SANCTUARY CITIES: A THREAT TO PUBLIC SAFETY

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security. See "Rep. Lofgren Submissions for the Record" at:

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SANCTUARY CITIES: A THREAT TO PUBLIC SAFETY

THURSDAY, JULY 23, 2015

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Subcommittee met, pursuant to call, at 10:08 a.m., in room 2141, Rayburn Office Building, the Honorable Trey Gowdy (Chairman of the Subcommittee) presiding.

Present: Representatives Gowdy, Goodlatte, Smith, King, Labrador, Buck, Ratcliffe, Trott, Lofgren, Jackson Lee, and Gutierrez.

Staff present: (Majority) George Fishman, Chief Counsel; Andrea Loving, Deputy Counsel; Graham Owens, Clerk; and (Minority) Rosalind Jackson, Professional Staff Member.

Mr. GOWDY. We will now begin by welcoming everyone to this morning's hearing on "Sanctuary Cities: a Threat To Public Safety." And I will recognize myself for an opening statement.

I want to thank all of our witnesses for being here today, and I want to express, Mr. Steinle, to you my profound sympathy to you and to Kate's mother, to her brother, and all of your family, and those who cherished her, for the tragic loss of your beautiful daughter.

The preeminent function of government is to provide for the safety and security of the law-abiding public. It is among the chief reasons we consent to be governed and bound by a collection of laws. We want those that we love to be protected, so we abide by the law in the hopes that others will feel similarly bound.

What makes this Nation different is our respect for and adherence to the law because the law is the greatest unifying force in our culture, and it is the great equalizing force in our culture. In fact, we think so highly of the law that we make aspiring citizens take an oath that contains six separate references to the law.

This system of laws failed Kate Steinle as it has failed others like her, and this is more than an academic discussion about prosecutorial discretion. It is more than political pandering to certain voting constituencies. It is more than the supremacy clause or the commandeering clause. It is quite literally life and death.

And this is the real world where everyone is not a DREAMer, and everyone is not a valedictorian. There are criminals motivated by malice and a conscious disregard for the lives of others, and

there are cities more interested in providing a sanctuary for those criminals than they are providing a sanctuary for their own law-abiding citizens.

I have been on this Committee, Mr. Chairman, for almost 5 years now, and I have listened closely to the debate over immigration. You do not hear many witnesses called by our colleagues on the other side to talk about law enforcement or background checks or enforcement mechanisms. You do hear certain phrases repeated with catatonic frequency as if rote repetition will somehow make it true.

You hear phrases like "functional control over the board" uttered by witnesses who are uniquely well-positioned to know better. You hear citizenship for 11 million undocumented aspiring Americans as if 11 million of any category could pass a background check. You hear arguments against empowering State and local law enforcement to assist Federal authorities, and those are the most illogical arguments of all.

We trust State and local law enforcement to investigate all manner of crime from murder, to sexual assault, to kidnapping, to narcotics trafficking, but God forbid they help us enforce immigration laws. State and local law enforcement are good enough to provide protection for Members of Congress in this city and when they are back home, but somehow, some way, all that changes when it comes to the issue of immigration. They are no longer smart enough to enforce Federal immigration law.

And even though some do not trust State and local law enforcement to enforce Federal law, they are more than happy to allow State and local officials to openly ignore that same Federal immigration law, which brings us to that benign-sounding phrase, "sanctuary cities." The definition of "sanctuary" is a place of refuge or safety. It almost sounds utopian, a place of refuge, a place of safety.

Refuge for whom? Safety for whom? For a young woman walking on a pier with her father, or for a career recidivist like Juan Francisco Lopez-Sanchez, who had a quarter century's worth of lawlessness dating all the way back to 1991. He committed local, State, and Federal crimes in at least 5 separate States. He was deported 5 times, and each time had so little regard for the law that he reentered that border that we are supposed to have functional control over.

His procedural history is every bit as disturbing. In May of 2011, this defendant was convicted and sentenced to 46 months imprisonment for illegal reentry again. At the conclusion of that sentence, he was released from the Bureau of Prisons to a known sanctuary jurisdiction for the ostensible prosecution of an old drug case. And, of course, San Francisco did not prosecute that old drug case. They dismissed it, which surprises exactly no one.

And then they released this defendant. They did not return him to the Bureau of Prisons or to Federal probation. They did not honor the detainer placed on him by ICE. They released someone they knew was not legally in this country and that had a criminal history dating back to the early 1990's.

And we are given a litany of excuses for policies like this. We are told that we need policies like the one in San Francisco so people will cooperate with law enforcement. And I want you to consider

how utterly illogical that is. We are releasing known criminals back into society so society will help us catch known criminals. And, of course, some of our friends on the other side say all of this is necessary so folks will, to use the President's word, "come forward" or "get on the books," or "get right with the law."

I want you to ask yourself, what in this defendant's background leads you to believe that he would ever come forward or get on the books or get right with the law? He was already on the books. Better than that, he was in jail, and he was there because he had not complied with a single damn thing we had asked him to do.

So are we supposed to catch him again after San Francisco releases him? Do we wait on another victim? Is that the strategy behind sanctuary cities; release them and then wait until they victimize someone else? Is that what we mean by coming forward?

The President and others constantly talk about comprehensive immigration reform, but they are very light on the details when it comes to enforcement and background checks. They just fundamentally fail to understand that border security, both borders by the way—both of them—and internal security are fundamental conditions precedent to fixing our broken immigration system.

Mr. Steinle, about a year ago there was a precious little girl waiting on the steps of the Capitol for me after votes, and I knew what was coming, so I could not walk past her. I knew or suspected that she would repeat those phrases that so-called advocates teach children to repeat to Members of Congress. But I had to stop as any father of a daughter would, and I stopped and the little girl said, I want to pray for you, one of the stuff that the advocates tell the children to say. She just said, I want to pray for you.

So I picked her up, and in a mixture of Spanish and English she told God that she was not here legally, but she wanted to stay. And everyone that I know would want to help that little girl. But everyone also should have wanted to help your little girl, Mr. Steinle. She was not 5, but she is still your daughter, and this country should have protected her.

And I hope you are given answers. I hope the politicians in San Francisco will explain to you why they thought it was more important to provide a sanctuary to Juan Francisco Lopez-Sanchez than they did to provide a sanctuary for your daughter. And I hope this Administration will tell you why a Bureau of Prisons released a five-time illegal entrant to a known sanctuary city for a piddling damn drug charge that wound up being dismissed. And I hope San Francisco will tell you why they released a convicted felon rather than honor the detainer in place, or just simply return him to ICE. You deserve those answers, and you deserve to know that your daughter's sacrifice had meaning and purpose, and that her death will serve to save the lives of other people.

When Trayvon Martin was shot and even before our criminal justice system had acted, the President said that could have been his son. For those of us that have daughters, which includes the President, your daughter could have been our daughter.

I used to have a quote on the wall of my old office at the courthouse, and it was given to me by a victim advocate. It is from a Greek philosopher named Solon. I will paraphrase it, but this is pretty close. He was asked what city was the best one to live in,

and he answered that city where those who are not injured by crime. Take up the cause of those who are as if it had been them.

That is the kind of country we should want, too, one where we do not have to lose our daughters, to feel the pain that you feel. And we should not have to lose daughters to know that no one else should have to feel like you feel this morning.

With that, I would recognize the Ranking Member.

Ms. LOFGREN. First, I would like to welcome all of the witnesses to the hearing today, but I especially want to welcome members of the Steinle family and to extend my heartfelt condolences to you. As a parent, I can only imagine what you are going through, and any time an innocent person is lost to violence, I think it is important that we all stop and consider what steps could we take, what policies and processes, procedures, and rules, and laws could be altered so that we would have a safer community, so that that tragedy would not occur.

And so, it is important the process that we are going through at this time. A hearing like this offers Members and the public an opportunity to learn more about the issue, and I hope that we can work together collaboratively to address some of the problems we were sent here to Washington to solve.

Now, I am eager to hear what each witness has to say. I must note that last night Chairman Goodlatte and I testified before the Rules Committee on H.R. 3009, a bill that has already been decided is the answer apparently to this. And I would note that if 3009 had been enacted into law, it would not have had any impact on these circumstances that resulted in the death of your daughter. In addition to that, major law enforcement associations, like the Fraternal Order of Police, the Major Counties Sheriffs Association, and others are telling us that that bill would actually make us less safe, and they all oppose that bill.

I do think that the testimony of the police chief of Dayton, Ohio I hope will be instructive because I have not heard a single person who suggests that it was wise, appropriate, or even legal for the sheriff in San Francisco to have released the individual who is charged with killing your daughter. Having said that, there are police agencies around the United States who believe that it makes our communities less safe to inquire as to the immigration status in every case. For example, the domestic violence organizations have contacted us to say that if there is a call for a domestic violence situation and the individuals who are calling know that they and everyone in their household will be interrogated as to their status, a family where there is mixed status will not call for domestic violence. So we have to be mindful of those issues, the entirety of the situation that we face.

I would ask unanimous consent to put into the record a bipartisan letter that was sent to appropriators just 4 months ago signed by 162 Members of Congress talking about the importance of the Byrne JAG and COPS grants for policing in this country.

Mr. GOWDY. Without objection.

Ms. LOFGREN. And noting that it is those very grants that would be removed by the legislation that is before the Congress later today. And I would also ask unanimous consent to enter into the record letters in opposition to H.R. 3009 by the Major Counties

Sheriffs' Association; the Fraternal Order of Police; the Law Enforcement Immigration Task Force; the League of Cities and the U.S. Conference of Mayors.

Mr. GOWDY. Without objection.

[The information referred to follows:]

Congress of the United States
Washington, DC 20515

March 20, 2012

The Honorable Frank Wolf, Chair
Subcommittee on Commerce, Justice
Science and Related Agencies
House Appropriations Committee
Washington, DC 20515

The Honorable Chaka Fattah, Ranking Member
Subcommittee on Commerce, Justice,
Science and Related Agencies
House Appropriations Committee
Washington, DC 20515

Dear Chairman Wolf and Ranking Member Fattah:

Thank you for your ongoing and diligent efforts to appropriately rebalance limited resources in this difficult fiscal climate in order to support our nation's highest priorities. As you begin to craft the Commerce, Justice, Science and Related Agencies (CJS) appropriation bill for Fiscal Year 2013, we urge you to include sufficient funding for the Byrne Justice Assistance Grant (Byrne JAG) Program and the Community Oriented Policing Services (COPS) programs, in particular the COPS Hiring program. These programs are critical to ensuring that state and local law enforcement have the tools, personnel, and resources necessary to protect and serve their communities.

The federal government has an important and appropriate role to play in helping to prevent and fight crime which knows no boundaries. The Byrne JAG and COPS programs are the cornerstone federal justice assistance programs that support this crucial role. Since their inception, the Byrne JAG and COPS programs have enabled law enforcement agencies to form vital partnerships among communities and law enforcement officers, combat criminal activities, and develop and implement problem-solving and crime prevention programs nationwide. The two programs work hand-in-hand to provide evidence-based and innovative programs to address a multitude of problems within the criminal justice system.

The strength of the Byrne JAG program is in its impact across the criminal justice system, from law enforcement to prosecution and courts, crime prevention and education, corrections and community corrections, drug treatment and enforcement, program planning, evaluation, technology improvement, and crime victim and witness initiatives. Byrne JAG funds can be deployed quickly to address emerging trends, such as gang violence, the manufacture of methamphetamine or, more recently, prescription drug abuse.

The Community Oriented Policing Services (COPS) Office and its corresponding programs provide invaluable resources and technical assistance to state and local law enforcement agencies. Since its inception, the COPS Hiring program has placed over 115,000 officers in communities across the United States to advance community policing and crime prevention efforts. These are critical bodies on the street patrolling high crime neighborhoods and working on drug and gang task forces. While the COPS Office is well known for its hiring program, it also provides many other valuable resources and support to assist law enforcement to update technology, strengthen school safety, assist tribal territories, prosecute child sexual predators, and enhance methamphetamine reduction efforts.

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In this tough economic time, when there have been increases in violent crime, drug sales, and threats to our homeland security, it is essential that law enforcement has the resources necessary to effectively and efficiently protect the public. Continued investment in the Byrne JAG and COPS programs is critical to ensuring our law enforcement men and women have the support and tools necessary to keep themselves and our families safe. In recent years, law enforcement agencies have watched their budgets diminish significantly, resulting in agencies making extremely difficult sacrifices. For example, many law enforcement agencies have been increasing the size of an officer's patrol area and decreasing the number of officers on a shift due to a lack of available personnel. These setbacks not only pose a serious risk to officers who may now patrol a high-crime area alone or wait longer for back-up; they also hamper law enforcement's ability to effectively and efficiently fight and prevent crime in communities.

We appreciate the difficulty you face in appropriating adequate resources for the programs under your jurisdiction. Continued support for the Byrne JAG and COPS Hiring programs is imperative to the success of law enforcement in keeping our communities safe. These programs supplement the manpower and incentivize the collaboration across agencies necessary to build upon successful crime reduction efforts over the past 20 years. For these reasons, we respectfully request that you include strong funding for the Byrne JAG and COPS programs, especially the COPS Hiring program, in the FY2013 CJS appropriations bill.

Thank you for your consideration of this request.

Sincerely,

DAVE REICHERT
Member of Congress

BILL PASCRELL, JR
Member of Congress

JASON ALTMIRE
Member of Congress

JOE BACA
Member of Congress

SPENCER BACHUS
Member of Congress

TAMMY BALDWIN
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Major County Sheriffs' Association

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July 22, 2015

The Honorable John Boehner
Speaker, House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Majority Leader, House of Representatives
H-107, The Capitol
Washington, DC 20515

Dear Speaker Boehner and Majority Leader McCarthy,

On behalf of the Major County Sheriffs Association (MCSA), an association of sheriffs collectively representing over 100 million Americans, I submit to you our comments and concerns regarding recent House deliberations on "sanctuary cities" and law enforcement grant penalties.

In response to the July 1, 2015 murder of Kathryn Steinle, there has been much discussion regarding grant penalties as a way to bring "sanctuary cities" into line with federal policy. While we understand the debate and political tension surrounding "sanctuary cities," the proposed solution of grant penalties does nothing address the core issue of a broken immigration system and lack of information sharing between state and locals. Rather, grant penalties will only further prevent law enforcement from effectively protecting their communities and themselves at a time when violent crime continues to rise.

The Major County Sheriffs Association believes that solving the issue of "sanctuary cities" requires a comprehensive and multifaceted approach that would increase border security and enhance information sharing between federal and state law enforcement regarding illegal immigrants.

MCSA has long advocated for comprehensive policy that would secure our nation's porous borders. The range of threats and crimes that continue to impact public safety in our communities – from narcotics to gangs and human trafficking – can be traced in large part back to continuing insecurity along our borders. Additionally, MCSA has repeatedly brought to light the need for increased information sharing between Federal, State, local and tribal law enforcement.

