Immigration: Public Safety and Justice Issues

Melissa Taylor Bell

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Headquarters
Daniel M. Sprague
Executive Director
40 Broad Street, Suite 2050
New York, NY 10004-2317
Phone: (212) 482-2320
Fax: (212) 482-2344

Eastern
Alan V. Sokolow
Director
40 Broad Street, Suite 2050
New York, NY 10004-2317
Phone: (212) 482-2320
Fax: (212) 482-2344

Midwestern
Michael H. McCabe
Director
614 E. Butterfield Road
Suite 401
Lombard, IL 60148
Phone: (630) 810-0210
Fax: (630) 810-0145

Southern
Colleen Cousineau
Director
P.O. Box 98129
Atlanta, GA 30359
Phone: (404) 633-1866
Fax: (404) 633-4896

Western
Kent Briggs
Director
1107 9th Street
Suite 650
Sacramento, CA 95814
Phone: (916) 553-4423
Fax: (916) 446-5760

Washington, D.C.
Jim Brown
Director
444 N. Capitol Street, N.W.
Suite 401
Washington, D.C. 20001
Phone: (202) 624-5460
Fax: (202) 624-5462
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Executive Summary

Each year, thousands of people from all around the world emigrate to the United States to start new lives. These immigrants must become familiar with and adapt to a myriad of local, state and federal laws in this country. Furthermore, they must also learn how the American legal system operates.

In addition to a lack of understanding of U.S. laws and the American legal system, other public safety and justice issues include:

- the debate over the issuance of drivers’ licenses and identification cards for illegal immigrants;
- rising gang-related violence in some immigrant communities; and
- little to no reimbursement from the federal government for state facilities that house inmates awaiting deportation.

Policy-makers have a number of options to consider in addressing these issues. For instance, states can:

- promote programs that increase interaction and communications between law enforcement;
- decide whether to issue drivers’ licenses to noncitizens and/or accept matricula consular as identification cards;
- implement specific programs to help reduce gang activity; and
- become familiar with proposed federal legislation that may influence states’ role in immigration policy and the deportation process.

This TrendsAlert is broken into two sections. The first section outlines these public safety and justice issues related to immigration. And the second section highlights how some states are addressing these issues.
1. Immigration and Public Safety and Justice Issues

In addition to the inherent illegality of some immigration, states are facing several immigration-related issues in the areas of public safety and law enforcement:

- Immigrants may not understand U.S. laws and the American legal system, and language barriers can intensify the problems.
- States are grappling with issue of drivers’ licenses and identification cards for illegal immigrants.
- Gang-related violence is on the rise.
- State facilities house inmates awaiting deportation with little or no reimbursement from the federal government.

Immigrant Understanding of the American Legal System and Language Barriers

Immigrants may not have a clear understanding of the federal, state and local laws of the United States. This lack of knowledge, combined with cultural differences, can lead to encounters with law enforcement. One of the numerous examples of cultural barriers clashing with the American legal system involves a Korean-born woman in Atlanta who beat her stepdaughter with a cane as a disciplinary measure. She was convicted of child cruelty but defended herself by saying it was an acceptable practice in Korea.¹ There are many other examples of cultural differences in child-bearing, health care and marital issues that have led to encounters with state and local law enforcement.

Many immigrants, especially those who are accustomed to corrupt, repressive and violent police forces in their native countries, fear law enforcement. Because of cultural and language barriers, police officers have difficulty communicating and persuading new immigrants to report crimes, serve as witnesses, provide information on criminal problems or become employees of the police department.

As the number of non-English speakers grows, law enforcement officers are facing language barriers when dealing with suspects and convicted criminals. When a state trooper pulls over someone who does not speak English well, there is always the potential for misunderstanding. The same scenario exists for prison guards who only speak English and convicts with little or no understanding of English.

