gain a huge advantage strategically.

SANCTUARY FOR WHOM?

I would suggest that the use of "sanctuary laws" in which jurisdictional authorities forbid the reporting of discovered illegally present foreign nationals to federal authorities do not invalidate federal immigration law. As such, the refusal to report law violation to federal authorities facilitates the illegal alien to remain in the United States, exposes the sanctuary government to liability exposure for every crime committed by the illegally present foreign national and inspires further criminal activity by evidencing disinterest in the enforcement of all law. Suggesting that sanctuary law is built on the proposition that illegal presence is a civil violation only does not solve the dilemma positively for the local "sanctuary" government. Virtually all moving and non-moving traffic violations are civil infractions. Yet we know that not only does the public

⁵ U.S. Department of Justice, Bureau of Justice Statistics, Criminal Victimization in the United States, 2005 Statistical Tables, NCJ 217198, Table 91.

⁶ U.S. Department of Justice, FBI Uniform Crime Report, "Crime in the United States, 2005"; released September, 2006

emphasize a strong interest in traffic safety, national law enforcement organizations have inspired nationwide contests in innovative and high volume enforcement of those laws. Granted, the public calculus for support continues to be founded on whether immigration law merits enforcing as a public safety threat avoidance strategy. Traffic laws engage the public's sense of safety for their families. Immigration law has not received either the duration or degree of scrutiny that traffic law enforcement enjoys relative to public or family safety. As public safety leaders we have a duty to educate our constituents and elected officials on the vagaries of sanctuary laws and the threat that illegal immigration truly represents. We should not create law with an expectation that it will not be enforced.

Legal liabilities would appear to attach to any government that facilitates the continued presence of illegal aliens who commit criminal offenses. Current events are rife with examples of crime committed by the illegally present. While only the most heinous becomes national news we are all familiar with local threats. The legal liabilities and benefits of enforcement of immigration law by local and state law enforcement are ripe for research and review and deserve more than a cursory exploration. At a minimum we have a duty to protect all who reside in or visit our jurisdictions from crime.

Certainly a rigorous review of data and logic would lead to more than an off-hand dismissal of enforcement in favor of continued under-reporting of crime, the governmental liability exposures and public safety and domestic security threats that continued unabated illegal immigration represents.

Finally, much discussion has occurred pertaining to whether local law enforcement has authority, either inherent sovereign authority or statutory, to enforce immigration law. This debate cannot be determined in this article; however I would hasten to add that this is an area deserving final treatment and clarification if we are serious about the control of our borders. Clearly illegal immigration will not be controlled until we have gained a level of deterrence through enforcement.

Sheriff Don Hunter
Collier County Sheriff's Office
August 2007

NOTE: The interpretation of law remains as much art as science. The most recent summary of United States Supreme Court statistics (October Term 2006) reflects that the Justices of the U.S. Supreme Court unanimously agreed with one another on points of written established law in 25% of the cases reviewed!⁷

⁷ Akin Gump Strauss Hauer & Feld LLP, Memorandum of June 2007, from SCOTUS blog, accessed by internet, 9August07

Graph 1. 2005 Estimated Victimizations, Crimes Reported and Crimes Solved for Illegally Present Population (estimate based on 20 million illegally present aliens).

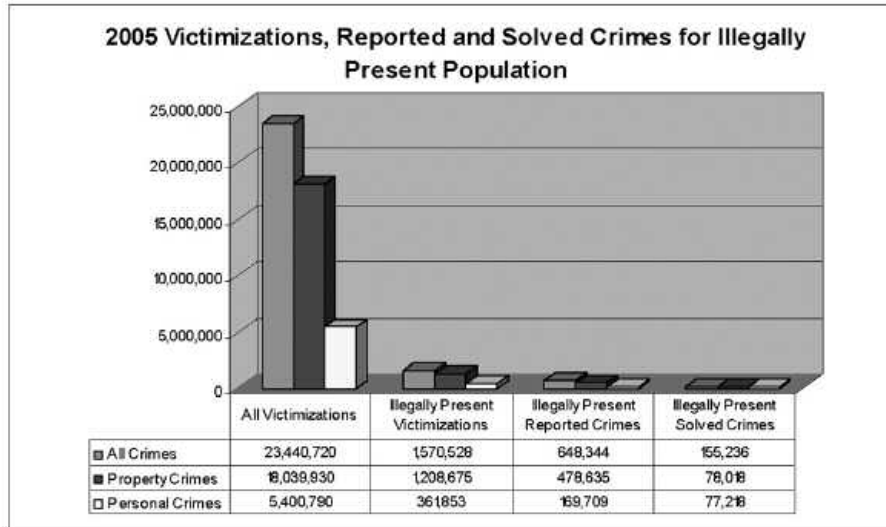
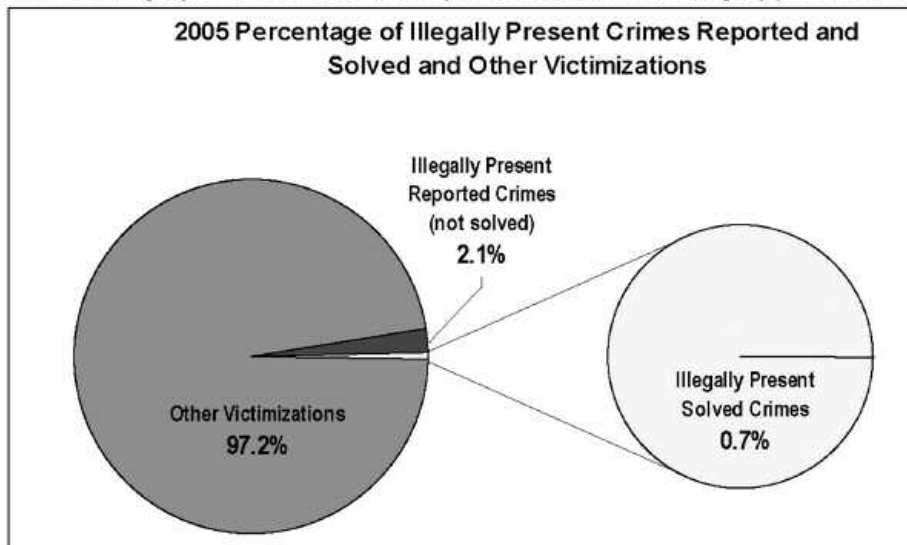


Chart 1. 2005 Percentage of Victimizations and Illegally Present Crimes Known to Police and Illegally Present Crimes Solved (estimated at 20 million illegally present aliens).



A P P E N D I X N

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PERF Immigration Summit
Washington, D.C., November 2, 2007

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