Information sharing is absolutely critical to maintaining public safety and combatting a wide variety of interstate and international threats that impact our communities. One specific area that we remain concerned about focuses on timely delivery of key information from the Federal level to States and locals on known criminal aliens that may reside in our communities. Information sharing responsibilities are binary meaning that information should not just flow from the bottom up. State and local law enforcement officers have a need

to know – for officer safety and basic policing operations – about any resident criminal alien threats that Federal law enforcement agencies are already aware of.

While we appreciate Congress' continued support for law enforcement, we strongly feel a law enforcement grant penalty solution would not only negatively impact law enforcement efforts across the country, but also not achieve its intended purpose. Any proposed solution that includes grant penalties is a failed attempt to address a problem that cannot be solved with a surface-level solution. "Sanctuary cities" present an array of challenges for state and federal governments, and will continue to do so without a clear solution that addresses the foundation of the problem. If Congress ultimately settles on a grant penalty, MCSA strongly advocates for a penalty that originates from another funding stream, separate from those designed to assist state and local law enforcement, given that "sanctuary" policies are derived by local politicians, not law enforcement officials.

As Congress moves forward with its deliberations, we respectfully request that Members of Congress contact their state and local law enforcement representatives to understand the adverse impact law enforcement grant penalties would have on their respective constituencies. It is imperative that we take a step back to fully comprehend the complexity of "sanctuary cities" and not cut necessary and needed funding to local law enforcement.

Very Respectfully,

Michael J. Bouchard

Michael J. Bouchard, Sheriff, Oakland County (MI)
Vice President – Government Affairs, Major County Sheriffs' Association

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JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

15 July 2015

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Harry M. Reid
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy P. Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Senator McConnell, Mr. Speaker, Senator Reid and Representative Pelosi,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our strong opposition to any amendment or piece of legislation that would penalize law enforcement agencies by withholding Federal funding or resources from law enforcement assistance programs in an effort to coerce a policy change in so-called "sanctuary cities." This is not meant to be construed as a position on "sanctuary cities," but rather on the use of Federal programs as an enforcement mechanism.

Local police departments answer to local civilian government and it is the local government which enacts statutes and ordinances in their communities. Law enforcement officers have no more say in these matters than any other citizen and, with laws like the Hatch Act in place, it can be argued they have less. Law enforcement officers do not get to pick and choose which laws to enforce and must carry out lawful orders at the direction of their commanders and the civilian government that employs them. It is wrong and a gross unfairness to punish these brave men and women, or the citizens they serve, because Congress disagrees with their enforcement priorities with respect to our nation's immigration laws.

The FOP believes very strongly that local police departments should at all times endeavor to cooperate with their Federal law enforcement colleagues but they also must follow the laws and policies of the government that employs them. It is critical to public safety and national security that local, State, Federal and tribal law enforcement work together and rely on the expertise and resources that each agency brings to the mission. This cannot be achieved if the Federal government is reducing the resources available to local law enforcement nor will it aid in cooperative efforts to address threats to public safety.

For these reasons, the FOP will vigorously oppose any amendment, bill or other legislative effort which would reduce or withhold funding or resources from any Federal program for local and State law enforcement. If Congress wishes to effect policy changes in these cities, it must find another way to do so.

On behalf of the more than 330,000 members of the Fraternal Order of Police, I want to thank you for your consideration of our view on this issue. Please feel free to contact me or Executive Director Jim Pasco in my Washington office if I can be of any further assistance.

Sincerely,

Chuck Canterbury
National President

July 20, 2015

The Honorable Trey Gowdy
Chairman, Subcommittee on Immigration and Border Security
1404 Longworth House Office Building
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member, Subcommittee on Immigration and Border Security
1401 Longworth House Office Building
Washington, DC 20515

Dear Chairman Gowdy and Ranking Member Lofgren:

As law enforcement leaders dedicated to preserving the safety and security of our communities, we are deeply troubled by the tragic murder of Kathryn Steinle in San Francisco on July 1, 2015. Like other Americans, we are concerned that a dangerous criminal with multiple felonies was out in the streets, and our hearts go out to Ms. Steinle's family and friends.

Even before this tragic incident, we have been alarmed to see various legislative proposals that would attempt to impose ineffective "one-size-fits-all" policies that would cause great harm to our departments and our communities. These troubling proposals are increasing in a misguided attempt to address Ms. Steinle's murder. Some would defund or condition funding of "sanctuary cities," including H.R. 3002 and H.R. 3009 in the House, Sen. Paul's yet-to-be-numbered sanctuary cities bill, as well as amendments submitted by Sens. Cotton and Vitter to the Every Child Achieves Act of 2015. These proposals, along with existing SAFE Act-type proposals to require state and local law enforcement to become immigration agents (such as H.R. 1148 and S. 1640), would threaten crucial federal law enforcement funding and undermine basic community policing principles. The Law Enforcement Immigration Task Force (LEITF) opposes these and similar proposals and urges Congress to reject them.

We Oppose Proposals that Impose Federal Immigration Enforcement Responsibilities on Local Law Enforcement

As several of our members noted in a February 10, 2015, letter to the leadership of the Subcommittee on Immigration and Border Security,

> Immigration enforcement is, first and foremost, a federal responsibility. Immigration enforcement at the state and local levels diverts limited resources from public safety. State and local law enforcement agencies face tight budgets and should not be charged with the federal government's role in enforcing federal immigration laws.

Since DHS announced that it would be replacing the flawed Secure Communities program with the Priority Enforcement Program (PEP), many law enforcement agencies have been working with the federal government on implementation of the new program. Recognizing the need to tailor it to the needs of particular jurisdictions, DHS is in the process of reaching out to jurisdictions to build trust for the program and to ensure that it meets the needs of a particular jurisdiction. We must give this process some time to determine if it will provide a way for local law enforcement and DHS to work together to identify and remove dangerous individuals from our communities.

The current legislative proposals would undermine this process, compelling local law enforcement officers to act as immigration agents while imposing a federal "one-size-fits-all" approach. These approaches would reduce trust between immigrant communities and law enforcement, while imposing troubling federal mandates on law enforcement.

We Oppose Proposals that Undermine Community Policing

State and local law enforcement agencies work every day to build trusting relationships with residents, and need that trust to do our job: apprehend criminals and maintain public safety. All should feel safe in our communities and comfortable in reporting crimes, serving as witnesses, and calling for help in emergencies. This improves community policing and safety for everyone.

The legislative proposals described above pose real danger to existing relationships between immigrant communities and state and local law enforcement. When state and local law enforcement agencies are required to enforce federal immigration laws, undocumented residents may fear that they, or people they know or depend upon, risk deportation by working with law enforcement. This fear undermines trust between law enforcement and the communities we serve, creating too much room for dangerous criminals and violent crime.

Rather than require state and local agencies to engage in additional immigration enforcement, Congress should focus on reforms to allow state and local law enforcement to focus resources on these very clear threats to safety: dangerous criminals, violent crime and criminal organizations.

We Oppose Proposals that Threaten Crucial Law Enforcement Grants

Our Task Force has consistently urged the federal government to ensure that state and local law enforcement have adequate resources. However, rather than provide additional resources to encourage better cooperation between federal, state and local law enforcement, the "sanctuary cities" proposals actually threaten crucial existing funding resources. This approach is deeply problematic. Because some of these proposals specifically target major cities that have expressed concern with the well-known constitutional deficiencies with immigration detainers, several of our largest law enforcement agencies may lose critical funding that enables them to keep their streets safe.

Conclusion

We urge Congress to reject proposals that tie law enforcement funding to federal mandates to carry out immigration enforcement functions and to reject SAFE Act-style proposals that foist federal immigration enforcement on states and localities. Our immigration challenge is national and deserves a national approach, and we continue to recognize that what our broken system truly needs is a permanent legislative solution.

Sincerely,

The Law Enforcement Immigration Task Force

Chief Art Acevedo
Austin Police Department
Texas

Chief Richard Biehl
Dayton Police Department
Ohio

Chief Mike Brown
Salt Lake City Police Department
Utah

Retired Chief Chris Burbank
Salt Lake City Police Department
Utah

Sheriff Mark Curran
Lake County Sheriff's Office
Illinois

Sheriff Tony Estrada
Santa Cruz County Sheriff's Office
Arizona

Assistant Chief Randy Gaber
Madison Police Department
Wisconsin

Chief Ron Haddad
Dearborn Police Department
Michigan

Chief Dwight Henninger
Vail Police Department
Colorado

Chief Michael Koval
Madison Police Department
Wisconsin

Chief Brian Kyes
Chelsea Police Department
Massachusetts

Chief Jose Lopez
Durham Police Department
North Carolina

Sheriff Leon Lott
Richland County Sheriff's Department
South Carolina

Chief J. Thomas Manger
Montgomery County Police Department
Maryland

Michael Masters
Cook County Department of Homeland Security and Emergency Management
Illinois

Sheriff William McCarthy
Polk County Sheriff's Office
Iowa

Sheriff Margaret Mims
Fresno County Sheriff's Office
California

Chief John Mina
Orlando Police Department
Florida

Chief Roy Minter
Peoria Police Department
Arizona

Lieutenant Andy Norris
Tuscaloosa County Sheriff's Office
Alabama

Commissioner Keith Squires
Utah Department of Public Safety
Utah

Chief Ron Teachman
South Bend Police Department
Indiana

Chief Michael Tupper
Marshalltown Police Department
Iowa

Sheriff Lupe Valdez
Dallas County Sheriff's Office
Texas

July 20, 2015

Dear Senator:

We write on behalf of mayors and their city governments to register our strong opposition to legislation that would withhold federal law enforcement assistance from so-called "sanctuary cities."

We believe that decisions related to how law enforcement agencies prioritize their resources, direct their workforce, and define the duties of their employees must reside with local government leadership. This includes defining the role of local police officers in the context of enforcing federal immigration laws. It is our strong belief that effective policing cannot be achieved by forcing an unwanted role upon the police by threat of sanctions or withholding of law enforcement assistance funding as has been proposed.

At a time when law enforcement agencies are working hard to strengthen police-community relations and build trust, legislative proposals to withdraw funding from communities are particularly troubling and counterproductive to those efforts.

Building relationships based on trust with immigrant communities is central to overall public safety, according to the recently released President's Task Force Recommendations on 21st Century Policing. In order to strengthen these relationships and to foster the trust so essential to public safety, the Task Force also recommended terminating the Department of Homeland Security's use of the state and local criminal justice system, to enforce civil immigration laws against civil and non-serious criminal offenders, including through detention, notification, and transfer requests.

Further, shifting the federal responsibility of enforcing civil immigration law to state and local governments diverts critical resources from their law enforcement agencies, compromises public safety, and hinders local police department efforts to work with immigrant communities in preventing and solving crimes.

Immigration enforcement laws and practices must be nationally based, consistent, and fully funded by the federal government. Immigration is a federal, not a state or local, responsibility.

We urge you not to take precipitous action that will have a negative impact on law enforcement agencies and public safety across the nation.

Sincerely,

Tom Cochran
CEO and Executive Director
The United States Conference of Mayors

Clarence E. Anthony
CEO and Executive Director
National League of Cities

Ms. LOFGREN. With that, I would just say that I will listen with great interest to all of our witnesses, but especially to Mr. Steinle, and hopefully I will have a chance to meet you after this hearing and your family as well. As you know, Congresswoman Pelosi and I sent a letter to the Attorney General and the Department of Homeland Security just a few days ago to explore how could it be that you would send a person who should have been deported to a jurisdiction for a warrant that was 20 years old that clearly there was not going to be a prosecution.

And oddly enough, I mean, this individual was deported in 1994, in 1997, in 1998, in 2003. And in none of those instances did this ancient warrant prevent him from being deported. I mean, he was also convicted repeatedly of felony reentry after removal, and served 16 years in Federal prison for that crime, and he just kept trying to get in. And I want to give credit to our Border Patrol because every time he tried to come back in, they caught him, which is exactly what they should do, and he was prosecuted.

So we need to examine all of this and knowing that none of it can bring your beautiful daughter back, but hopefully we will be able to improve the situation as really a tribute to your loss.

And with that, I would yield back, Mr. Chairman.

Mr. GOWDY. I thank the gentlelady from California. The Chair would now recognize the Chairman of the full Committee, the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman, and thank you for holding this hearing and for the work that you have dedicated to this issue for the last 2 years.

I want to thank all of our witnesses for being here today. I think you all have compelling testimony, but I especially want to thank Mr. Steinle, who I just had the opportunity to meet. I told him that the fact that he would come here 3 weeks after the tragic death of his daughter to me shows courage and determination to make sure that other lives are saved as a result of this. So you have my deepest sympathy, but also my deepest appreciation and admiration for coming here today. I also told Mr. Steinle that my son lives in San Francisco. I have been on that very pier with my son and my daughter, and we want to make sure that everybody is safe.

Last week, this Committee held a Department of Homeland Security oversight hearing with Secretary Johnson as the sole witness. Many Members focused their questions on sanctuary cities, Immigration and Customs Enforcement detainers, and criminal aliens. So we have heard much of what the Administration has to say about these issues. But today we will hear perspectives on sanctuary policies that are distinctly different than what Secretary Johnson had to offer, and I look forward to that testimony.

I am honored to have the family of Kate Steinle here and Mr. Steinle testifying. And, of course, their perspective on this issue is one that we wish they never had to contemplate. And the same is true for the countless other victims of criminal aliens that this Committee has heard from the past several years, people like Jamiel and Anita Shaw, whose son was murdered by a criminal alien gang member who has been released from jail by Los Angeles law enforcement pursuant to Los Angeles sanctuary policy. And people like Sabine Durden, whose son, Dominic, was killed in a car

accident by an illegal immigrant who had two prior DUI convictions. Ms. Durden is here with us this morning, and I thank you very much for being here today as well.

These tragedies were preventable. This Administration must reverse its wholesale and unprecedented shutdown of immigration enforcement. Because the result of that shutdown is that millions of unlawful and criminal aliens are not considered high enough priorities for deportation, they are left in American communities. In fact, in the last year, the number of administrative arrests of criminal aliens has fallen by a third, and the Department continues to release thousands of such aliens onto our streets. ICE admitted to releasing 30,558 aliens with criminal convictions in 2014.

Last week we publicized ICE data showing the recidivist activity of those criminal aliens ICE released in 2014. Already 1,423 have been convicted of new crimes like vehicular homicide, domestic violence, sexual assault, DUI, burglary, and assault, among many others. And no doubt, even more have been arrested for, and charged with, additional crimes.

Secretary Johnson's solution, the Priorities Enforcement Program, is a failure. Even the Secretary admitted last week that five of ICE's Priority A, meaning the worst offending jurisdictions, have refused to participate in PEP. And while 33 of the 49 Priority A jurisdictions have apparently agreed to participate, it remains to be seen how fully they will participate. The Administration has admitted that when it says a jurisdiction has agreed to participate, that could encompass compliance with only a very small part of PEP.

There is a clear answer to this problem: compliance with ICE detainers must be mandatory. Jurisdictions that violate that policy must suffer consequences. And, most importantly, Congress must no longer allow the President the ability to simply turn off the immigration enforcement switch.

