

Immigration and Local Policing: Results from a National Survey of Law Enforcement Executives

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In the past several decades, the number of immigrants in the United States who lack legal documentation has grown to unprecedented levels—approximately twelve million, according to recent estimates (Passel 2006)—and so has controversy surrounding their settlement in American communities. Many immigrants are choosing new destinations. Cities, suburbs, and rural communities in parts of the country that have not traditionally hosted large numbers of immigrants are now more on par with traditional gateway cities like Los Angeles, New York, and Chicago (Zúñiga and Hernández-León 2005). As evidence of this dramatic shift, the Mexican immigrant population (both legal and undocumented) in “new gateway” states grew dramatically between 1990 and 2000: 200-400 percent in New York, Pennsylvania, Washington, and Wisconsin; 645 percent in Utah; 800 percent in Georgia; 1000 percent in Arkansas and Minnesota; and over 1800 percent in North Carolina, Tennessee, and Alabama (Zúñiga and Hernández-León 2005, p. xiv).

With immigrant settlement patterns shifting, undocumented immigration has become even more of a hot-button political issue. An increasing number of state and local governments are asking police to take a more active role in identifying and arresting immigrants for civil immigration violations. Two federal statutes adopted in 1996 created opportunities for this partnership between federal immigration agents and local police. The Antiterrorism and Effective Death Penalty Act (AEDPA) gives local police the authority to arrest previously deported non-citizen felons, and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) authorizes training of local and state police to enforce federal immigration laws.

Federal Powers, Local Police, and Immigration

The devolution of immigration policing authority from the federal to local governments represents a sharp break with a long-established tradition of federal control over all aspects of immigration enforcement and is giving rise to what some observers are calling “immigration federalism” (Spiro 1997; Huntington 2007). Although federal authority over immigration has always involved a degree of cooperation and occasional conflict between local and federal officials, the federal government has historically been recognized to have plenary power in this area. Being present in the U.S. without authorization is a civil violation under federal law, not a prosecutable crime under the jurisdiction of localities. In the past, state and local police forces played only a supportive role, sometimes sharing information about those they had detained as criminal suspects or assisting in enforcement actions.

The federal government cannot require local governments to do immigration policing. Police powers are constitutionally reserved for the states and their jurisdictional subunits, an arrange-

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ment that provides localities with significant flexibility and autonomy. But with the AEDPA and IIRIRA, the federal government has created an opening for localities to ask their police officers to be trained by and to join the federal government in enforcing immigration laws within the interior of the United States.

Beginning in 2002, informal working relationships between local police and federal immigration agents have developed in some departments. Others are seeking formal training from federal immigration authorities under the 287(g) program (referring to the section of the IIRIRA which authorizes such collaboration). Federal agents also are embedded in some police departments to assist in enforcement of drug and human smuggling laws. A number of state prisons and local jails send the names of criminal suspects to federal authorities to be checked for immigration violations. And an increasing number of police departments are electing to do their own immigration status checks. Within the past several years, the number of law enforcement agencies that have asked for training to make these checks has increased from eight to more than sixty (Immigration and Customs Enforcement 2008). Other local governments and police departments, stating concerns for public safety and the importance of police-community relationships, have rejected local civil immigration enforcement entirely—a small number have declared themselves to be sanctuary cities, while others follow a kind of informal “don’t ask, don’t tell” policy regarding contacts with possible unauthorized immigrants.

This devolution of immigration policing to the local level presents police departments with several important challenges. One is the potential for conflict between commitments to community policing and active involvement in immigration control. Community policing practices emphasize close communication and collaboration between police and community. Engagement in identifying and removing unauthorized immigrants challenges these relationships in areas with large numbers of Hispanic residents. As the Immigration Committee of the Major Cities Chiefs (2006, p. 3) observed, “Local enforcement of federal immigration laws raises many daunting and complex legal, logistical and resource issues for local agencies and the diverse communities they serve.” While stopping short of endorsing one approach for local law enforcement in the debate over how best to respond to unauthorized immigration, the recommendations highlight the many challenges to local law enforcement in carrying out its primary function, including loss of trust among immigrant groups, inadequate resources, complexity of federal laws, lack of local legal authority for intervention, and risks of civil liability.