Drivers’ Licenses and Identification Cards for Illegal Immigrants

Since the events of Sept. 11, the debate has grown over immigrants’ access to drivers’ licenses and state identity documents. Advocates for issuing licenses to undocumented immigrants argue that denying licenses to these immigrants makes everyone in the community less safe. Because many immigrants are likely to drive, with or without a license, unlicensed drivers would endanger public safety because they would tend to not be well-educated about driving laws and unlikely to be insured. These advocates argue that drivers who have access to training, testing, licenses and insurance are far less likely to cause traffic accidents than unlicensed drivers. Unlicensed drivers are almost five times more likely to be in a fatal crash than are validly licensed drivers,² and an average of 14 percent of all accidents are caused by uninsured drivers resulting in more than $4.1 billion in insurance losses per year.³

Opponents of issuing drivers’ licenses to undocumented immigrants argue that issuing a drivers’ license, in effect, turns an illegal alien into a de facto citizen and rewards illegal behavior. They also point to the fact that driving is a privilege and not a right. In addition, these opponents predict that allowing the issuance of licenses to undocumented immigrants would encourage additional flows of illegal immigrants.
A related issue involves Mexican-issued identification cards or *matriculas consulares*. In some states, statutes identify *matricula consular* as a “reasonably reliable” document for indicating the owner’s residency for driver’s license issuance, residency verification, banking and other purposes. Supporters say the card allows immigrants to open bank accounts to keep money secure and helps prevent crime because aliens are not afraid to seek police help. More than 70 banks including large national banks such as Bank of America, Bank One and Citibank accept the cards. In some states, the cards are used to acquire a driver’s license, enroll children in schools and obtain utilities.

Critics of the card say it is intended to circumvent federal immigration law and make it easier to live in this country illegally. And, police, other government officials and private companies typically responsible for turning illegal residents over to federal authorities are relenting. Also at issue is the lack of card security, which has led to multiple cards issued under the same name, address and photograph. This occurs because the Mexican government does not have a centralized cardholder database and does not have the technology to verify identities of card applicants.

**Gang Violence**

During the first six months of 2003, after years of steady decline the number of murders has leveled off and slowly began to rise while the number of other crimes continued to decrease overall.\(^6\) One of the key factors driving-up the number of murders is the resurgence of gang activity, particularly in Hispanic communities.

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A recent report by the National Youth Gang Center found that gang activity, which experienced steady decline in the late 1990s, was up 2 to 3 percent in 2000 in cities with populations of more than 25,000. The gang homicide rate increased more than 50 percent from 1999 to 2002, the last year for which national figures are available.\(^7\) Today gang violence seems to be concentrated in Hispanic communities with a high population of illegal immigrants. Most gang violence is intra-Hispanic, often pitting Mexican gangs against Central American ones.

The problem is not confined to large cities, however. Gang members are leaving large cities, such as Los Angeles and Chicago, for smaller cities throughout the country.\(^8\) Hispanic gangs, for example, are emerging in small cities with average populations of approximately 50,000. Charlotte, N.C., Fairfax County, Va., and Gwinnett County, Ga., have all experienced a large upsurge in their Latino populations and, consequently, the number of Latino gangs and gang violence. In North Carolina, the number of Latino residents has increased 400 percent since the 1990s, and this Hispanic population increase has become a major factor in gang-related violence and murder.

**State Resources and the Deportation Process**

The costs of apprehending, prosecuting and incarcerating illegal aliens have become a major issue at state and local levels.\(^9\) Considering an average annual cost of more than $30,000 to keep an inmate in prison, state officials are searching for ways to reduce or transfer to the federal government the expenses associated with incarcerating criminal aliens, and at the same time meet the public safety needs of the state. States are also pressing for deporting criminal aliens, and lobbying for stricter enforcement of anti-illegal immigration measures.\(^10\)
According to the U.S. Bureau of Justice Statistics, as many as 250,000 aliens marked for deportation are now serving time in U.S. prisons, on probation or on parole.1 The deportation process, which takes place at the federal level, can take several months. During that time, states pay for the incarceration costs of the deportees.

2. Policy Options

Policy-makers have a number of options to consider in addressing issues related to immigration and public safety and justice. More specifically:

- States can promote programs to increase interaction and communications between law enforcement.
- There are several programs designed to bridge language and cultural barriers.
- Several states are examining the issue of drivers' licenses for noncitizens and the use of matricula consular as identification cards.
- There are a number of options to help reduce gang activity, such as forming multi-agency task forces with expertise in gang activity.
- States need to be aware proposed federal legislation that can influence state government’s role in federal immigrant policy and the deportation process.