This Committee has passed a bill that addresses all three of those priorities, H.R. 1148, the "Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act" introduced by Chairman Gowdy. While I look forward to consideration of H.R. 1148 on the floor later today, the House will vote on legislation to address one part of the solution to sanctuary cities. That bill is a good first step, and I will support it. I also appreciate the Majority Leader's commitment to me that we will take additional action to ensure compliance with our immigration laws in the future.

Today I look forward to hearing the witnesses' thoughts on how to prevent sanctuary policies and the overwhelming number of crimes committed pursuant to these policies. And I also want to acknowledge that Mrs. Wilkerson, I think, is here this morning as well. She testified before the Senate hearing on Tuesday.

So I want to make it clear to everyone that this Committee is committed to addressing this problem in a comprehensive way, and we have taken the first step by bringing the bill to the floor today. But that should not be the end; that should be the beginning of our efforts to make sure that American citizens are safe in their cities around the country.

Thank you, Mr. Chairman.

Mr. GOWDY. The gentleman from Virginia yields back. The gentlelady from California is recognized briefly for a unanimous consent.

Ms. LOFGREN. Thank you, Mr. Chairman. I should have asked earlier for unanimous consent to enter Ranking Member Conyers' statement into the record. And I would also ask unanimous consent to enter into the record 137 statements, including from the Archbishop of San Francisco, Church World Services, the Methodists, and 134 other organizations on this subject.*

[The prepared statement of Mr. Conyers follows:]

*__Note:__ The material referred to is not printed in this hearing record but is on file with the Subcommittee. Also, see "Rep. Lofgren Submissions for the Record" at:

http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=103781.

Statement of the Honorable John Conyers, Jr. for the Hearing on "Sanctuary Cities: a Threat to Public Safety" Before the Subcommittee on Immigration and Border Security

Tuesday, July 23, 2015, at 10:00 a.m.
2141 Rayburn House Office Building

I want to start by offering my sincere condolences to the Steinle family — who lost their daughter just three weeks ago — and to Sheriff Jones — who lost one of his deputies last Fall. You have our deepest sympathies and your losses are on each of our minds. Your presence here today is very much appreciated.

I also want to say how unfortunate it is that we are having this important hearing only a few hours before we head to the Floor to vote on a bill that deals with this very issue. The lack of Committee process and regular order breaks the commitment made to this body by the Majority Leader and will lead to a less informed debate on this critical topic.

The decision to rush H.R. 3009 to the Floor without any Committee process is not the only evidence we have that the Majority has already made up its mind on this topic. The pejorative title of this hearing demonstrates their belief that so-called "sanctuary cities" are a "threat to public safety."

I disagree with that conclusion for several reasons.

To begin with, numerous studies prove that communities which have adopted "community trust policies" are not less safe than other communities.

In fact, studies show that crime rates ***actually decrease*** in communities after they adopt such policies.

Further, these studies find that strong-arm policies – such as Secure Communities – ***fail to lower crime rates.*** Instead, they can make communities ***less safe*** because residents become more fearful and therefore less likely to report criminal activity.

Clearly, every law enforcement agency wants its community to be safe and every police officer's goal is to implement the best policy to protect the people they are sworn to serve.

To suggest that local law enforcement officials are pursuing policies that make their communities less safe is simply false and offensive.

Second, I know that each of us opposes violent crime and wants to do what we can to prevent tragedies like the ones we will hear about today.

Nevertheless, in our zeal to achieve this goal, we must consider solutions that actually are effective and not rule out options based on any predisposition.

To that end, we should consider the recommendations of law enforcement itself. The Major Cities Chiefs Association, for instance, opposes federal proposals that would "undermine the trust and cooperation between police officers and immigrant communities, which are essential elements of community-oriented policing."

The Association explains that such "measures would result in fear and distrust of local police, damaging our efforts to prevent crime and weakening our ability to apprehend those who prey upon the public."

Federal legislative proposals such as H.R. 3009 that is on the Floor today would do just that. It would community trust and make it harder for local law enforcement to fight crime in their jurisdictions.

Finally, if we are looking for ***real*** solutions, we should be undertaking ***real comprehensive immigration reform***.

An immigration reform bill – such as the measure that passed the Senate in 2013 or the bill that had 201 House cosponsors in the last Congress – would allow law-abiding immigrants to come out of the shadows and get right with the law. As a result, it would enable Immigration and Customs Enforcement to focus its resources on deporting the worst elements.

That kind of solution would help ensure that our entire community, citizens and immigrants alike, are protected from harm.

Accordingly, I look forward to hearing from our witnesses and I yield the balance of my time.

Mr. GOWDY. We welcome our very distinguished panel of witnesses today. I would ask you to all rise so I can administer an oath.

Do you swear the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

[A chorus of ayes.]

Mr. GOWDY. May the record reflect all the witnesses answered in the affirmative.

I will introduce you en banc and then recognize you individually for your opening statement.

From left to right, Mr. Jim Steinle of Pleasanton, California is the father of Kate Steinle who was murdered on July the 1, 2015 by a recidivist criminal alien who had been released from the San Francisco Sheriff's Department.

Sheriff Scott Jones started with Sacramento County Sheriff's Department in 1989 as a security officer at their brand new main jail. As a deputy he worked in corrections patrol, legal affairs. He was promoted through the ranks to sergeant, lieutenant, and finally captain. As sheriff, he instituted an annual strategic planning process that prioritizes projects and continues to drive the department forward.

He holds a bachelor's degree in criminal justice from CSU Sacramento and a juris doctor degree from Lincoln Law School.

Ms. Jessica Vaughan currently serves as the director of policy studies for the Center for Immigration Studies. She has been with the Center since 1992 where she has experience in immigration policy and operations topics such as visa programs, immigration benefits, and immigration law enforcement. And, in addition, she is an instructor for senior law enforcement, training seminars at Northwestern University Center for Public Safety in Illinois.

She has a master's degree from Georgetown and a bachelors in international studies at Washington College in Maryland.

Finally, Chief Richard Biehl joined the Dayton Police Department as Director in Chief on January 28, 2008. He has more than 35 years of experience in law enforcement. He served on the Cincinnati Police Department from 1980 to 2004 in positions including officer, sergeant, lieutenant, captain, and ultimately assistant police chief.

Welcome to all of you. Mr. Steinle, you are recognized for your opening remarks.

TESTIMONY OF JIM STEINLE, FATHER OF KATHRYN STEINLE, PLEASANTON, CA

Mr. STEINLE. Thank you. First of all, I would like to thank the Members of this Committee for the honor to speak to you about our daughter, Kate. All children are special in their own way. Kate was special in the way she connected with people. We called it the "Kate effect."

Kate was beautiful, she was kind, she was loving and deep in faith. Kate had a special soul, a kind heart, the most contagious laugh, and a smile that would light up a room. Kate loved to travel and spend time with her friends, and, most of all, spend time with her family. In fact, the day she was killed we were walking arm in arm on Pier 14 in San Francisco enjoying a wonderful day to-

gether. Suddenly a shot rang out, Kate fell, looked at me and said, "Help me, Dad." Those were the last words I will ever hear from my daughter.

The day Kate died, she changed her Facebook cover photo to a saying that said, "Whatever is good for your soul, do that." This quote truly describes her spirit. After graduating from Cal Poly San Luis Obispo, she went to work for a title company and saved her money so she could travel the world. She traveled to Spain, Thailand, Amsterdam, Dubai, South Africa, just to name a few. She even made her way to the slums of Mumbai, India to reach out to her friend's mother's nanny. She spent time there with the woman's family and came home a changed person.

Everywhere Kate went throughout the world she shined the light of a good citizen of the United States of America. Unfortunately, due to disjointed laws and basic incompetence on many levels, the U.S. has suffered a self-inflicted wound in the murder of our daughter by the hand of a person that should never have been on the streets of this country.

I say this because the alleged murder is an undocumented immigrant who has been convicted of seven felonies in the U.S. and already deported five times. Yet in March of this year, he was released from jail to stay here freely because of legal loopholes.

It is unbelievable to see so many innocent Americans have been killed by undocumented immigrant felons in recent years. In fact, we recently came across a statistic that says between 2010 and 2014, 121 criminal aliens who had an active deportation case at the time of release were subsequently charged with homicide-related offenses. Think about that: 121 times over 4 years an illegal immigrant, a violent illegal immigrant, with prior criminal convictions that later went on to be charged with murder when they should have been deported. That is one every 12 days.

Our family realizes the complexities of immigration laws. However, we feel strongly that some legislation should be discussed, enacted, or changed to take these undocumented immigrant felons off our streets for good. We would be proud to see Kate's name associated with some of this new legislation. We feel that if Kate's law saves one daughter, one son, a father or mother, Kate's death will not be in vain.

Thank you.

[The prepared statement of Mr. Steinle follows:]

Jim Steinle

Father of Kathryn Steinle

Sanctuary Cities: A Threat to Public Safety

Thursday, July 23, 2015

1

First of all, I would like to thank the members of this committee for the honor to speak to you about our daughter, Kate.

All children are special in their own way. Kate was special in the way she connected with people. We call it the Kate Effect.

Kate was beautiful, kind, happy, caring, loving and deep in faith. Kate had a special soul, a kind and giving heart, the most contagious laugh, and a smile that would light up a room. Kate loved to travel, spend time with her friends, and most of all spend time with her family. In fact, the day she was killed, we were walking arm in arm on Pier 14 In San Francisco, enjoying a wonderful day together. Suddenly a shot rang out, Kate fell, and looked at me and said "Help me, Dad." Those are the last words I will ever hear from my daughter.

The day Kate died, she changed her Facebook cover photo to a saying that said, whatever's good for your soul....do that. This quote truly describes her spirit. After graduating from Cal Poly San Luis Obispo, she went to work for a title company and saved her money so she could see the world. She traveled to Spain, Thailand, Amsterdam, Dubai, and South Africa, just to mention a few. She even made her way to the slums of Mumbai, India to reach out to her friend's mother's nanny. She spent time there with the woman's family and came home a changed person. She went to South Africa on safari with her friend and witnessed the aftermath of the slaughter of elephants. After that, she became passionate about PAWS, an organization that helps save and create sanctuaries for these remarkable animals. Everywhere Kate went throughout the world, she shined the light of a good citizen from the United States of America. Unfortunately, due to unjointed laws and basic incompetence of the government, the US has suffered a self-inflicted wound in the murder of our daughter by the hand ofa person that should have never been on the streets in this country. I say this because the alleged murderer is an undocumented immigrant who has been convicted of 7

felonies in the US and already deported 5 times. Yet, in March of this year, he was released from jail and allowed to stay here freely because of legal loopholes.

It is unbelievable to see that so many innocent Americans have been killed by undocumented immigrant felons in recent years. In fact, we recently came across a statistic that says between 2010 and 2014, 121 unique criminal aliens who had an active deportation case at the time of release were subsequently charged with homicide related offenses. Think about that, 121 times over the past 4 years the administration has released an illegal immigrant with prior criminal convictions that later went on to be charged with a murder when they should have been deported. That's 1 every 12 days.

Our family realizes the complexities of immigration laws, however, we feel strongly that some legislation should be discussed, enacted and/or changed to take these undocumented immigrant felons off our streets for good. We would be proud to see Kate's name associated with some of this new legislation. We feel that if Kate's Law saves 1 daughter, 1 son, a mother or a father, Kate's death won't be in vain.

Mr. GOWDY. Thank you, Mr. Steinle.

Sheriff Jones?

TESTIMONY OF THE HONORABLE SCOTT JONES, SHERIFF, SACRAMENTO COUNTY, CA

Sheriff JONES. Chairman Gowdy and Members, thank for you the invitation to speak with you this morning. I am Scott Jones and I am the Sheriff of Sacramento County, one of the largest sheriffs departments in the country. And in Sacramento County, like the rest of California and many communities, we have a very diverse population, including a large population of undocumented immigrants. They are a vital, important, and valued part of our community.

Unfortunately, there is also a percentage of that community that chooses to victimize others as a way of life in sometimes heinous ways. Unfortunately, unlike their American counterparts, I cannot protect my community from these offenders.

Secure Communities went a good way in the right direction by allowing fingerprints to be processed by ICE. Now, keep in mind we do not have access to their database, so we do not know status. But they did a good job of notifying their local ICE offices of the folks that they wanted to take custody of. Because they cannot be in every jail 24 hours a day, they served the jails with a detainer that says hold this person for a brief time until we get down to the jail and take custody of this person that we have already identified should not be released. It worked well, and few people fell through the cracks.

Even under the new watered down version of Secure Communities, the Priority Enforcement Program, it is dependent on detainers to be functional. I can tell you that the detainer system has failed, and consequently and necessarily then the Priority Enforcement Program is also failing.

Even notwithstanding the fact that the Federal Government allows and encourages States to pass their own immigration laws, though they have no legal authority to do so—it is a plenary and exclusive function of the Federal Government—they are allowed to so without consequence or challenge because it is much easier for that to happen. So we consequently have 50 different immigration policies that are constantly evolving.

The recent TRUST Act in California severely limited the types of crimes for which we can honor detainers. But then came a lowly magistrate judge in Clackamas County, Oregon who held that in Clackamas County only that detainers were unlawful. I and other sheriffs came back and talked with ICE administrators and begged, pleaded with them to stand with us so we could stand with our ICE partners to keep our communities safe and honor detainers at least for the ones that our State laws allowed because they already said they would not contravene that. They said, no, that it would not happen during this Administration.

And in a leadership vacuum, someone will fill that space, and that someone was the ACLU who seized on the opportunity to send a letter to every sheriff in this country telling them that if they honored any ICE detainers, not just the ones that were allowed by State law, but any ICE detainers, they would be sued. Again, we

pleaded with ICE to no avail. So now, over 200 jurisdictions in this country do not honor ICE detainers. People are simply released without any scrutiny from ICE at all.

California has become a de facto sanctuary State, and in short order this entire country will be a de facto sanctuary country. But that is not the same as sanctuary cities that pass laws that overtly and conspicuously violate Federal law. They, too, are allowed to do so. I have it on good authority that the San Francisco Sheriff's Office has not contacted ICE for any reason in over 3 years despite being served with many detainers during that time period. It is deplorable and reprehensible. And you will find no shortage of police chiefs willing to come here and testify that this type of legislation named after in part Danny Oliver, the deputy of mine that got killed last October 24th by someone removed 4 times, that it is going to be bad for our communities, that it is going to erode trust in our immigrant communities, that we should not be enforcing immigration law. It should be a function of the Federal Government. And I cannot argue with any of that. I agree with every little sentiment that is expressed.

I do not care. I do not have any desire to enforce immigration law, but that presupposes that there are people that are concerned with enforcing immigration law, and that is not happening. And notice I mentioned police chiefs willing to come here and testify. I defy you to find a sheriff that will come here and testify that some of this legislation is not a good idea, because while we are both singularly concerned with building trust in our communities, only the sheriffs, because of their roles in corrections in this country, are concerned with the dire consequence of releasing someone they know who should not be released, that they know ICE already wants and that society should be protected from, and not to be able to hold them for even 1 minute while ICE can come down to the jail and take custody of them.