A second concern is that immigration enforcement activities may discourage members of immigrant communities who are victims or witnesses of crime to come forward. Many new immigrant groups that may be vulnerable to high rates of victimization come from countries where distrust of authorities—particularly law enforcement—is a valid concern. In such cases, building community trust in the police is already a difficult task. A 2007 report by the International Association of Chiefs of Police notes that local immigration enforcement makes that task even more difficult. This report identifies eight specific areas of conflict between communities, elected officials, and federal and local law enforcement.

A third concern is that the core commitment to local concerns in policing will be lost in the

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process of developing stronger links with federal immigration authorities. American policing spent the last half of the twentieth century elaborating on and strengthening local control. During this period, the focus of police evolved from an emphasis on administrative and professional issues, to community relations and interaction. Problem solving and fear reduction and an emphasis on “zero-tolerance” have also been added to the policy mix (Greene 2001). Each of these re-conceptualizations of American policing, despite their differences, has a decidedly local character. Local communities have provided an important check on the expansion of police authority and jurisdiction, reflecting the historical antipathy of the American populace toward federalizing law enforcement (Mastrofski 1988).

Finally, police commitments to avoid racial profiling are put at risk by active involvement in immigration enforcement because the drive to eliminate unauthorized immigrants has focused on people who have crossed the nation’s southern border from Mexico. Although many departments have developed antiprofiling policies, immigration enforcement subtly encourages officers to focus on people who “look Mexican” or who are heard to speak a foreign language. Also, enforcement efforts that target unauthorized immigrants will inevitably draw some naturalized citizens, legal permanent residents, and citizens into newly intrusive contacts with the police. The climate is reportedly becoming inhospitable for many people: as detailed in a recent Pew Hispanic Center report, over half of all Latinos in the United States fear that they or someone close to them may be deported in the current enforcement climate (Pew Hispanic Center 2007).

How, then, should police respond? Will enforcing civil immigration laws erode community policing ideals, particularly in towns and cities with significant immigrant populations? Are other essential elements of local police services at risk?

The growing involvement of local police in immigration enforcement has gained enormous momentum with almost no systematic research or information base (though see Waslin 2007 and www.trac.syr.edu). Law enforcement executives, public officials, and scholars seeking information on this topic have largely had to rely on media accounts, anecdotal information, and reports by advocacy groups of one stripe or another. To respond to the need for systematic information on this topic, the authors have launched a four-stage project, which includes two rounds of survey research and two rounds of local, in-depth, comparative case studies. Our research is geared toward describing the range of actions local police have taken in regard to unauthorized immigration and ultimately describing the context for these actions.

This report presents the initial results of our first nationwide survey of police executives in large U.S. cities. We report on several issues. These issues include the role of local politics in setting police policy, the relationship of local police departments with federal Immigration and Customs Enforcement authorities, the range of variation in local practices and policies, and community relations. The results indicate that local police play a critical role in the ways in which local communities relate to immigrants, particularly in their exercise of discretion with regard to immigration enforcement.

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Nature of the Sample

A national web/mail survey of 452 law enforcement executives was initiated in November 2007. We received 237 survey responses (a response rate of 52.4 percent). The sample chosen for this survey was large and medium-sized local (subcounty) jurisdictions. We began with a list of all U.S. cities and towns that were included in the Census Bureau's American Community Survey (ACS) in 2005; the Census Bureau aimed to include in the ACS all localities of 60,000 or higher population, although a few communities had slightly lower populations. We dropped from this list several communities that do not have their own police departments (such as certain townships, and some municipalities that contract with other local governments for police services). This list yielded our 452-community sample and ultimately the 237 responses reported here.