Improving Relations and Communication Between Law Enforcement and Immigrants

State officials may want to consider promoting programs that increase interaction between immigrant communities and law enforcement. In some cities, nonprofit organizations collaborate with police departments to find alternative channels of communication between law enforcement and the various immigrant communities. Initiatives such as police-immigrant working group forums have proven effective. For example, the Vera Institute of Justice in New York City is organizing working groups with representatives from the city’s immigrant communities and police department officials for a series of forums on topics such as the community’s crime rate, safety, policing needs and concerns, the relationship between the police and the community, and strategies for improving police-community relations. Such community working groups also assist police departments in strengthening relations with immigrant communities through coordinated public education and outreach campaigns.

Law Enforcement and Language Barriers

Some states and municipalities are educating their law enforcement officers in Spanish. For example, Badges Without Borders is a program designed to educate Indianapolis police officers and firefighters in the language and culture of the growing Latino population in the city.15 A similar program in Pennsylvania offers state police officers basic language training in Spanish.16 In Kentucky, police officers receive a basic level of Spanish language instruction during basic training to help them communicate with non-English speakers in such situations as traffic violations. A federally funded enhanced police corps training program in Kentucky provides a more intensive language training that includes 80 hours of course work and a two-week-long Spanish language immersion program in Mexico.17 A Spanish language program.
launched by the California Highway Patrol bridges the language gap by training cadets in basic law enforcement tasks in both English and Spanish. California funded the Garden Grove Police Department to employ two bilingual community service officers to serve as liaisons with the growing Asian population. About half of the 143,000 people in the city are Southeast Asians, mainly Vietnamese immigrants, predominantly characterized by poor to no English competency. The police department also established substations in the heart of the city where most of the Vietnamese live. The strategy of hiring bilingual police officers and posting bilingual notices has helped bridge language and cultural gaps and opened access for the police to the immigrant community. The criminal justice system, and the corrections community in particular, has begun to address the growing challenge of language barriers between non-English speaking inmates and corrections officers. In Arizona, any inmate who does not receive a minimum eighth grade score in certain subjects must attend 120 days of functional literacy classes, which include English language instruction. Deportable foreign nationals, however, are excluded from this program. New Mexico’s legislation requires inmates incarcerated for longer than 18 months but fewer than 10 years to be enrolled in the educational program, which includes an ESL course in every state prison facility. The inmates participating in various re-entry initiatives are also required to enroll in the educational program. The program is mandatory for all qualified inmates, regardless of their nationality. Although ESL classes are not mandatory for qualified inmates in Colorado, the state offers strong incentives for enrolling in educational programs. Inmates with a high school or General Educational Development (GED) diploma are eligible for certain jobs at prison facilities, and because the ESL course is a prerequisite for earning those diplomas in prison, the enrollment rate is high despite the voluntary nature of the program.

Drivers’ Licenses and Identification Cards for Illegal Immigrants
States have been very active in altering the regulations governing driver’s license issuance to noncitizens. During the 2003 state legislative sessions alone, 40 different state legislatures introduced 119 bills that dealt with the immigrant’s eligibility and restrictions for obtaining driver’s licenses. Six states signed bills into law that expanded immigrant’s access to drivers’ licenses, while seven states passed legislation restricting access. Generally, restrictive measures include lawful residence requirements, prohibition of foreign-issued identification documents and the requirement that the validity of the license ends with the expiration of the applicant’s lawful residence status.

In most states, applicants need to produce proof of identity and a Social Security number before obtaining a drivers’ license. However, a Social Security number is not required in Oregon and Vermont. Forty-two states require it only if people have been assigned the number or are eligible
for one. Connecticut and New Hampshire require a Social Security number only from new applicants. Illinois and Kentucky make exemptions to the rule on religious grounds. In addition, six states accept the Individual Taxpayer Identification Number (ITIN) as an alternative to the Social Security number. ITIN is a tax processing number that the IRS has been issuing to certain nonresident and resident aliens, their spouses and dependents since July 1996. The ITIN is only available to individuals who are residing in the United States legally and are not eligible for a Social Security Number.

Twenty-six states require drivers' license applicants to have proof of lawful presence in the country. Louisiana grants a temporary license to noncitizens working in the agriculture industry. The temporary license has a different appearance and is valid for only a year. Minnesota, Mississippi and Ohio place distinguishing features on the driver's license issued to noncitizens, such as "non U.S. Citizen" and "non-renewable/non-transferable."