Sheriffs are accountable to the people. They are elected. We have our own political voice. There is a reason, a very conspicuous reason. Even though our large role in corrections in this country that there is no sheriff representation on the President's 21st Century Task Force on Policing. And that is it.

Even without national immigration reform, there can be solutions. There can be legislative or stroke of pen changes by policy that will make this part better, to make detainers lawful and mandatory on local detention facilities so we can cooperate with our ICE partners despite what the policymakers in Washington have.

I hope you have had an opportunity to review the information that I have presented prior to this hearing. It lists some of those suggestions. I remain deeply committed to assisting in whatever way I can in this issue, and I look forward to exploring any of those issues further through any of your questions you may have. Thank you.

[The prepared statement of Sheriff Jones follows:]

THE IMMIGRATION CRISIS

SCOTT JONES: SACRAMENTO COUNTY (CA) SHERIFF

INTRODUCTION

The Sacramento County Sheriff's Department is one of the largest Sheriff's Departments in America. We have over 1300 full-time deputy sheriffs, and a constituency of over 1.4 million persons, covering 1,000 square miles. Unlike most counties, the largest population center in Sacramento County is in its unincorporated portion, with a population of almost 600,000 ranging from rural and suburban, to densely populated urban areas. We operate two large jails, with an average daily population (ADP) of about 4,500 inmates. Since one of our jails is next door to a federal courthouse, we house federal and ICE inmates under contract.

I have worked my entire adult career in the Sheriff's Department, starting in corrections in 1989, and elected Sheriff in 2010. I have a bachelor's degree in criminal justice, and a juris doctor (law) degree. I have been a member of the California State Bar since 1998. During my entire career, both historically and currently, we have enjoyed a particularly positive relationship with our federal partners, including legacy INS and ICE.

OUR POPULATION:

Sacramento is extremely diverse demographically, with a large population of undocumented immigrants. Additionally, California is home to an estimated 24% of ALL undocumented immigrants. The vast majority are law abiding and hard working men, women and families who want nothing more than to live the American Dream. I want that for them also. Further, our State and National economies are dependent on this population in many respects. That being said, there is a segment in every population—including the undocumented population—that will choose crime, drugs, violence, and gangs as a way of life. Worse yet, in many instances they victimize other undocumented persons because they know that their victims are often too afraid to call police for help because of their uncertain and ever-changing place in our communities.

I and most other public safety leaders in California have no interest in enforcing immigration law. Our focus is keeping communities safe and ensuring that the entire community (including our undocumented population) is protected and willing to call us if they need help. Of course, that presupposes that there are people or entities that ARE

concerned with enforcing immigration law. That ARE interested in protecting our communities from dangerous undocumented immigrants. That ARE adequately identifying them, detaining them when necessary, and removing criminals that the rest of my community needs to be protected from. None of that is happening to any satisfactory degree.

THE PROBLEM: WHY DETAINERS, THE PRIORITY ENFORCEMENT PROGRAM, AND SANCTUARY CITIES ARE FAILING

The problem with the current immigration policy can fundamentally be simply stated as there is NO coherent, sustainable immigration policy. Worse than that, there is *anti-policy* (an unwillingness to support even current promulgated policy and law, or challenge contrary policies), and each State has their own policies and laws on immigration.

The 'Priority Enforcement Program' (PEP)

Secure Communities, until it was repealed with the November 20, 2014 Executive Memo, was designed to identify each undocumented person prior to their release from custody, by allowing ICE to serve detainers on local jails to hold those who were arrested for new crimes in custody for "no more than 48 hours," if there was reason to believe they were in the country illegally. This resulted in identifying and removing many criminals that had extensive criminal and violent histories. Presumably, the current administration felt that this cast too broad a net and repealed Secure Communities in favor of the Priority Enforcement Program (PEP), or "Secure Communities *lite*". Under PEP, only the top priority undocumented persons are targeted for removal. Unfortunately, prior removal, multiple felony arrests, youths with extensive gang activity, misdemeanor convictions, and many felony convictions (as long as they aren't 'aggravated felonies') won't get you in the first priority. This coupled with many states' rush to reduce felonies to misdemeanors[1] means that many undocumented criminals do not even rise to the level of concern or care for the federal government and its law enforcement agencies. Further, even those in the first priority that are targeted for removal are often released pending their court proceedings, and escape their fate altogether.

[1] E.g. California's Proposition 47 which reduced many felonies to misdemeanors, including commercial burglary, theft of most guns, most identify theft, "purse snatching", shoplifting regardless of number of priors, etc.

But even those offenders in the first priority are escaping consequence.

Detainers: Mandatory vs. "Mere Requests"

The success of either Secure Communities or the watered down Priority Enforcement Program is absolutely dependent upon ICE being able to adequately identify each undocumented person who is arrested to determine which priority they fall under. It is crucial to remember that ICE does not allow local law enforcement access to their database(s), so we know neither someone's criminal history if under an alias, nor their immigration offenses or status. We are completely dependent on ICE for this information and enforcement. As such, both programs have local jails submitting fingerprints to ICE, which in turn gives their local agents definitive information on which they can act. In the past, they relied on ICE detainers when necessary to have the local jails hold the undocumented arrestee for "no more than 48 hours" so ICE could determine with accuracy who the arrestee is and whether further action would be appropriate. The detainers were served for those inmates held on local charges that ICE had already determined were worthy of further action by ICE. Until this administration, the "shall" language in the statute was interpreted and enforced by the federal government as mandatory.

However, many states more recently asserted that the mandatory language of detainer law is merely a "request" and not a legal demand. Although several years ago the federal government asserted this law was mandatory, the federal government has continued its historic capitulation on immigration issues. During the last couple years, the federal government refused to take a position on whether detainers are mandatory or suggestive even when directly asked by law enforcement, and recently have capitulated to advocacy groups that the detainer is merely a request. Thus, arrestees are not being kept in custody long enough to determine their proper identity and whether they qualify for removal or further action by ICE. While their newer "Request for Notification" may be effective for many *sentenced* inmates with a certain release date, those that are arrested on fresh charges who get citation releases, who are released on their own recognizance, who bail out, or who get released from court are NOT subject to such requests for notification because they are getting out too quickly and without enough advance notice to ICE to respond to the jails and assume custody of these offenders. According to ICE officials, in-custody arrests are down 95% from just a year ago. That means that the overwhelming majority of undocumented persons who are arrested on local charges—no matter how severe—are released right back into

the community without any review or action by ICE, *regardless of which 'priority' they fall under.* Once back in the community, ICE can either choose to utilize precious resources to go find them again, or simply allow the cycle to continue.

ICE has said they've rolled out a new "request for notification" that should help. It will not. It does nothing more or further to ensure offenders are kept long enough for ICE officers to respond to the jails and assume custody. It is merely a codification of the existing policy change that they will not treat the detainers as mandatory.

A Word About Sanctuary Cities

Because of the above failure of PEP and the detainer system, it is very difficult to cooperate with ICE in keeping known and dangerous offenders off the street. There IS cooperation that goes on, however, in terms of notification prior to release when feasible. Cooperation at the line level is and remains excellent despite the policy roadblocks that are continually put up. Our goals *at the line level* remain the same—to keep our communities safe.

It is important to note that many cities and even states—such as California—even without the designation are de facto sanctuary jurisdictions. More on that a little later, but for those jurisdictions such as San Francisco that put a greater value on their undocumented population than the safety of their American one, the consequences on public safety can be far more dire. In most of these jurisdictions there is NO cooperation or communication with ICE officers, so the dangerous outcomes detailed above are even more exacerbated. Although ALL jurisdictions have to walk a fine line between state law and federal law on immigration, these jurisdictions flagrantly enact ordinance and law that is overtly contrary to federal law. The federal government should not permit this because it is putting communities at grave risk—not to mention that the only entity legally entitled to pass immigration laws is the federal government. Yet the federal government continues to capitulate their plenary authority—AND THEIR RESPONSIBILITY—to enforce existing laws or create policy applications to keep communities safe.

WHO IS MAKING POLICY IF NOT THE FEDERAL GOVERNMENT?

State Action Challenges

As mentioned previously, the federal government—specifically the Executive Branch—deliberately chooses not to challenge any erosion of the immigration framework. As a result, there are 50 different immigration laws in effect in this country. Fundamentally, the states have no authority to promulgate immigration law; it is a plenary function of the United States government under the Constitution. The Supremacy Clause ensures that jurisdiction for wholly federal questions resides squarely and exclusively with the federal government. Yet, the federal government challenges none, and simply allows the States to issue new and ever-changing edicts. This lack of challenge by the federal government not only fosters 50 different immigration laws, but also emboldens States and organizations like the ACLU—who virtually believe nobody should be incarcerated OR deported—to craft policy and use the courts to establish new restrictions, confident that they will get no challenge from the federal government.

Court Challenges

The ACLU continues to sue local jails, municipalities, and law enforcement agencies all over the country on a variety of immigration-related issues. They are currently suing us over immigration issues. A case of note from a lower court out of little Clackamas County, Oregon invalidated detainers as amounting to a detention without probable cause. This case is not mandatory law on any other jurisdiction than Clackamas County, yet it had every other Sheriff (because they run corrections) in the country watching what the federal government would do to challenge that decision; to defend the supremacy of the federal government; to intervene; or simply stand up and say 'we don't agree with that decision'. The response was nothing. They by deliberate decision did not challenge that court decision. When there is a power vacuum, someone will step in and that person was the ACLU. They sent a letter to every sheriff threatening to sue them if they honored <u>any</u> ICE detainers, not just the ones that the erosive state laws still allowed. This had the effect of causing every other Sheriff in the country to look to their federal partners in the East and implore them—beg them—to stand with them to enforce federal law. Since we care about public safety and the policy-makers care about votes, it was made very clear that there would be no challenge during this administration, and many sheriffs had to make a painful decision NOT to cooperate with ICE and detainers in any way. As a result, I and most other California sheriffs now do not honor ANY ICE detainers for any reason, because ICE is not allowed to stand with us against any challenge. The result is that almost all undocumented persons that are

arrested are released without any scrutiny from ICE at all. Thus, the ACLU has affected national immigration policy with one successful court decision in Oregon, and will continue to do so as long as they are able to find jurists willing to engage in judicial activism to effectively change the law, without fear of federal challenge.

Immigration law, and necessarily the safety of this country, is eroding at an unprecedented rate and the federal government is a spectator at best, and a willing participant at worst.

HOW TO FIX THE PROBLEMS

Of course singularly reforming immigration at the federal level remains the best option but even while we wait for that, the immediate problems CAN be fixed. Here's how:

- Make Detainers mandatory on local jails
- Challenge court decisions and state laws that are contrary to public safety and contrary to existing federal immigration law
- Do not allow Sanctuary Cities to enact substantive laws that are contrary to federal law
- Allow ICE to carry out its mission unencumbered by politics
- Have ICE share its resources and databases with local law enforcement jurisdictions
- Provide support, legal protection or immunity for local jurisdictions willing to enforce immigration law
- Require the DMV of states that issue undocumented drivers licenses to share their information and biometrics with ICE for cross referencing and *proper* identification

I remain deeply committed to assisting in this national effort in whatever way I possibly can. Thank you for your time.

Mr. GOWDY. Thank you, Sheriff.

Ms. Vaughan?

TESTIMONY OF JESSICA M. VAUGHAN, DIRECTOR OF POLICY STUDIES, CENTER FOR IMMIGRATION STUDIES, WASHINGTON, DC

Ms. VAUGHAN. Thank you very much for the opportunity to testify on the public safety problems created when local governments adopt policies that obstruct immigration enforcement, commonly known as sanctuary policies.

According to an ICE report that I obtained through a FOIA request, as of October 2014, there were 276 such jurisdictions in the United States. Over an 8-month period in 2014, more than 8,100 criminal aliens who were the subject of detainers were instead released back into the streets as a result of these non-cooperation policies. Approximately two-thirds of these individuals already had a serious criminal history as defined by ICE as the time of their release. Nearly 1,900 of them subsequently reoffended just in that 8-month period. Only 28 percent of them have been re-apprehended by ICE.

Now, I have just reeled a lot of statistics that I know sometimes make some people's eyes glaze over, but as someone who also has lost a close family member—my brother—because of a negligent act by a sworn law enforcement officer and also a bad policy—and I should add that the offense that was committed was one that some on this Committee would call a minor traffic offense that killed my brother—I have to say that it is really not okay to refer to these tragedies as a little thing, as one Member of this Committee has.

I have a friend. Her name is Heather. A few years ago she was carjacked at knife point and taken to Roger Williams Park in Providence, Rhode Island and raped repeatedly by an illegal alien who had been in the custody of the Providence Police Department more than once, but was released because of then Mayor Cicilline's sanctuary policies. This was not a little thing.

I have other friends, some in this room, who can tell similar stories, and I am afraid that Congress is about to try to get away with doing just a little thing just by barring funding from these sanctuary jurisdictions, some funding. And I am asking you today to not be satisfied with just doing a little thing. This big problem requires you to have the courage to do a bigger thing. You have the language in the Davis-Oliver Act. Please do this for these families who have lost so much.

Sanctuary policies do nothing to build trust between immigrant communities and local law enforcement. They do not improve access to law enforcement services for immigrants, nor have they been shown to increase the likelihood that more immigrant crime victims will report crimes. On the contrary, they destroy the trust of the community at large that the laws will be faithfully enforced to preserve the quality of life for all.

Despite the widespread public outrage at the San Francisco sheriff's policies that caused the release of a man who went on to kill Kathryn Steinle, it is clear that some jurisdictions will not budge from their criminal alien sanctuary policies. To make matters worse, the Obama administration's new Priority Enforcement Pro-

gram explicitly allows local jurisdictions to obstruct ICE, and also establishes the entire country as a sanctuary for nearly all illegal aliens by further narrowing enforcement priorities and severely restricting the ability of ICE officers to deport removable aliens, including many with criminal records.

Therefore, Congress must step in to correct the situation by clarifying in the law that local law enforcement agencies are expected to comply with ICE detainers; establishing that local law enforcement agencies will have qualified immunity when cooperating in good faith; by implementing sanctions for those sanctuary jurisdictions that continue to refuse to cooperate; and by reversing the Obama administration's non-enforcement policies.

Thank you very much.

[The prepared statement of Ms. Vaughan follows:]

Sanctuary Cities: A Threat to Public Safety
U.S. House Judiciary Subcommittee on Immigration and Border Security
July 23, 2015

Statement of Jessica M. Vaughan
Center for Immigration Studies

Thank you for the opportunity to testify on the public safety problems created when local governments adopt policies that obstruct immigration enforcement, commonly known as sanctuary policies. According to ICE records, as of October 2014 there were 276 such jurisdictions in the United States. Over an eight-month period in 2014, more than 8,100 criminal aliens who were the subject of detainers were instead released back to the streets as a result of local non-cooperation policies. Approximately two-thirds of these individuals had a serious criminal history at the time of their release. Nearly 1,900 have subsequently re-offended. Only 28 percent have been re-apprehended by ICE.