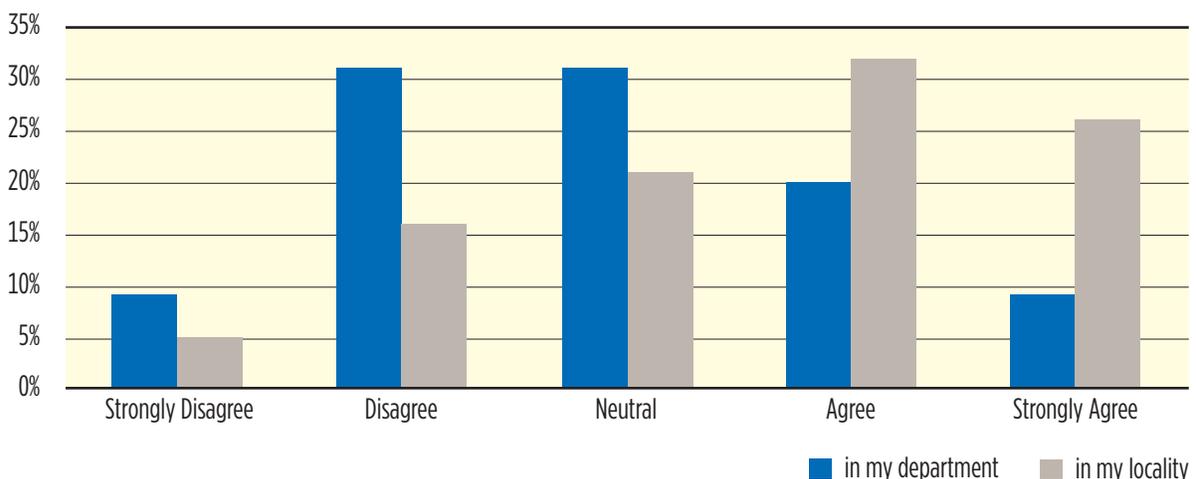
Most of these communities have a substantial number of foreign-born residents. Sixteen percent of the residents in the average locality represented in our survey were immigrants as of 2005 (according to the ACS data). The share of immigrants in the cities we surveyed ranged widely from 1 percent to 60 percent of the population.

Local Politics, Law Enforcement, and Immigration

One of the critical issues for law enforcement in responding to immigration is the extent to which the attitudes of personnel in their department may differ from those of residents or political leaders of the jurisdiction they serve. The nature of law enforcement and the situations officers encounter often cause the police to see their community from a somewhat different perspective than other community members. In this section, we contrast the views of law enforcement leaders with their perceptions of the attitudes prevailing in the jurisdictions their departments are responsible for protecting.

The responses suggest that on the issue of immigration, the difference between police departments and their community is significant. Figure 1 depicts the degree to which unauthorized immi-

Figure 1: Unauthorized immigration is a controversial topic...



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gration is viewed as a controversial topic in a comparative format. Police executives are more inclined to see unauthorized immigration as a controversial topic within their community than within their department. Indeed, the differences on this question are quite striking. This suggests a cleavage between the way that police and communities frame the immigration issue.

A related issue is whether people believe that it is easy to determine who is in the country without authorization. Figure 2 shows a contrast in views between departments and communities. Law enforcement officials see community members as more likely than police personnel to think that determining someone's immigration status is relatively easy. Chiefs also report that gaining the trust of unauthorized immigrants is a much greater priority for their department than for their locality. Fifty-two percent note that gaining the trust of unauthorized immigrants is a priority in their departments, as compared with 25 percent in their community. The difference may be attributable to the view, widespread among police departments, that effective police work depends on law enforcement's ability to gain the trust and communication of all segments of the local population.

Figure 2: People believe that it is relatively easy to determine who is in this country without authorization...