There has also been legislative action concerning the use of matricula consular as well. Colorado recently outlawed use of the card already approved by many cities there, and legislation to restrict the card has been introduced in the Arizona and Iowa legislatures. A bill introduced during the 2004 legislative session in South Carolina prohibits state agencies, including school districts, from accepting a matricula consular as a form of identification. In March 2003 the governor of South Dakota approved legislation that prohibits any state agency, state-supported university or postsecondary technical institute from accepting a matricula consular card. Tennessee statutes also explicitly prohibit the state from recognizing matricula consular cards as proof of identification for issuing a drivers' license. The card has been rejected in New York, and critics of the card in Utah are lobbying for legislation banning it.

Circling Gang-Related Violence

To address recent spikes in gang-related violence, state and local law enforcement agencies may want to consider:

- recruiting Spanish-speaking officers or improve the Spanish-speaking skills of law enforcement personnel;
- increasing patrols in gang-heavy areas;
- gaining intelligence on Latino gangs and sharing that information with law enforcement throughout the country; and
- forming special gang units or multi-agency task forces with expertise in gang culture and activity.

A more fundamental way to curb gang activity is to prevent youth from joining gangs in the first place. Children of parents who are poor, working several jobs and are not at home may get
involved with gangs. After-school programs, for instance, are one way to keep unsupervised youth off the streets.

State Resources and the Deportation Process

To alleviate states’ financial burden of incarcerating criminal aliens, the Immigration Reform and Control Act of 1986 authorized the U.S. attorney general to partially reimburse the states for the criminal justice costs associated with illegal aliens. The Violent Crime Control and Law Enforcement Act of 1994 expanded the state compensation program to include local jurisdictions and empowered the attorney general to transfer criminal aliens to federal prison if states were unable to incarcerate them due to the lack of space or facilities. The federal government is increasing appropriations for this reimbursement. In 1995, the first year of the State Criminal Alien Assistance Program appropriations, Congress reimbursed $129 million. In fiscal years 2002 and 2003, Congress appropriated $564 and $565 million, respectively.

Proposed federal legislation could also have a major effect on state law enforcement. H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, and S. 1906, the Homeland Security Enhancement Act, would authorize state and local law enforcement officers to uphold federal immigration laws as a condition of receiving federal funding under the Immigration and Naturalization Act. The proposed act stipulates that states failing to enact laws that authorize police to enforce the federal immigration law may not be federally reimbursed for incarcerating noncitizens and that their reimbursement funds must be reallocated to states that do comply with the CLEAR Act.

States also receive federal funding through the Immigration and Naturalization Act to cover the costs associated with refugee resettlement and to support programs such as Refugee Cash Assistance and Refugee Medical Assistance for refugees not eligible for Medicaid. The CLEAR Act would provide funding to offset the costs of incarceration of possible deportees. The measure would require the Department of Homeland Security to deposit into a “State and Local Immigration Law Enforcement Fee Account” one-third of all fees collected for immigrant and nonimmigrant visa applications and for adjustment of status applications.

Proponents of the legislation argue that the federal government does not have the capability to apprehend illegal aliens and that state and local law enforcement officers would be a much-needed supplement to federal immigration agents. State and local law enforcement would not be asked to search for illegal aliens, however. The proposed legislation only requires law enforcement officers who question someone for other alleged crimes and suspect the person is in the country illegally to notify federal officials.

Although the legislation would provide training materials for state and local law enforcement, opponents argue that immigration laws are complex and federal immigration agents receive a great deal of training on immigration law. Therefore, a manual or pocket guide may not offer law enforcement the training they need to uphold federal immigration law. Opponents also argue that enactment of this legislation would lead to more racial profiling because it is a judgment call on the part of officers to decide whether they think someone may be in the country illegally. Some also fear that immigrants will be more reluctant to report crimes out of fear of being deported,
even if they are the victims of the crime. State and local policy-makers and law enforcement officials, however, are concerned with the potential backlash from immigrant-heavy communities. There is also the question of what happens to the families of these detainees.

Conclusion
States and immigrants are facing several challenges in the areas of public safety and justice. Immigrants may not have a good understanding of American laws and the legal system when they first arrive, and linguistic and cultural barriers can exacerbate this problem. There are other issues as well. States are debating whether to issue drivers’ licenses to illegal immigrants. Rising gang violence in some immigrant communities, which used to be concentrated in a few large cities, is now spreading throughout the country. In addition, states shoulder some of the financial burden of housing illegal immigrants awaiting deportation.
Endnotes


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