Sanctuary policies do nothing to build trust between immigrant communities and local law enforcement. They do not improve access to law enforcement services for immigrants; nor have they been shown to increase the likelihood that more immigrant crime victims will report crimes. On the contrary, they destroy the trust of the community at large that the laws will be faithfully enforced to preserve the quality of life for all.

Despite widespread public outrage at the San Francisco Sheriff's policies that caused the release of a man with five prior deportations and seven felony convictions, and who was the subject of an ICE detainer, who then went on to kill Kathryn Steinle, it is clear that some jurisdictions will not budge from their criminal alien sanctuary policies. To make matters worse, the Obama administration's new Priority Enforcement Program (PEP) explicitly allows local jurisdictions to obstruct ICE – and also establishes the entire country as a sanctuary for nearly all illegal aliens by further narrowing enforcement priorities and severely restricting the ability of ICE officers to deport removable aliens, including many with criminal records. Therefore, Congress must step in to correct the situation by a) clarifying in the law that local law enforcement agencies are expected to comply with ICE detainers; b) establishing that local law enforcement agencies will have qualified immunity when cooperating in good faith; c) implementing sanctions for those jurisdictions that continue to refuse to obstruct enforcement; and d) reversing the Obama administration's non-enforcement policies.

SANCTUARIES ARE NOT A NEW PROBLEM

The Steinle case was not the first time that an illegal alien killed someone after being released back to the streets because a local law enforcement agency ignored an ICE detainer. In 2014, a man was released by the Cook County Sheriff after serving a 60-day sentence for a domestic assault conviction, despite an ICE detainer. Soon afterwards, in Romeoville, Illinois, he killed a 15-year old girl named Brianna Valle, and also shot her mother. In 2011, in Albion New York, a man was released after bonding out on burglary charges, despite an ICE detainer. He later stabbed and killed 45-year old Kathleen Byham outside a Walmart store.

DATA ON REJECTED DETAINERS

Local refusal to comply with ICE detainers has become a public safety problem in many communities and a mission crisis for ICE that demands immediate attention.

According to a report[1] prepared by ICE that I obtained in a FOIA request, as of October, 2014 there were 276 state and local jurisdictions that had adopted policies of non-compliance with some or all ICE detainers, or

[1] "Declined Detainer Outcome Report, ICE Law Enforcement Systems & Analysis Unit, October 4, 2014, http://cis.org/sites/cis.org/files/Declined%20detainers%20report_0.pdf.

other forms of immigration enforcement obstruction, such as barring ICE from interviewing inmates in jails. These took the form of policies, laws, executive orders or regulations. These jurisdictions were located in 43 states and the District of Columbia.

Sanctuary policies are not considered mainstream law enforcement practice, by any measure. The 276 jurisdictions represent a small fraction of the more than 17,000 law enforcement jurisdictions nationwide. Nevertheless, they include jurisdictions with large populations of illegal aliens and also significant problems with a direct connection to illegal immigration, such as drug trafficking and gang crime – such as Chicago, San Francisco, New York, Philadelphia, Miami, Baltimore and Washington, DC.

Number of Detainers Refused: From January 1, 2014 to August 31, 2014, local law enforcement agencies refused to comply with a total of 8,811 detainers, resulting in their release from custody. These detainers were associated with 8,145 individuals, of whom:

- 7,600 had one declined detainer
- 464 had two declined detainers
- 81 had three or more detainers.

As of June, 2015 the total number of detainers declined by local law enforcement agencies reportedly was over 17,000.

Most Offenders Released Had Prior Arrests; One-fourth Were Already Felons: The majority (63%) of the individuals freed by local agencies had a serious prior criminal record.

- 5,132 were previously convicted or charged with a crime or were labeled a public safety concern. Of these,
- 2,984 had a prior felony conviction or charge
- 1,909 had a prior misdemeanor conviction or charge related to violence, assault, sexual abuse, DUI, weapons, or drug distribution or trafficking
- 239 had three or more other misdemeanor convictions.

The report does not state how many of the released offenders had prior single misdemeanors or other types of violations not directly associated with violence, assault or drugs.

Released Offenders Later Arrested Again: Of the 8,145 individual aliens freed by local agencies, there were 1,867 (23%) who were subsequently arrested again for a criminal offense.

- ICE took action (arrest or removal) against 40 percent (751) of the 1,867 who re-offended.
- 1,116 (60%) of the re-offenders were at large at the time of the study.

Crimes Committed After Subject's Release: The 1,867 offenders who were released and subsequently re-offended were arrested 4,298 times during the eight-month period covered by the study. They accumulated 7,491 new charges in total, after their release. Ten percent of the new charges involved dangerous drugs and seven percent were for driving under the influence of alcohol (DUI).

The report describes six instances of very serious crimes committed by criminal alien felons who were sought by ICE with a detainer, but nevertheless released by a local law enforcement agency with sanctuary policies.

- Santa Clara County, Calif.: On April 14, 2014 an individual with nine previous convictions (including 7 felonies) and a prior removal was arrested for "first degree burglary" and "felony resisting an officer

causing death or significant bodily injury." Following release, the individual was arrested for a controlled substance crime.

- Los Angeles, Calif.: On April 6, 2014 an alien was arrested for "felony continuous sexual abuse of a child." After release, the alien was arrested for "felony sodomy of a victim under 10 years old."
- San Francisco, Calif.: On March 19, 2014 an illegal alien with two prior deportations was arrested for "felony second degree robbery, felony conspiracy to commit a crime, and felony possession of a narcotic controlled substance." After release, the alien was again arrested for "felony rape with force or fear," "felony sexual penetration with force," "felony false imprisonment," witness intimidation, and other charges.
- San Mateo County, Calif.: On February 16, 2014 an individual was arrested for "felony lewd or lascivious acts with a child under 14." In addition, the alien had a prior DUI conviction. Following release by the local agency, the individual was arrested for three counts of "felony oral copulation with a victim under 10" and two counts of "felony lewd or lascivious acts with a child under 14."
- Miami Beach, Fla.: On December 19, 2013 the police department arrested an alien for felony grand theft. This alien had been ordered removed (and presumably absconded) in 2009. The alien also had prior convictions for strong-arm robbery, cocaine possession, larceny, trespassing, theft, marijuana possession, and resisting an officer. After release by the local agency, the alien was arrested on two separate occasions; once for "aggravated assault with a weapon and larceny" and once for "under the influence of a controlled substance."
- Santa Clara County, Calif.: On November 7, 2013 an alien was arrested (and later convicted) for "felony grand theft and felony dealing with stolen property." This alien had been ordered removed in 2010 (again, a likely absconder). The alien also had prior felony and misdemeanor convictions for narcotic possession, theft, receiving stolen property, illegal entry and other crimes. After release by local authorities the alien was arrested for "felony resisting and officer causing death or severe bodily injury" and "felony first degree burglary."

Sanctuaries With the Most Releases: As of the date of the report, 276 counties in 43 states had refused to comply with an ICE detainer. The largest number of detainers were refused in the following jurisdictions:

- Santa Clara County, Calif.
- Los Angeles County, Calif.
- Alameda County, Calif.
- San Diego County, Calif.
- Miami-Dade County, Fla.

The ICE report included a list of the 20 detention facilities that had housed the inmates that were freed, but it was redacted from the document. The report states that the following jails were among the top 20:

- Santa Clara County Jail in San Jose, Calif.
- Santa Rita Jail in Dublin, Calif.
- Twin Tower Correction Facility in Los Angeles, Calif.
- Dade Correctional Facility in Miami, Fla.
- Vista Detention Facility in San Diego, Calif.

SANCTUARY POLICIES ARE BASED ON "CHILLING EFFECT" MYTH, NOT FACTS

One of the most common reasons offered for non-cooperation policies is that they are needed to enable immigrants to feel comfortable reporting crimes. This frequently-heard claim has never been substantiated, and in fact has been refuted by a number of reputable studies. No evidence of a "chilling effect" from local police cooperation with ICE exists in federal or local government data or independent academic research.

It is important to remember that crime reporting can be a problem in any place, and is not confined to any one segment of the population. In fact, most crimes are not reported, regardless of the victim's immigration status or ethnicity. According to the Bureau of Justice Statistics (BJS), in 2012, only 44 percent of violent victimizations and about 54 percent of serious violent victimizations were reported to police. In 2012, the percentage of property victimizations reported to police was just 34 percent.[2]

In addition, data from the Bureau of Justice Statistics show no meaningful differences among ethnic groups in crime reporting. Overall, Hispanics are slightly more likely to report crimes. Hispanic females especially are slightly more likely than white females and more likely than Hispanic and non-Hispanic males to report violent crimes. [3] This is consistent with academic surveys finding Hispanic females to be more trusting of police than other groups. [4] A multitude of other studies refute the notion that local-federal cooperation in immigration enforcement causes immigrants to refrain from reporting crimes:

- A major study completed in 2009 by researchers from the University of Virginia and the Police Executive Research Forum (PERF) found no decline in crime reporting by Hispanics after the implementation of a local police program to screen offenders for immigration status and to refer illegals to ICE for removal. This examination of Prince William County, Virginia's 287(g) program is the most comprehensive study to refute the "chilling effect" theory. The study also found that the county's tough immigration policies likely resulted in a decline in certain violent crimes. [5]

- The most reputable academic survey of immigrants on crime reporting found that by far the most commonly mentioned reason for not reporting a crime was a language barrier (47 percent), followed by cultural differences (22 percent), and a lack of understanding of the U.S. criminal justice system (15 percent) — *not* fear of being turned over to immigration authorities. (Davis, Erez, and Avitable, 2001).

- The academic literature reveals varying attitudes and degrees of trust toward police within and among immigrant communities. Some studies have found that Central Americans may be less trusting than other groups, while others maintain that the most important factor is socio-economic status and feelings of empowerment within a community, rather than the presence or level of immigration enforcement. (See Davis and Henderson 2003 study of New York; Menjivar and Bejarano 2004 study of Phoenix).

- A 2009 study of calls for service in Collier County, Fla., found that the implementation of the 287(g) partnership program with ICE enabling local sheriff's deputies to enforce immigration laws, resulting in significantly more removals of criminal aliens, did not affect patterns of crime reporting in immigrant communities. (Collier County Sheriff's Office).

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[2] Jennifer Truman, Ph.D., Lynn Langton, Ph.D., and Michael Planty, Ph.D., Bureau of Justice Statistics, "Crime Victimization 2012," http://www.bjs.gov/content/pub/pdf/cv12.pdf.

[3] See additional data from the National Crime Victimization Survey here: http://www.bjs.gov/content/pub/pdf/cvus0805.pdf.

[4] Lynn Langton, Marcus Berzofsky, Christopher Krebs, and Hope Smiley-McDonald, Bureau of Justice Statistics report, "Victimizations Not Reported to the Police, 2006-2010," http://www.bjs.gov/content/pub/pdf/vnrp0610.pdf.

[5] *Evaluation Study of Prince William County's Illegal Immigration Enforcement Policy: FINAL REPORT 2010*, http://www.pwcgov.org/government/dept/police/Documents/13185.pdf.

- Data from the Boston, Mass., Police Department, one of two initial pilot sites for ICE's Secure Communities program, show that in the years after the implementation of this program, which ethnic and civil liberties advocates alleged would suppress crime reporting, showed that calls for service decreased proportionately with crime rates. The precincts with larger immigrant populations had less of a decline in reporting than precincts with fewer immigrants. (Analysis of Boston Police Department data by Jessica Vaughan, 2011).

- Similarly, several years of data from the Los Angeles Police Department covering the time period of the implementation of Secure Communities and other ICE initiatives that increased arrests of aliens show that the precincts with the highest percentage foreign-born populations do not have lower crime reporting rates than precincts that are majority black, or that have a smaller foreign-born population, or that have an immigrant population that is more white than Hispanic. The crime reporting rate in Los Angeles is most affected by the amount of crime, not by race, ethnicity, or size of the foreign-born population. (Analysis of Los Angeles Police Department data by Jessica Vaughan, 2012).

- Recent studies based on polling of immigrants about whether they might or might not report crimes in the future based on hypothetical local policies for police interaction with ICE, such as one recent study entitled "Insecure Communities", by Nik Theodore of the University of Illinois, Chicago, should be considered with great caution, since they measure emotions and predict possible behavior, rather than record and analyze actual behavior of immigrants. Moreover, the Theodore study is particularly flawed because it did not compare crime reporting rates of Latinos with other ethnic groups.

For these reasons, law enforcement agencies across the country have found that the most effective ways to encourage crime reporting by immigrants and all residents are to engage in community outreach, hire personnel who speak the languages of the community, establish anonymous tip lines, and set up community sub-stations with non-uniform personnel to take inquiries and reports – not by suspending cooperation with federal immigration enforcement efforts.

Proposals to increase ICE-local cooperation, most recently the Davis Oliver Act, which was passed by this committee, enjoy strong support among law enforcement leaders across the country. These leaders — sheriffs, police, and state agency commanders — routinely and repeatedly express concern over crime problems associated with illegal immigration and routinely and repeatedly express their willingness to assist ICE, and that it is their duty to assist ICE.[6] The National Sheriffs Association and numerous individual sheriffs and police chiefs have expressed support for the Davis Oliver Act.

DETAINER NON-COOPERATION POLICIES MORE COMMON TODAY

While local sanctuary policies aiming to shield illegal aliens from detection or provide access to public benefits and driver's licenses have existed for many years, the policies on rejecting detainers are a much more recent phenomenon.

As recently as 2007, the Department of Justice (DOJ) investigated the nature of sanctuary policies, and found that while a number of local jurisdictions did not go out of their way to inquire about immigration status during encounters or notify ICE of an alien in custody, nearly all jurisdictions

[6] See for example, the remarks of Sheriffs at these events by the Center for Immigration Studies: http://cis.org/Videos/Sanctuary-Cities-Panel, http://cis.org/Videos/Panel-Crime-Challenges, and http://cis.org/vaughan/sheriffs-skeptical-chilling-effect-secure-communities.

accepted detainers at that time.[7] The DOJ audit found that 94 out of 99 (95%) jurisdictions surveyed about detainer acceptance were fully compliant. All seven of the jurisdictions that were investigated in the audit in the most detail (Oregon state corrections, New York City; San Francisco; California state corrections; Texas state corrections; Clark County, Nev.; and Cook County, Ill.) fully complied with detainers at that time. In 100 percent of the individual alien cases audited, the local agency accepted the ICE detainer.

The 2007 DOJ audit found even higher apparent recidivism rates among criminal aliens released from custody than the 2014 ICE analysis found. Looking at a four-year period after release (compared to the 8-month period covered in the 2014 ICE study), the DOJ found that 73 out of a random sample of 100 criminal aliens had re-offended after release. The aliens committed an average of six new crimes apiece after release. Noted the report: "If this data is indicative of the full population of 262,105 criminal histories [from the four-year time period], the rate at which released criminal aliens are re-arrested is extremely high."

Some jurisdictions now claim that sanctuary policies are needed because holding aliens on ICE detainers is too costly, but back in 2007, the DOJ auditors found no local agencies that had released aliens due to lack of resources.

I believe the increase in policies prohibiting compliance with all or some detainers has less to do with legitimate law enforcement concerns and more to do with the Obama administration's scheme to drastically scale back immigration enforcement.