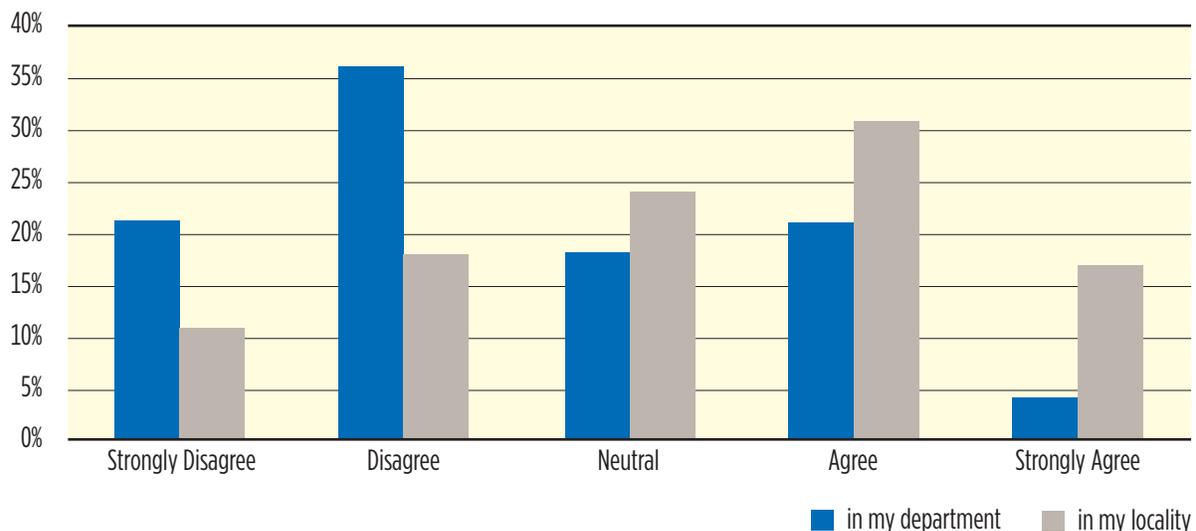
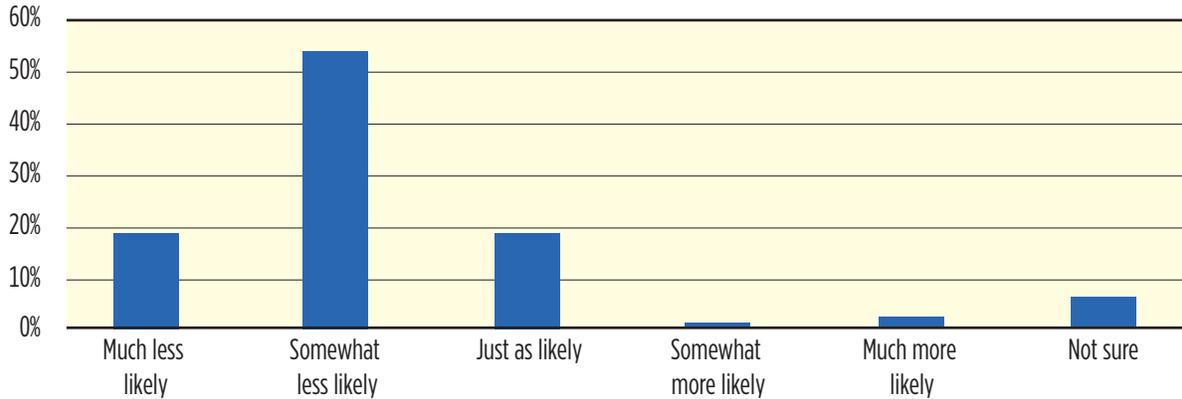


Figure 3 provides an additional perspective on the issue of trust in immigrant communities. The majority of chiefs believe that immigrants are less likely than the general population to report to the police situations in which they have been victims or witnesses of crime.

