

Immigration

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Local Law Enforcement and Immigration

Community Conflict in the Making

MAYOR DONALD CRESITELLO OF MORRISTOWN, NJ, recently began negotiations with U.S. Immigration and Customs Enforcement (ICE) to deputize Morristown police officers to enforce federal immigration laws. As a mayor in a neighboring New Jersey municipality, this author understands what may compel Cresitello to take these drastic steps. However, while there certainly are concerns about national security, the law has always placed immigration enforcement in the exclusive jurisdiction of the federal government. Efforts to secure this nation from those hostile to it must be tempered by respect for its national heritage and commitment to civil rights. The plan to deputize local police to enforce federal immigration laws is contrary to those values, and Cresitello should reconsider his compact with ICE.

Negative Impact

At first blush, the ability of local police to enforce federal immigration law seems like a viable solution to our nation's challenge of illegal immigration. However, piling the additional duties of immigration enforcement on the already strained local police departments will do little more than force illegal immigrants further into society's shadows. The negative effects resulting from this policy are significant.

The job of local police is to investigate and prosecute crime. Enforcement of immigration laws by local police will discourage and even prevent undocumented immigrants from accessing police services, and will deprive police of the benefit of immigrants' cooperation in fighting and investigating crime.

Undocumented immigrants already are wary of law enforcement authority. By deputizing local police to enforce immigration laws, undocumented immigrants will not come forward to report crime, and will be less likely to offer information or to cooperate with police out of fear of revealing their immigration status. Such alienation of immigrant populations will only lead to increased crime and decreased intelligence and crime-fighting

capability, reversing years of local police efforts to gain the trust of immigrant communities.

Immigrants who are victims of domestic violence will be particularly impacted by this deputizing of local law enforcement. An advocate for battered immigrants at the St. Paul Domestic Abuse Intervention Project noted that local police involvement in immigration enforcement increases fear in "already vulnerable communities."

"Most immigrants in battered women shelters are too afraid to call police, even if they have been badly assaulted by their partner." (See G. Pendleton, "Local Police Enforcement of Immigration Law and its on Victims of Domestic Violence," American Bar Association Commission on Domestic Violence at www.immigrationforum.org.)

These immigrants, who are often women, could potentially obtain legal status in the United States via the battered-spouse petition or the U-visa process. However, if these women are afraid to report the abuse to the local authorities for fear of detention by ICE before they can file a petition with U.S. Citizenship and Immigration Services, then they will have no police records documenting the abuse they suffered. As a result, it

will be difficult for these women to meet their burden of proof to obtain legal status through the battered-spouse petition procedure. Instead, they will remain in their abusive relationships, and the violence will continue undetected (see *Hernandez v. Ashcroft*, 345 F.3d 824, 841 (9th Cir. 2003)).

Burgeoning Concern

Cresitello's efforts are widely opposed by major law enforcement organizations, including the International Association of Chiefs of Police and the Major Cities Police Chiefs Association. Local officers often find their definitive duty to their community compromised when they are compelled to enforce federal immigration law.

"As a law enforcement officer, my number one responsibility is community policing and community safety. It's hard to accomplish that goal if the community is afraid to speak with the police," expressed Officer Nicolas Yanez, president of the Omaha chapter of the Latino Peace Officers Association. "For example, [] witnesses or victims of crime are afraid to come forward to report crimes for fear we might take action against them based on their immigration status."

Fear undermines the trust and authorities that police officers rely on to do their job effectively, and members of local law enforcement are frustrated with the difficult position thrust upon them.

Hillsdale, NJ, Police Department Sgt. Robert Francaviglia said, "We've been trying to get the immigrants in our town to believe that we're not like many of the governments in their old countries, governments that were corrupt and want to railroad them, not serve them."

Police chiefs from around the country have echoed such concerns (see a compilation of these concerns at www.

bordc.org/resources/police.pdf). Local police have worked hard to gain the trust and cooperation of America's growing immigrant population. Morristown police have undoubtedly done the same. By proceeding with the ICE agreement to enforce immigration laws locally, Morristown police stand to exchange this hard-earned partnership for heightened hostility, under-reporting of crime, impediments to investigations, and increased liability for civil rights violations.

Furthermore, adding immigration enforcement to the ambit of local police duties will strain the resources of local

police. Requiring local police to pick up the slack of federal immigration agencies will only divert crime-fighting resources without solving the problem of illegal immigration. This misguided solution raises practical concerns and questions heralded some time ago by Michael Vietri, Chief of Police of Palisades Park, NJ.

"If the Justice Department deputizes us and we make an arrest, then what do we do? Send them to the county jail? Now I'd be paying my officers to go to the county courthouse or jail, or worse, farther away to Newark? Who's going to reimburse us?" asked Vietri. "There are so many

people who could get arrested in Palisades Park alone. You're talking maybe having to deal with county and federal courts. [T]he point about doing this to fight terrorism sounds like a decent idea, but when you go deeper, you see the possible effects." (See "Policing Immigration," *Bergen Record*, April 22, 2002.)

Civil Rights Violation

Perhaps most importantly, local police run the risk of violating the civil rights of both legal and illegal immigrants when enforcing immigration laws. A federal district judge held that the city of →

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Mamaroneck, NY, violated the equal protection rights of Latino day laborers when the city implemented a law enforcement campaign intended to reduce their presence (*see Doe v. Village of Mamaroneck*, 462 F. Supp.2d 520, 550 (SDNY 2006)).


Historically, Mamaroneck was the site where day laborers gathered to seek employment. Before the 1990s, the workers were predominantly Caucasian. In recent years, however, the Latino population of the area has grown, and the laborers who meet in Mamaroneck are now almost exclusively Latino. The city of Mamaroneck implemented its campaign to eliminate the presence of the day laborers, increase traffic citations against the potential employers picking up workers, heighten police presence in the area, and even harass the workers.

The district judge concluded that the

fact that the laborers were Latinos was a "motivating factor" in this campaign. The campaign was impermissibly targeted against Latinos on the basis of race, and thus, constituted a discriminatory application of a facially neutral policy. Therefore, heightened police action against immigrants where their nation of origin determines their citation or arrest violates the equal protection rights of immigrants. Similar violations may result when local police begin to request immigration documents from people because they appear foreign or speak with an accent.

The Community and Beyond

The challenge of illegal immigration is a national one; thus, addressing the challenge should, therefore, be done at the national level. The solution is not to force immigrant communities into the shadows. Con-

gress must enact comprehensive immigration reform that incorporates legalization, appropriate legal channels for hiring low-skilled workers, and increased employer enforcement and sanctions. Until then, it would be wise to maintain immigrant communities' trust in the police and engage all residents in keeping the community safe in Morristown and across America. 

MAYOR MICHAEL WILDES of Englewood, NJ, is a former federal prosecutor, an immigration lawyer, and a partner in the law firm of Wildes & Weinberg. He also is a member of New Jersey Governor Corzine's Blue Ribbon Panel on Immigrant Policy.

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