Detainers have been used for decades and are a perfectly legitimate, lawful tool to enable ICE take custody of aliens from local authorities.[8] They help protect the public and ICE officers by allowing officers to take custody of removable aliens in a secure setting rather than on the street, in homes or at work places. The administration is pretending that it abandoned this tool because of unfavorable court rulings, but in fact top agency leaders helped instigate these rulings by reversing long-standing agency policy (over the objections of career personnel and without legal foundation) and declaring that detainers were suddenly optional for local agencies to honor. This new policy was then simply accepted by certain federal judges – leaving ICE's local law enforcement partners who had cooperated in good faith (and in compliance with federal regulations) twisting in the wind and subject to significant legal and financial liability.[9]

PEP WILL MAKE MATTERS WORSE

On November 20, 2014 the President announced a series of controversial executive actions, including the termination of the Secure Communities program and the establishment of a new program known as the Priority Enforcement Program (PEP). In addition to further reducing the categories and numbers of illegal aliens who will be subject to deportation, and further restricting the circumstances in which ICE officers may issue detainers or move to deport aliens, the program explicitly allows local jurisdictions to obstruct ICE by choosing to ignore ICE requests to be notified of aliens' release dates. According to Department of Homeland Security officials, already, five of the largest jurisdictions in the

[7] U.S. Department of Justice, Office of the Inspector General, Audit Report 07-07, "Cooperation Of SCAAP Recipients In The Removal Of Criminal Aliens From The United States," January, 2007, https://www.oig.justice.gov/reports/OJP/a0707/final.pdf.

[8] 8 USC 1226 (a) and 1357.

[9] See Dan Cadman and Mark H. Metcalf, *Disabling Detainers: How the Obama Administration Has Trashed a Key Immigration Enforcement Tool*, Center for Immigration Studies, January, 2015: http://cis.org/disabling-detainers.

country have indicated that they still will obstruct ICE and refuse to participate in PEP, not matter how much enforcement is watered down by the prioritization guidelines.

Since it is now clear that many of the sanctuaries will not reform themselves, and that the Obama administration will not move to discourage or penalize them, it is up to Congress to fix this problem.

Debarring sanctuaries from certain federal funding – specifically, debarring those jurisdictions that do not honor all ICE detainers from all law enforcement and homeland security funding – would be a reasonable interim action by Congress. But the only effective and lasting solution to local sanctuary policies would be for Congress to take multiple actions: a) clarifying in the law that local law enforcement agencies are expected to comply with ICE detainers; b) establishing that local law enforcement agencies will have qualified immunity when cooperating in good faith; c) implementing sanctions for those jurisdictions that continue to refuse to obstruct enforcement; and d) reversing the Obama administration's non-enforcement policies.

Members of Congress should beware of proposals that attempt to spell out specific criminal convictions that trigger mandatory cooperation, such as felonies, crimes of moral turpitude, or other definitions of "serious" crimes. These do more harm than good, because by distinguishing between felons and other types of aliens against whom detainers might be filed, Congress would be suggesting that it's acceptable for state and local governments to ignore detainers based on other types of immigration violations -- even though the many laws laying out what constitutes a deportable offense were written and passed by Congress and signed by the president. Moreover, allowing agencies to reject detainers for aliens convicted of misdemeanors and other crimes ignores the reality that these offenders also can be a threat to public safety, in addition to being deportable. Such conditions on cooperation and enforcement will only undermine these laws and serve as an endorsement of the Obama administration's disastrous "worst of the worst only" limitations on enforcement.

In addition, distinguishing between types of detainers for immigration violations that must (or need not) be honored could expose ICE's partners to predatory litigation as a result of their cooperation. There are a number of law enforcement agencies that have been reluctant to fully honor detainers solely because they fear getting sucked into costly litigation. To address this, Congress must clarify ICE's authority to issue detainers, and provide qualified immunity for ICE's local law enforcement partners (as the law now provides for 287(g) partners).

These provisions and more are included in the Davis Oliver Act, which has been passed by this committee. It has earned the endorsement of the National Sheriffs Association as well as many individual sheriffs and police chiefs, indicating that San Francisco Sheriff Mirkarimi's sanctuary policies and all others are well out of the mainstream of law enforcement practices in America. Congress – and the presidential candidates – should join the sheriffs' association in supporting these provisions in order to keep the list of victims from growing.

Mr. GOWDY. Thank you, Ms. Vaughan.
Chief Biehl?

TESTIMONY OF RICHARD BIEHL, CHIEF OF POLICE, DAYTON POLICE DEPARTMENT, DAYTON, OH

Chief BIEHL. Chairman Gowdy, Ranking Member Lofgren, and Members of the Committee, thank you for the opportunity to appear before you today to provide testimony on this important issue.

I am Richard Biehl, the director and chief of police of Dayton, Ohio Police Department. I have had the honor of serving in this position since January 28th of 2008. Further, I have spent the last 35 years working to improve public safety in urban areas. Through that experience, I know that effective public safety, even when grounded in evidence-based best practices, is crucially dependent upon community engagement and support.

First, I would like to express my condolences to the Steinle family for their loss and to Sheriff Jones for the loss of his officer last year. Sadly, I attended the funeral of Cincinnati Police Officer Sonny Kim less than a month ago killed in the line of duty. He was my 9th in my career.

I happened to read a Proverb a couple of days ago, and I think it is quite appropriate to the conversation today. "Our passions are the winds that propel our vessel. Our reason is the pilot that steers her. Without winds, the vessel would not move; without a pilot she would be lost."

I know we are here to discuss the topic of sanctuary cities and the role in public safety. As we have the conversation about sanctuary cities, the specifics of how we define them are important, and as we think about how to best protect the residents and keep our communities safe, it is crucial that we do not undermine proven community policing practices.

First, I would like to explain Dayton's policy regarding cooperation with Federal immigration enforcement efforts. Our policy states that the Dayton Police Department shall not stop, investigate, or arrest a person solely because of their real or perceived immigration status. Investigation of a person's immigration status must be done only for the most serious offenders. This approach has served the Dayton community well. During the time these policies have been in place, Dayton has experienced significant reductions in crime. This is an important point I want to convey to you all.

As chief of police, my primary concern is with the safety all residents, and in Dayton we have seen a reduction in crime in our city. Our immigration law enforcement approach allows us to focus on true threats to public safety while ensuring that our immigrant communities maintain necessary trust to report criminal incidents to our Department.

I am concerned that proposed legislation, such as H.R. 3009, would coerce local law enforcement departments to make decisions that undermine our ability to keep our community safe. The Dayton Police Department, like many agencies throughout the State of Ohio, is facing critical staffing shortages that are already creating potential challenges for fulfilling its public safety responsibilities.

Making local police departments fulfill immigrant enforcement responsibilities will only make it even more challenging.

I have seen the positive effects of community policing in my city. Dayton as a population is only 4 percent foreign born. Given its demographics, it may appear an unlikely place for a national immigration policy to be of much concern, much less an issue impacting local policing. But in my time as police chief, I have repeatedly witnessed how significant the issue is to our community.

Within a month of beginning my service as Dayton Police Chief, I was approached by multiple community advocates who expressed concerns that the Latino community members were being racially profiled. Allegations like this are deeply troubling to me. Our cities are safer when there is a sense of trust with our communities, including our immigrant communities. If families view law enforcement as a threat, or are fearful of dropping off their kids off at school, or walking around their neighborhood, no one benefits.

As I stated earlier, Dayton has seen a reduction in crime, not an increase, as a result of our community policing policies, such as investigating persons of immigration status only for the most serious offenses. I might add that we have bene recognized Statewide, nationally, and internationally for excellence in problem-only policing and community-oriented policing.

While immigration enforcement is a Federal responsibility, collaboration between State and local law enforcement and Federal immigration enforcement official can and should exist; but policies need to be clearly tailored to ensure community policing is not undermined. I agree we should deport serious violent offenders. No one wants violent crime in their community, because once we get beyond violent offenders that some localities and municipalities disagree over collaboration with Federal immigration enforcement officials.

I support the new Priority Enforcement Program initiative as the U.S. Department of Homeland Security has described it. PEP allows local jurisdictions to work with ICE to implement priorities concerning crimes that most negatively impact public safety in their communities.

I believe local law enforcement should comply with notifications as well as detainers as long as the detainers do not require jurisdictions to exceed their legal authority to hold persons beyond their current sentence and local charges. Requiring local law enforcement to hold persons for additional time must be supported by a legal basis; otherwise, it would ask local law enforcement to violate the U.S. Constitution, something none of us wants.

Before Congress tries to impose a legislative solution, I believe it should first allow PEP to be implemented. What everybody wants is a safe community. That is what I want, and that is what community members care about. We should not punish localities who are trying to promote trust in their communities. Collaboration with Federal immigration officials should exist for those serious and violent of criminals. That collaboration needs to be carefully tailored to address the priorities of local communities while ensuring community policing is not undermined, such as through the PEP Program.

A long-term solution requires Congress to come up with a fix for a broken immigration system and clarify immigration enforcement responsibilities. Until that time, local community leaders will continue to implement practical solutions to promote public safety in our communities.

Thank you again for the opportunity to testify today. I am happy to answer any questions that you may have.

[The prepared statement of Chief Biehl follows:]

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Testimony of

Richard Biehl
Chief of Police
Dayton Police Department

Hearing on
"Sanctuary Cities: A Threat to Public Safety"

Before the
Committee on the Judiciary
Subcommittee on Immigration and Border Security

U.S. House of Representatives
Washington, D.C.

July 23, 2015

Introduction

Chairman Gowdy, Ranking Member Lofgren, and members of the committee, thank you for the opportunity to appear before the committee today and to provide testimony on this important issue.

I am Richard Biehl, the Director and Chief of Police of the Dayton (OH) Police Department. I have had the honor of serving in this position since January 28, 2008. Before becoming Chief of Police in Dayton, beginning in 1980, I served nearly 25 years as a Cincinnati Police Officer, including six years as an Assistant Police Chief. From 2004-2007, I was the Executive Director of the Community Police Partnering Center, a bridge organization created after the Cincinnati riots of 2001 and the mission of which was to engage citizens to work with Cincinnati Police Officers to create safer neighborhoods. Thus, I have spent the last 35 years working to improve public safety in urban areas. Through that experience, I know that effective public safety, even when grounded in evidence-based best practices, is crucially dependent upon community engagement and support.

I deeply regret that we have been brought here today because of Kathryn Steinle's tragic death. It is both sad and disheartening that it is only after her death that there is now some renewed discussion to take some meaningful action on the urgent need to address our failed immigration system. However, I am concerned by the proposed legislation I have seen, which I believe would harm public safety more than it would enhance it and would do nothing to fix our immigration system.

Community Policing

As Police Chief of the City of Dayton, Ohio, I have seen firsthand how our broken immigration system creates challenges for law enforcement. Had immigration reform passed, undocumented Dayton residents would have a mechanism to come forward and register, helping law enforcement know who is present in the community. Instead, this population remains in the shadows. In the absence of effective federal policy and strategy to address who can come to our country and what to do about those who are already here - living productively and contributing to our communities despite lacking documentation - state and local law enforcement are forced to navigate complex and difficult questions ourselves.

Dayton, Ohio, has a population that is about 52% Caucasian and 43% African-American -- only 3% Hispanic/Latino and 2% other ethnic and racial minorities and overall only 4% are foreign-born. Given its demographics, it may appear an unlikely place for national immigration policy to be of much concern, much less an issue impacting local policing, but in my time as Police Chief, I have repeatedly witnessed how significant the issue is to our community.

Within a month of beginning my service as Dayton's Police Chief, I was approached by multiple community advocates who expressed concerns that Latino community members were being racially profiled. The following quote is an excerpt of one email I received in February, 2008:

> The continuing arrests are causing near panic in some parts of East Dayton. Yesterday a family pulled their children out of our neighborhood school because they believe that the police are 'hunting' for undocumented Latino drivers when they drop their children off and pick them up after school. I'm hearing from a young man – born in Chicago of Latino-American parents – that he is continuously stopped by police and has seen cruisers parked outside dance clubs 'picking off' young Latinos as they leave the clubs and get in their cars late at night. I hear repeatedly that cruisers are parked in the neighborhood near Latino households – having an excruciatingly intimidating effect on families.

Stories like this were – and are – deeply troubling to me. Our cities are safer when there is a sense of trust with our communities, including our immigrant communities. If families view law enforcement as a threat, and are fearful of dropping their kids off at school or walking around their neighborhood, no one benefits. Fearful communities are not cooperative communities. If we have any group of residents who don't trust us or are afraid to talk to us, that compromises our ability to ensure public safety.

For law enforcement agencies to be effective in their public safety mission they need community support. This support is based upon trust -- trust that is earned when public and law enforcement officials act fairly and treat people with dignity.

The primary mission of law enforcement agencies is to prevent crime and disorder. As abundant research in problem oriented policing reveals, the most effective efforts in preventing crime and disorder requires people to take an active role in partnership with law enforcement. And when this prevention mission fails, community engagement is crucial in solving crime and holding offenders accountable. Despite improvement in investigative techniques, forensic science, technology, etc., to this day, the <u>most</u> important factor on whether law enforcement personnel solve a crime is whether community members can and will tell them who committed the crime. Community engagement is the key to public safety and law enforcement tactics that

generate community fear or loss of perceived legitimacy of authority by law enforcement create an environment where crime and disorder grow.

I made it my mission to ensure that the Dayton Police Department builds trust with those we have a duty to protect. Our Department adopted three key policy changes since 2010 to support community policing and better serve our growing immigrant community, including (1) refining our enforcement strategies that involve federal immigration personnel, (2) setting out department-wide guidelines for interacting with immigrant witnesses and victims and (3) publicizing existing federal laws that offer protection to cooperative victims and witnesses. These changes have allowed the Department to focus on what is important, both in terms of building community partnerships and prioritizing and focusing enforcement resources.

For example, when I became Chief I faced allegations that the Police Department had been engaging in racial profiling in moving vehicle arrests. We had been making thousands of arrests for driving without a license. Yet, when we analyzed the data we found that Latinos were not over-represented in the arrests being made and that the vast majority of the people we arrested were not involved in any other criminal acts. The Latinos felt they had been targeted because the consequences for being arrested for driving without licenses were so dire. Because of the immigration implications, these traffic-related arrests created significant distrust of police in the immigrant community. We reprioritized and since then we have been making many fewer traffic arrests involving all segments of our community, allowing us to spend greater time on more significant and violent crimes. In 2012, this strategy helped drive the crime rate in Dayton to its lowest level ever.

Through focusing our public safety efforts on serious, chronic, and high-rate offenders, while employing community policing and problem oriented policing methodologies, Dayton community has become safer than ever. By taking these actions and avoiding mission creep into immigration enforcement, we have produced concrete results, coinciding with significant reductions in crime in Dayton. Our efforts have earned statewide, national and international recognition for exemplary policing.