A related issue is the potential for victimization of unauthorized immigrants by criminals. Chiefs are split on whether unauthorized immigrants are more or equally vulnerable to street crime and domestic violence. But on this topic, chiefs tend to see their communities as somewhat less likely to appreciate the victimization of immigrants as a significant problem. Three in ten chiefs reported that their own departments consider victimization of immigrants to be a significant problem, compared to 23 percent who believe that the broader community feels the same way (see Figure 4).

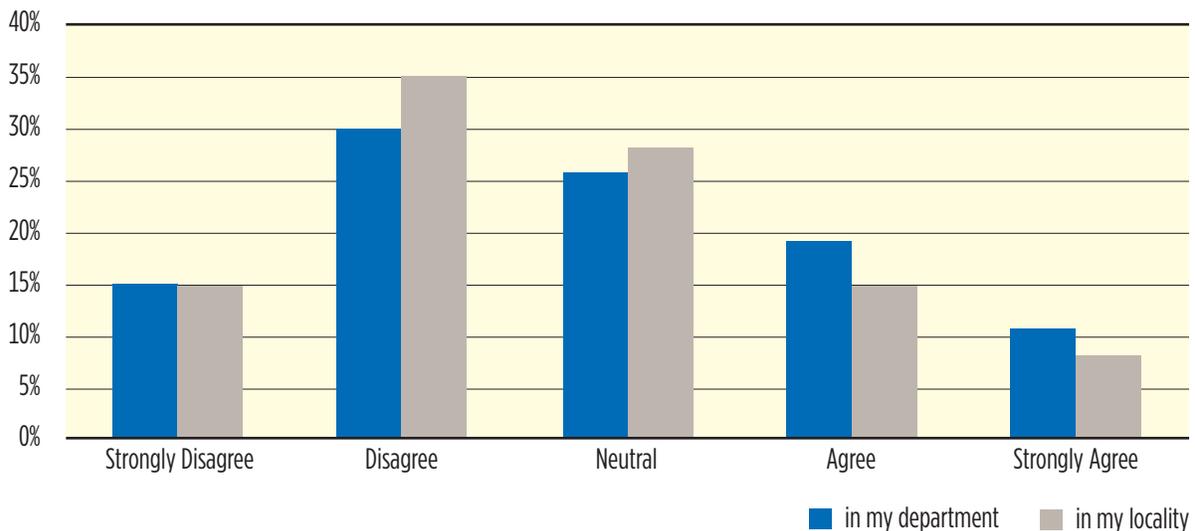
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Figure 3: How likely are immigrants in your community to contact law enforcement when they are victims or witnesses to crime, as compared with the general population?



A majority of the chiefs responding (59 percent) report a relatively high level of satisfaction from elected officials with their current level of immigration enforcement. Chiefs report wide variation, however, in what local officials expect. Nearly half (46 percent) report that their local government has no official policy regarding unauthorized immigrants living or traveling through the jurisdiction. At the other end of the spectrum, 12 percent of chiefs report that their local governments expect their departments to take a proactive role in deterring unauthorized immigration. Only 4 percent of chiefs report that their local governments have openly declared themselves as “sanctuary cities” for unauthorized migrants who are not engaged in criminal activities, while another 15 percent report that their cities unofficially operate under a “don’t ask-don’t tell” policy.

Figure 4: Victimization of immigrants is considered a significant problem...

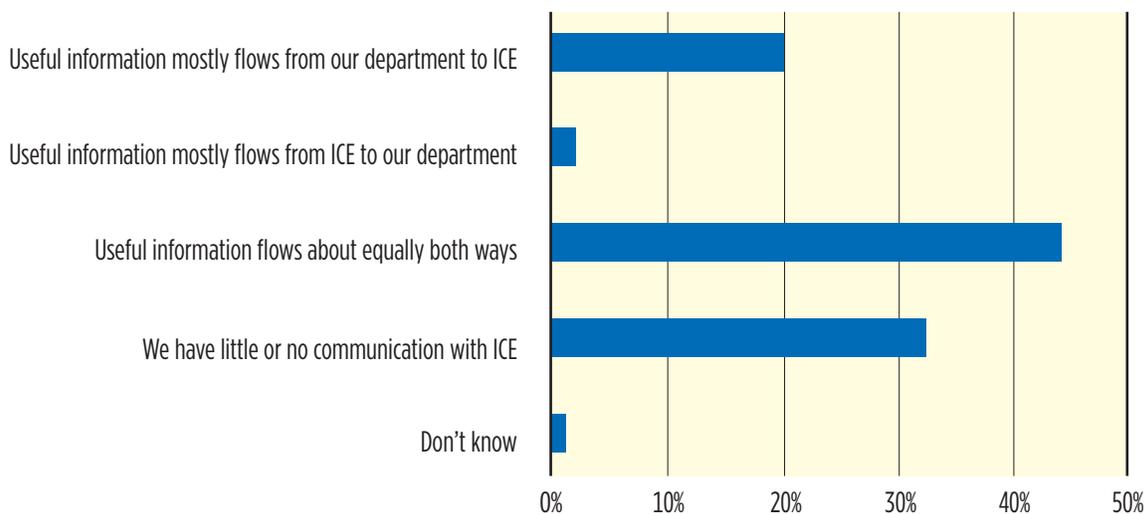


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Relationships with U.S. Immigration and Customs Enforcement (ICE)

The relationship between local law enforcement and Immigration and Customs Enforcement, an agency of the U.S. Department of Homeland Security, is an important part of the local response to immigration issues. Our survey revealed interesting differences among local police chiefs in their views regarding the relationship between their department and ICE (see Figure 5).

Figure 5: Which of these statements best describes the direction of your department's current communication with ICE?



Although a plurality of chiefs (44 percent) believe that useful information flows equally between their department and ICE, 20 percent report that the flow of useful information is mostly in one direction—from their department to ICE. Another 32 percent report little or no communication with ICE at all.

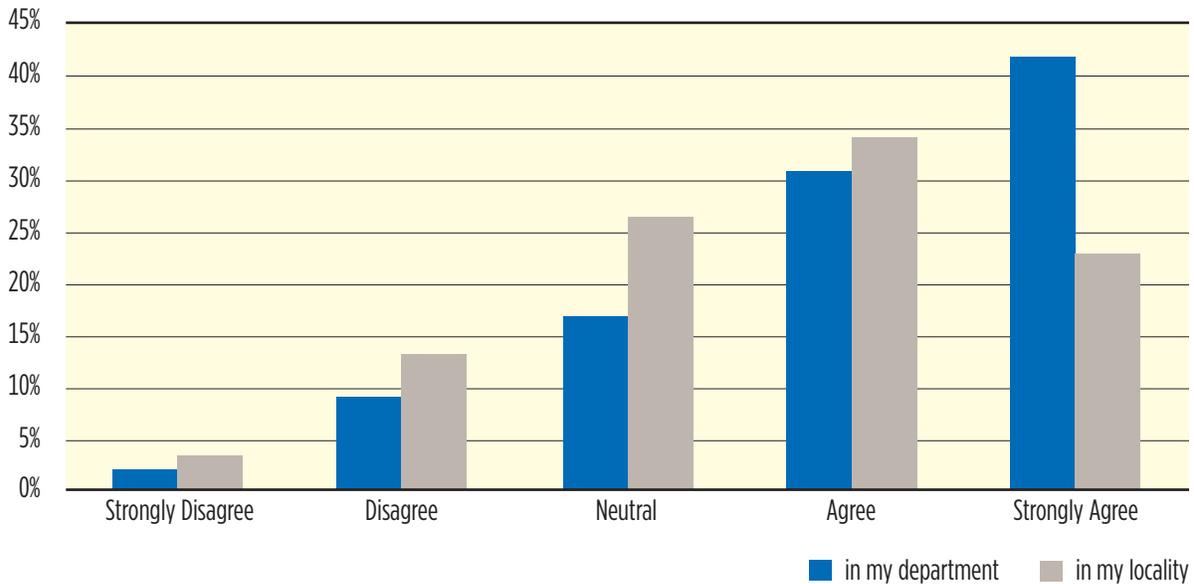
Whether a department has a formal agreement with ICE or not, a large majority (74 percent) report that they contact ICE when a suspected unauthorized immigrant is held for a criminal violation. Formal written agreements with ICE are rare, however. Only 4 percent of departments report having a 287(g) Memorandum of Agreement (MOA) that provides for federal training of local law enforcement and cooperation in arrests and investigations of unauthorized immigrants, while 3 percent have an MOA to help manage unauthorized immigrants who have been incarcerated. A slightly larger share of departments (8 percent) have ICE officers embedded in one or more of their units. It should also be noted that 14 percent of chiefs responded that their departments do *not* participate or assist in ICE immigration-enforcement activities. (Note that respondents were allowed to choose more than one of the above responses, if appropriate.) A majority of those who work with ICE report satisfaction with this relationship.