Immigration Enforcement Is a Federal Responsibility

Immigration enforcement is a federal responsibility. Relying on state and local law enforcement to carry out federal immigration enforcement responsibilities is highly problematic. Having state and local law enforcement take on the work of federal immigration officials has many adverse consequences:

- Local enforcement of immigration laws undermines the trust and cooperation with immigrant communities that are essential elements of community oriented policing.
- Local law enforcement agencies generally do not possess adequate resources to enforce these laws in addition to the added responsibility of homeland security.
- Immigration laws are very complex and the training required to understand them would significantly detract from the core local law enforcement mission to create safe communities.
- Local law enforcement agencies do not possess clear authority to enforce the civil aspects of these laws. If given the authority, the Federal government does not have the capacity to handle the volume of immigration violations that currently exist.

- The lack of clear authority increases the risk of civil liability for local law enforcement personnel.

I am aware that there is some discussion to federally mandate the local law enforcement cooperation with immigration enforcement officials beyond notification for the impending release of violent criminals. I believe this would be a mistake, and I am not alone in my conclusion.

In recent years, leading police organizations, including the International Association of Chiefs of Police (IACP), the Major Cities Chiefs (M.C.C.), and the Police Foundation, have expressed concerns about the role of local law enforcement in immigration enforcement. Notably, the Major Cities Chiefs has stated "Any initiative to involve local police agencies in the enforcement of immigration laws should be completely voluntary." I wholeheartedly agree with this position.

M.C.C. has noted that immigration enforcement is likely to have a chilling effect on the willingness of victims and witnesses of crimes in immigrant communities to assist police, "result[ing] in increased crime against immigrants and in the broader community, creat[ing] a class of silent victims and eliminat[ing] the potential for assistance from immigrants in solving crimes or preventing future terroristic acts."

It is often said that immigration law is only rivaled by tax law in terms of complexity and opaqueness. Trainings for local law enforcement conducted by federal immigration authorities can be time consuming and complex. Accordingly, both the IACP and M.C.C. have addressed the complexity of immigration laws and the difficulty faced by local law enforcement in adequately applying these laws.

Local law enforcement agencies generally lack the resources to enforce federal immigration laws. In recent years, local law enforcement has already been forced to increasingly turn our attention to homeland security issues, protecting our communities against terrorist threats, in addition to the menu of traditional locally focused crimes against persons and property. Adding immigration enforcement to this mix strains local law enforcement agencies that are already stretched thin.

When state and local law enforcement agencies are tasked with carrying out federal immigration enforcement responsibilities, the law enforcement agencies – as well as the state and local governments overseeing those agencies, can face tremendous costs. In addition to the manpower and resources required, states and localities face the risk of civil liability. The Dayton Police Department, like many law enforcement agencies throughout the State of Ohio, is facing critical staffing shortages that are already creating potential challenges in fulfilling its public safety responsibilities.

In summary, there is not the time, resources, or expertise for law enforcement to engage in immigration enforcement. It would put us in an impossible position, potentially causing us to compromise our public safety mission.

"Sanctuary Cities"

There is surprisingly little consensus over what that "sanctuary city" means. While I am not sure what the precise definition of a "sanctuary city" is, it would seem the specifics of that definition

are important and relevant. In attempting to protect our residents and keep our communities safe, I think it is crucial that we do not undermine proven community policing practices.

It is important to understand Dayton's cooperation with federal immigration law enforcement efforts. Our policy states that Dayton Police Department personnel shall not stop, investigate or arrest a person solely because of their real or perceived immigration status. Investigation of any person's immigration status must be done only for the most serious offenders.

If an individual poses a threat to national security or is a suspect in a felony offense of violence or a felony drug trafficking offense AND there is reason to believe that that individual does not have legal status to be in the United States, the Dayton Police Department will contact ICE for any investigative or enforcement assistance. We have a more nuanced approach for individuals committing lesser crimes because we must balance investigative approaches that will encourage (and not discourage) public cooperation with investigations.

This approach has served the Dayton community well and has coincided with significant reductions in crime. This approach allows us to focus on true threats to public safety, while ensuring that our immigrant communities maintain necessary trust to report criminal incidents to our Department.

I do not consider Dayton a "sanctuary city." Nor have I heard any of our elected officials call Dayton a "sanctuary city." Yet, some of the current federal legislative proposals would include Dayton in their one-size-fits-all solution. I am concerned that a poorly conceived response of compelling states and localities to carry out certain immigration policies will undermine trust between law enforcement and immigrant communities. I understand the honest desire to keep dangerous and repeat offenders off the streets. However, by defining "sanctuary" policies so broadly and potentially requiring state and local law enforcement to honor warrantless immigration detainers, or redirect our focus to minor offenses, the proposals are off the mark.

Everyone wants a safe community. Cities and counties with policies and practices resembling Dayton's – or even more restrictive than Dayton's – are not trying to harbor criminals or create law-free zones (indeed, the federal officials are able to enforce federal immigration laws in even the least cooperative jurisdictions). On the contrary, I believe states and cities are committed to proven community policing policies to create an environment wherein all community members trust state and local law enforcement and feel secure in reporting criminal conduct and working with local and state law enforcement.

In Dayton, our policies have been successful in building trust and making our city safer. Within a year of implementing our new community policing policies, we began to see significant progress. I specifically recall a community meeting we held as we worked toward implemented these policies. The meeting was attended by about 300 members of the local immigrant community, a turnout that was unthinkable prior to implementation of strategic community policing efforts. I believe that so many people came to meet us because they felt safe to speak with us, and were concerned about keeping their communities safe from crime.

Police presence within an entire community is crucial to create a feeling of safety and establishing trust for all residents and members of that community. Asking the immigration status of a victim or a witness in the course of an investigation not only detracts from the investigation, it is detrimental to relations with members of our community because it undermines trust.

The absence of effective, cogent action by Congress to address immigration reform has left state and local governments with the challenge of sorting this issue out on their own – trying to find pragmatic solutions to a tough issue. Instead of considering how to punish these "sanctuary cities," Congress should be working to reform our broken immigration system.

In discussing the importance of these policies in the context of community safety, it is also important to note studies that reveal that immigrants are no more likely to break the law as native-born residents. According to a recently released report from the American Immigration Council, only about 1.6 percent of immigrant males, age 18-39, are incarcerated, compared to 3.3 percent of the native-born. Similarly, a RAND Corporation study found that unauthorized immigrants released from the Los Angeles County jail system were no more likely to be rearrested than similar legal or naturalized immigrants released during the same period in 2008. Researchers studied about 1,300 male immigrants released from jail over a 30-day period and followed them for a year to see whether there were differences in recidivism between unauthorized immigrants and similar legal or naturalized immigrants. They found no significant differences between these populations.

Collaboration with Federal Immigration Officials

Collaboration between state and local law enforcement and federal immigration enforcement officials can and should exist, but policies need to be carefully tailored to ensure that community policing is not undermined. I agree that we should deport serious violent offenders. No one wants violent crime in their community. It is once we get beyond the violent offenders that some localities and municipalities disagree over collaboration with federal immigration enforcement officials.

I support the new Priority Enforcement Program (PEP) initiative. As the U.S. Department of Homeland Security has described it, PEP allows local jurisdictions to work with ICE to implement priorities concerning the crimes that most negatively impact public safety in their communities. Under the initiative, individuals who commit those crimes are prioritized for notification to ICE when they are set to be released.

I believe local law enforcement should comply with notifications as well as detainers as long as the detainers do not require jurisdictions to exceed their legal authority to hold persons beyond their current sentence or local charges. Requiring local law enforcement to hold persons for additional time must be supported by a legal basis – otherwise it would ask local law enforcement to violate the U.S. Constitution, something none of us wants.

Before Congress tries to impose a legislative solution, I believe that it should first allow PEP to be implemented. If PEP succeeds in focusing attention on national security and public safety threats while avoiding legal and constitutional pitfalls, then we should expect local law enforcement agencies to cooperate with ICE when someone is in custody meets PEP criteria.

Conclusion

What everyone wants is a safe community. That is what I want and that is what community members care about. We should not punish localities that are trying to promote trust in their communities. Collaboration with federal immigration enforcement officials should exist for the most serious and violent criminals. That collaboration needs to be carefully tailored to address the priorities of local communities and ensure that community policing is not undermined, such as through the PEP program.

A long-term solution requires that Congress come up with a solution to fix our broken immigration system and clarify immigration enforcement responsibilities. Until that time, local community leaders will continue to implement practical solutions that promote public safety in our communities.

Thank you again for the opportunity to testify today. I am happy to answer any questions you may have.

Mr. GOWDY. Thank you, Chief, and thank all our witnesses.

The Chair will now recognize the gentleman from Idaho, Mr. Labrador, for his questions.

Mr. LABRADOR. Thank you all for being here. Sheriff Jones, in your written testimony you provide some suggestions for fixing our immediate problems between ICE and local law enforcement, including making detainers mandatory in local jails and having ICE share resources with localities to ensure effective enforcement. In your view, given the current politicized status of ICE's policies, what can be done to compel ICE to provide these resources to States and localities?

Sheriff JONES. Well, thank you for the question. It is important to remember that until a couple of years ago, ICE detainers were mandatory. There was nothing equivocal in the enabling statute. It says "local jails shall," not "may" or "in their discretion," but "shall" hold folks for no more than 48 hours. It is only through policies of this Administration that that has softened up.

About 3 years ago, they were mandatory. For about a year or 2-year period, the Federal Government literally would refuse to answer whether they are mandatory or mere requests, and now, of course, they have simply thrown up their hands and said, well, look at Clackamas. I guess that is Federal law. Well, that is not the way our American system of jurisprudence works.

Mr. LABRADOR. Okay. Can you explain that to the American people? It is one judge in one jurisdiction does not make the law for the United States.

Sheriff JONES. It is not even a judge.

Mr. LABRADOR. It is a magistrate.

Sheriff JONES. It is a magistrate.

Mr. LABRADOR. They are judges——

Sheriff JONES. I guess.

Mr. LABRADOR. Yes.

Sheriff JONES. They still have a longer appointment than I do, so.

Mr. LABRADOR. Yes.

Sheriff JONES. So it is applicable in that particular district, nowhere else. And so, the Federal Government could have done something minimally such as stand up and say we do not agree with that, let alone challenge it, but they do not. They allow that to extrapolate to make national policy, and the ACLU seized upon that vacuum to do so.

So it is not like it is unprecedented that detainers are mandatory. They have been mandatory, and that was the success of the Secure Communities Program.

Mr. LABRADOR. So what can be done now? You see this Administration not doing their job. What——

Sheriff JONES. Well, there are a number or things, but specifically relative to detainers, they have to be once again determined to be mandatory. The fact that you cannot hold someone based on anything less than a warrant or a court order is ludicrous. We arrest everyone in this country, citizens or not, we detain them on reasonable suspicion. We arrest them on probable cause. They do not see a judge for 48 hours or 2 days or 3 days. So to suggest that

because you are undocumented you somehow have greater constitutional rights, that——

Mr. LABRADOR. American citizens.

Sheriff JONES [continuing]. Is ludicrous. You cannot——

Mr. LABRADOR. It is. Okay. Thank you very much. Chief Biehl, thank you for the work that you do in your community, but I do have some questions for you. Your testimony discusses the need for comprehensive immigration reform to help law enforcement know who is present in the community. But is it not true that Kate Steinle's killer was previously in the custody of San Francisco law enforcement officials, and, thus, was already known by the San Francisco law enforcement?

Chief BIEHL. That is a fact.

Mr. LABRADOR. Your written testimony contains a quote from an email by community advocates you received regarding alleged racial profiling in Dayton. Were any of the allegations in the email substantiated?

Chief BIEHL. They were not substantiated through investigation. I will say that in terms of arrest data, there was clearly a surge of arrests of Hispanics and Latinos that occurred 1 year prior to my arrival that was substantial. So whether the actual basis of those allegations——

Mr. LABRADOR. Were any of these arrests taken out because there was insufficient data about their criminality?

Chief BIEHL. That is my understanding.

Mr. LABRADOR. Were any of these arrests dismissed, or were they not prosecuted because of racial profiling?

Chief BIEHL. Yes, a number of them were—I am sorry.

Mr. LABRADOR. Because of racial profiling?

Chief BIEHL. No, not because of racial profiling. A number were dismissed, though.

Mr. LABRADOR. But not because of racial profiling.

Chief BIEHL. No.

Mr. LABRADOR. Okay. Your testimony notes that your department is focused on serious chronic and high rate offenders. Would it not make sense to protect residents of Dayton by working with Federal immigration agencies to enforce laws so that aliens never have the opportunity to commit so many crimes as to be considered serious, chronic, and high rate offenders?

Chief BIEHL. Actually we do work with Federal immigration authorities. In fact, we have partnerships with the Federal Bureau of Investigation, the Drug Enforcement Administration, United States Marshals Fugitive Task Force, Department of Homeland Security, including individuals who have homeland security investigation credentials, even the Trafficking and Steering Committee, and also the United States Secret Service. So we have partnerships across Federal law enforcement agencies.

Mr. LABRADOR. And you think that is a good thing, right?

Chief BIEHL. Absolutely. That is why we do it.

Mr. LABRADOR. Do you comply with ICE detainers?

Chief BIEHL. Actually they are complied with in my county.

Mr. LABRADOR. Excellent. And would you have complied with an ICE detainer in the case of Juan Francisco Lopez-Sanchez, a seven-time convicted felon who has been deported by the U.S. five times?

Chief BIEHL. Absolutely.

Mr. LABRADOR. Absolutely. Your recent opposition to allowing State and local law enforcement officers to help enforce Federal immigration law include that immigration law include that immigration laws are very complex. I do not know that immigration laws are any more complex than other criminal laws. Why do you not think that your officers are smart enough to be able to act as a force multiplier for Federal immigration enforcement?

Chief BIEHL. Thank you for that question, Congressman. My understanding for individuals to be credentialed on a 287 requires 3 weeks of training. That is a substantial commitment of training time for police officers for a very specific area of enforcement. I cannot think of any agencies that could spend that amount of time with personnel and training.

There are training requirements now being proposed through the State of Ohio. There have been a number of tasks forces established—the 21st Century Task Force on Policing, the Presidential Task Force—that are once again emphasizing the need for additional training for law enforcement. I can tell you training time is at an absolute premium specifically as it relates to critical staffing levels. So how do we spend time training police officers?

And just from talking from individuals who are in this area of law, the law is constantly changing, so 3 weeks of training is only valuable as long as the laws do not change.

Mr. LABRADOR. Thank you. I yield back my time.

Mr. GOWDY. The gentleman from Idaho yields back. The gentlelady from California.

Ms. LOFGREN. Thank you, Mr. Chairman. First, I appreciated hearing from all the witnesses. Sheriff Jones, you mentioned that no sheriff would come and take the position of Chief Biehl. I would like to ask unanimous consent to put into the record a letter from the Law Enforcement Immigration Task Force opposing H.R. 3009 signed by a number of law enforcement officials, including Sheriff Mark Curran from Illinois, Sheriff Tony Estrada from Arizona, Sheriff Leon Lott from South Carolina, Sheriff William McCarthy from Iowa, Sheriff Margaret Mims from Fresno, and Sheriff Lupe Valdez from Texas.**

Mr. GOWDY. Without objection.