The survey also asked chiefs how their department and their communities assess the responsibilities of the federal government in immigration control. The great majority of chiefs (72 percent) regard

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immigration enforcement as the responsibility of the federal government (see Figure 6). A significantly smaller majority (58 percent) perceive support for this view within their local communities.

Figure 6: Immigration enforcement is considered the responsibility of the federal government...



Practices and Policy of Immigration Enforcement

The survey probed police practices in situations involving immigrants whose residence in the U.S. was unauthorized. Chiefs were asked how their officers would respond when faced with a number of situations. In general, the more serious the violation, the more likely they believe that their officers are to check immigration status. Thus chiefs believe that in situations involving traffic violations and witnesses or victims of crime (except human trafficking), their officers are least likely to contact ICE or inquire of immigrant status. Chiefs believe that their officers are most likely to contact ICE in situations involving violent crime or a parole violation. Arrests for domestic violence and nonviolent crime fall somewhere between (see Figure 7).

In many cases, these decisions are made without clear policy guidance. Just under one-half of departments have a policy regarding interactions with immigrants, with 39 percent reporting that these are written policies and 9 percent reporting that these are unwritten policies. Fifty-one percent of departments do *not* have a written or unwritten policy regarding how officers are to deal with immigrants, and 1 percent reported that they do not know whether they have a policy regarding interactions with immigrants.

Furthermore, only 45 percent of departments offer training for sworn officers specifically related to incidents or calls involving unauthorized immigrants. This suggests that in many jurisdictions, local law enforcement is not well prepared to deal with the often complex and difficult decisions posed by unauthorized immigration and that decisions regarding immigrant-police interactions are more frequently made on an ad hoc basis.

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Figure 7: Percentage of police departments that typically check immigration status, contact ICE, or both, when encountering possible unauthorized immigrants in these situations.



Most chiefs report that their response to the problem of illegal immigration is largely a product of their own departmental leadership, but some note the participation of local elected officials, the district attorney's office, federal officials, and the courts.

Community Relations and Local Law Enforcement

Good community relations was a priority in the departments surveyed. Chiefs report a variety of tools used to maintain relationships. A majority of chiefs rated the following activities as very effective: neighborhood meetings, visits to schools, churches and neighborhoods, bike patrols, cooperation with nongovernmental organizations, and officer proficiency in foreign languages.

Three-quarters of chiefs reported that their departments accept the Mexican consular ID card (*matrícula consular*) or other foreign IDs as forms of identification under some circumstances. However, only 17 percent of respondents said that their departments maintained a phone line for confidential reports of criminal activity by members of the immigrant community. Only 40 percent of chiefs report that their departments have enough officers proficient in foreign languages to work effectively in their immigrant communities.

Conclusion

The results of this survey suggest several important conclusions about immigration and local police departments.

First, chiefs perceive significant differences between their departments and the communities they serve on important dimensions of the immigration issue. In the view of law enforcement leaders, the community is more likely to view unauthorized immigration as controversial than is the department, somewhat more likely to see immigration as a local rather than federal enforcement

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problem, and more likely to see determining immigration status as relatively straightforward.

Second, in many cases the police lack guidelines for their officers in the area of immigration. While nearly every department (91 percent) has a policy prohibiting racial profiling, the potential for conflict between these policies and immigration enforcement remains unresolved in many departments. A majority of police departments in our sample lack an official policy on how to deal with unauthorized residents and do not provide training to their officers on this issue. Norms may be developing on an ad hoc basis. The survey responses suggested that officers make distinctions between types of crime in deciding whether to inform federal authorities, with less serious crimes being reported less often.

Third, while most departments have some relationship with ICE, the vast majority have no formal agreement, such as a 287(g) MOA. Nevertheless, ICE is viewed as an important resource by local law enforcement, and levels of satisfaction with ICE are reasonably high. It is noteworthy, however, that a significant minority of departments report no relationship with ICE.

Fourth, chiefs report varied levels of interest in their communities in the issue of immigration enforcement. Nearly half of the communities in this survey have so far remained silent on this issue, and opinion in the remainder is split on whether police should be more involved. Most chiefs report that local authorities are satisfied with the department's efforts in this area.

Taken together, these results suggest that the leaders of local law enforcement are at an early stage of the development of policies and training to respond to unauthorized individuals. Communities and departments are both in need of information. It is imperative that more information be gathered about the nature of challenges facing local police in immigration issues so that the police and community can work together more effectively. As in most areas of public safety, immigration enforcement requires effective engagement of the community in order to be successful. Policies, programs, and training that enhance such relationships are likely to pay dividends in this area.

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References

- Greene, Jack R. 2001. "Community Policing in America: Changing the Nature, Structure, and Function of the Police." In J. Horney (ed.) *Policies, Processes, and Decisions of the Criminal Justice System: Criminal Justice 2000*. Washington, D.C.: National Institute of Justice.
- Huntington, Clare. 2007. "The Constitutional Dimension of Immigration Federalism," *University of Colorado Law Legal Studies Research Paper No. 07-06*. Available at SSRN: <http://ssrn.com/abstract=968716>.
- U.S. Immigration and Customs Enforcement. 2008. *Partners: ICE ACCESS*. Retrieved <http://www.ice.gov/partners/dro/iceaccess.htm>.
- International Association of Chiefs of Police. 2007. *Police Chiefs Guide to Immigration Issues*. Retrieved Jan. 3, 2008 from <http://www.theiacp.org/documents/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf>.
- Major Cities Chiefs. 2006. *M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies*. Retrieved 3 Jan 2008 from http://www.houstontx.gov/police/pdfs/mcc_position.pdf.
- Mastrofski, Stephen D. 1988. "Varieties of Police Governance in Metropolitan America," *Politics and Policy* 8, pp. 12-31.
- Passel, Jeffrey S. 2006. *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey*. Last retrieved 15 July 2007 at <http://pewhispanic.org/files/reports/61.pdf>.
- Pew Hispanic Center. December 2007. *2007 National Survey of Latinos: As Illegal Immigration Issue Heats Up, Hispanics Feel a Chill*. Last retrieved 3 January 2008 at <http://pewhispanic.org/files/reports/84.pdf>.
- Spiro, Peter. 1997. "Learning to Live with Immigration Federalism," *Connecticut Law Review* 29, pp.1627-36.
- Waslin, Michele. 2007. "Immigration Enforcement by Local and State Police: The Impact on Latinos," *Law Enforcement Executive Forum* 7, pp. 15-32.
- www.trac.syr.edu, "Transactional Records Access Clearinghouse: Comprehensive, Independent, and Nonpartisan Information on Federal Enforcement, Staffing, and Spending."
- Zúñiga, Víctor, and Rubén Hernández-León, eds. 2005. *New Destinations: Mexican Immigration in the United States*. New York: Russell Sage Foundation.