Ms. LOFGREN. Also I would like to ask unanimous consent to place in the record a letter from the Major County Sheriffs' Association opposing the idea of removing grant funding as a mechanism to enforce anything.***

Mr. GOWDY. Without objection.

Ms. LOFGREN. You know, as we seek efforts to make our communities safer, we do not want to make it more dangerous. And, Chief Biehl, your testimony I thought was very interesting. In your oped recently you said that crime in Dayton dropped by nearly 22 percent after you engaged in your new community policing effort, and that serious property crime dropped almost 15 percent.

Now, why do you think this happened? Was it community trust? And have these favorable crime reduction figures continued or not?

**Note: The material referred to was previously submitted. See page 22.

***Note: The material referred to was previously submitted. See page 18.

Chief BIEHL. Thank you, Congresswoman. In fact, they are a direct outgrowth of not only innovative policing strategies, but also community partnerships. Our community working with us to address crime and particularly serious violent crime has been crucial in reducing crime in Dayton as crime trends have continued through my tenure as police chief.

Ms. LOFGREN. Now, again, there has been a lot of discussion about detention and whether that is constitutional and citing one particular case. However, there are a number of cases, and rather than go into all of them here, I would ask unanimous consent to place a summary of a series of cases, Federal cases, that have found that you cannot hold somebody on a civil matter at the request of ICE absent a warrant or something else.

[The information referred to follows:]

Federal Court Decisions Invalidating ICE Detainers

Morales v. Chadbourne, 996 F. Supp. 2d 19, 29, 32–34 (D. R.I. 2014) (holding that plaintiff stated a Fourth Amendment claim where she was held for 24 hours on an ICE detainer issued without probable cause), affirmed, Morales v. Chadbourne, —F.3d —, 2015 WL 4385945, *4-*8 (1st Cir. July 17, 2015) (slip op.) (holding that ICE agent could be held liable for detention because it was clearly established in 2009 that ICE detainers must be based upon probable cause).

Galarza v. Szalczyk, No. 10–6815, 2012 WL 1080020, at *10, *13 (E.D. Pa. Mar. 30, 2012) (unpub.) (holding that where plaintiff was held for 3 days after posting bail based on an ICE detainer, he stated a Fourth Amendment claim against both federal and local defendants; it was clearly established that the "detainer caused a seizure" that must be supported by "probable cause"), rev'd on other grounds, Galarza v. Szalczyk, 745 F.3d 634 (3d Cir. 2014) (holding that the County operating the jail, too, may be liable for violating the Fourth Amendment).

Mendoza v. Osterberg, No. 13–65, 2014 WL 3784141, at *6 (D. Neb. July 31, 2014) (unpub.) (recognizing that "[t]he Fourth Amendment applies to all seizures of the person," and thus, "[i]n order to issue a detainer[,] there must be probable cause") (internal quotation marks, ellipses, and citations omitted).

Villars v. Kubiatowski, 45 F.Supp.3d 791, 808 (N.D. Ill. 2014) (holding that plaintiff stated a Fourth Amendment claim where he was held on an ICE detainer that "lacked probable cause").

Miranda-Olivares v. Clackamas Cnty., —F.Supp.2d —-, No. 12–02317, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (slip op.) (holding that plaintiff's detention on an ICE detainer after she would otherwise have been released "constituted a new arrest, and must be analyzed under the Fourth Amendment").

Uroza v. Salt Lake County, No. 11–713, 2013 WL 653968, at *5–6 (D. Ut. Feb. 21, 2013) (unpub.) (holding that plaintiff stated a Fourth Amendment claim where ICE issued his detainer without probable cause; finding it clearly established that "immigration enforcement agents need probable cause to arrest . . . [and] detainees who post bail should be set free in the absence of probable cause to detain them again").

Vohra v. United States, No. 04–0972, 2010 U.S. Dist. LEXIS 34363, *25 (C.D. Cal. Feb. 4, 2010) (magistrate's report and recommendation) ("Plaintiff was kept in formal detention for at least several hours longer due to the ICE detainer. In plain terms, he was subjected to the functional equivalent of a warrantless arrest" to which the "'probable cause' standard . . . applies"), adopted, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010) (unpub.).

Ortega v. ICE, 737 F.3d 435, 439, 441 (6th Cir. 2013) (dismissing plaintiff's due process claims against individual officers based on qualified immunity, but clarifying for future cases that "transfer[ring] [a prisoner] from home confinement to prison confinement" based on an ICE detainer "amounts to a sufficiently severe change in conditions to implicate due process"; dismissing plaintiff's Fourth Amendment claim because it was not clearly established in 2011 whether "moving a convict from home confinement to prison confinement" based on an ICE detainer "resulted in a new seizure within the meaning of the Fourth Amendment.").

Mendia v. Garcia, 768 F.3d 1009, 1013 (9th Cir. 2014) (where plaintiff alleged that ICE caused his extended detention by issuing an ICE detainer that precluded him from posting bail, his injury was traceable to ICE for purposes of establishing standing to sue for damages).

Ms. LOFGREN. And I think that is why sheriffs all across the United States, whether or not their communities say they are "sanctuary cities," have been reluctant to do this. And that is why the Administration has gone to this Priority Enforcement Program because it does not violate anybody's constitutional rights if you ask to be notified before you release somebody.

And what we have heard from ICE is if you have got a serious character like this guy in San Francisco, they will get there, and they will pick him up, and they will take him away and deport him, which is what should have happened in this case. Actually he should never have been sent to San Francisco in the first place.

I am wondering whether you have any objection, Chief Biehl, or whether your community would have any objection to the Priority Enforcement Program that requires notification so that ICE can come and remove people who are priorities for enforcement, who are serious criminals.

Chief BIEHL. I am not aware of any objection from my community with that program at all. None have been expressed to me. I have been involved in the Committee conversations, the task force conversations for the development of some of the mechanisms and notification and also for, you know, basically be involved in the roll out. I mean, it is just literally being rolled out as we speak.

I just met with our local field office director last week, who actually gave me a packet describing the program and its implementation. So this is literally just being implemented.

Ms. LOFGREN. I would note also, and I see that my time is almost expiring, that when someone is booked into a jail, their fingerprints are taken. And those fingerprints, I mean, of everyone.

Chief BIEHL. Correct.

Ms. LOFGREN. Immigrants, undocumented, legal, American citizens. Those fingerprints are shared with the Federal Government and made part of the database. And that has not been changed at all, has it, Sheriff? No. And I do not think there is any confusion that that interferes with community policing or building trust with the community. Have you heard that?

Chief BIEHL. Not at all.

Ms. LOFGREN. Mr. Chairman, I am hopeful that we can hone in on the need to make sure that the ability to remove dangerous criminals by ICE is enhanced, and that we do not get diverted by disagreements over overall immigration policy because I believe

that we can have the ability to come together to reach consensus in a way that would be a very positive outcome.

And with that, my time has expired, and I yield back.

Mr. GOODLATTE [presiding]. The Chair thanks the gentlewoman and recognizes himself for his questions. And let me just say that there are 5,000 ICE agents in the country responsible for enforcing our immigration laws, which we know there are 350,000 convicted criminal illegal aliens on the streets right now. There are 11 million or more people who are unlawfully present in the United States. And that when you have over 900,000 local law enforcement officers, some communities may want to participate, some may not. We do not require them to enforce our immigration laws.

But the people who are unlawfully present in the United States and cause various types of problems, including committing crimes, are a concern to not just the national government, to local governments as well. So I think the first step is to see that our laws are enforced by the Federal Government, and I do not believe they are, and by State and local governments. And I think that beyond that, legislation is needed to address many aspects of our immigration policy.

Let me ask Mr. Steinle and then Sheriff Jones to talk a little bit more about the personal experiences that they have. Mr. Steinle, do you believe that San Francisco should have been required to honor ICE detainers?

Mr. STEINLE. Well, absolutely.

Mr. GOODLATTE. And do you agree that the U.S. immigration and enforcement policy should not be to the detriment of U.S. citizens and legal lawful resident immigrants?

Mr. STEINLE. Yes.

Mr. GOODLATTE. So would it not be best to remove unlawful aliens before they commit serious crimes as opposed to simply trusting and hoping that they will not, in fact, commit serious crimes? In the case of Mr. Lopez-Sanchez, he had committed some drug offenses, and he had committed the offense of illegally entering the United States. He had not committed murder at that point in time. But this whole debate about how serious a crime you have to commit before you can be subject to the enforcement of the laws which apply to everybody gets to be problematic, does it not?

Mr. STEINLE. Well, Mr. Chairman, if I may, our intent with Kate's law is to get rid of or do something with the violent felons. The way I understand the law is if any undocumented person comes into the United States and subsequently is deported, then comes back into the United States, they are a felon.

Mr. GOODLATTE. That is correct, and they do not have to have committed any other crime. They are a felon at that point in time.

Mr. STEINLE. They are a felon at that point.

Mr. GOODLATTE. And Kate's law would impose a mandatory minimum sentence.

Mr. STEINLE. But where I see that we have to hone in on is a felon is not a felon is a felon. We are talking about violent felons that come in here to the United States. If we try to arrest every felon, the jails would be full, and the officers here would be extremely busy. I think we need to differentiate somehow or another

the levels of felonies, and that is another can of worms. I understand that. But do you see that as a——

Mr. GOODLATTE. But if you have cooperation between local law enforcement and the Federal Government, with limited resources they do have to set priorities, but they will set those priorities based on the best information, not based upon——

Mr. STEINLE. I understand.

Mr. GOODLATTE [continuing]. Individual localities trying to set their own immigration policies.

Mr. STEINLE. Sure, I understand.

Mr. GOODLATTE. Sheriff Jones, would you tell us about Deputy Danny Oliver, his life, and what kind of person, deputy he was, and the circumstances of his murder?

Sheriff JONES. Yes, thank you. He was not unlike any cop in this country who has answered the call, who law enforcement is a calling, not a job, to help people, and for a life of service. He was particularly assigned to the Problem-Oriented Policing Unit, or "POP officers" might be more familiar. They are what I call the quality of life police. Their job is to address quality of life issues, not answer calls for service.

It is what he was doing on that date with a particular problem motel in our jurisdiction, had already made contact with someone in the front, and was onto the back of the hotel when he came in contact with two people in a car. And I believe the last words he ever spoke was "How is your day going today," and then he was shot a single time in the forehead killing him almost instantly.

Mr. GOODLATTE. Are there changes to immigration enforcement that could have prevented Deputy Oliver and Investigator Davis' murders?

Sheriff JONES. First of all, he was booked in under an alias that we did not even know his true identity for several days. Secondly, we realized that he had a driver's license that was issued from one of the States that issue them. Now California does as well. Had suffered 11 different misdemeanor traffic-related convictions from hit and run to DUI. Was able to walk in and renew his driver's license.

And he had been removed from the country four times, the first time with a deportation. The second time the next year he was simply released back across the border the very same day he was captured, 3 days later was back in this country. Once again, released across the border that very same day, and the next year came into this country illegally. Was arrested on felony warrants for a local crime, was deported again 3 days later. So not only escaping consequences for any of his deportations or prior illegal entry, but in the last case at least escaped any consequences for his local criminality because presumably it was easier to deport him than face his criminal conduct.

Some time thereafter, I know not when, he entered the country illegally, and fast forward to the events of October 24th of last year.

Mr. GOODLATTE. Thank you. One last question. Ms. Vaughan, what are your thoughts when you hear sanctuary cities proponents state that unlawful aliens are no more likely to commit crimes than native-born individuals?

Ms. VAUGHAN. Well, I have reviewed a lot of the literature on this, and there is no evidence that immigrants are any more or less likely to commit crimes than anyone else. That is really not the relevant question. The question is what do we do with that fraction of the immigrant population that is committing crimes, that has committed crimes? How do we handle that? And that is where ICE needs the cooperation of law enforcement agencies because it is the local agencies who know who those problem individuals are.

Mr. GOODLATTE. Thank you very much. The Chair recognizes the gentleman from Illinois for his questions.

Mr. GUTIERREZ. Thank you, Mr. Chairman. I want to start off by expressing my deepest sympathies to the family of Kathryn Steinle. Her death is a senseless tragedy. I have two daughters of my own, and as a father I cannot even begin to imagine the pain that her parents are going through. I am truly very sorry for your loss.

I am often criticized by my supporters because I do not have a soft spot for immigrant criminals no matter how small or how old their violations. Many argue that old convictions on drunk driving should be forgiven when determining whether someone should get deported or not. After all, they have already served their time and paid the consequences doled out by the criminal justice system.

I am not one of those people who argue for leniency for criminal immigrants. If you have serious criminal activity on your record, you have given up your USA privileges, and, generally speaking, I will not spend time or energy fighting for you. There are too many immigrants in this country who have never done anything wrong or never committed crimes, and I fight for them because they are part of what enriches America and what benefits all Americans.

The tragedy in San Francisco has generated an important dialogue regarding our communities, the police officers we have entrusted to protect us, and our broken immigration system. The fact is, he should have never been released to be on our streets again. Deported five times. It seems to me they caught him and deported him, and he should have been deported once again.

But there are serious questions about just how it is the local police should go about it. Nearly 300 jurisdictions have decided that they will not comply with a detainer from Homeland Security. The fact is the courts have said that they do not have to comply with those detainers, so what we need to figure out a way is to fix the broken immigration system that we have.

We spend a lot of time talking about Mr. Lopez. We do not spend a lot of time talking about people who enter this country through other borders—JFK, LAX—and commit crimes in this country from all over the world. So if we are truly going to protect our Nation, then we need to have a holistic approach to our broken immigration system.

It breaks my heart, Mr. Steinle, because I could have been walking on that pier, as I have, with both of my daughters, and I want to make sure that it does not happen. And I will continue to work with my colleagues on the other side of the aisle to fix our system, not in pieces and bits, but in its totality so that we can protect everybody in America, because indeed there are many people who want to fix our broken immigration system, and we need to do it in a holistic way.

Had we done it, we would have secure communities. We would have more. We would have verification of employment. We would have so many other means. We would have the ability to flush out the bad people. Why? Because we would let the good people come forward so that they cannot hide among the good people, the good people who live in my congressional district.

Now, I would like to take a moment, Mr. Chairman, to go back just for one moment. I know it might seem a little just, I do not know, unnecessary, but I would like to go back to a transcript at the end of the DHS hearing which you presided over, Mr. Gowdy, on July 14, 2015. I said, and this is the record, a transcript of the record of the July 14 hearing, which I stayed for the whole hearing, all 3 hours.

Mr. GOWDY. Yes, sir, you did.

[The information referred to follows:]

> Mr. GUTIERREZ. "First, thank you, Mr. Gowdy, for your excellent presiding over these hearings. . . . I just want to just for the record, because I think it's very important"—listen to this—"I want to say to you, Mr. Gowdy, I share with you the same anguish and pain, as I know the Secretary does and every American, at the death of that woman, and that nobody has come here to look for excuses or anything else. . . . I mean, this is a career criminal we have on our hands. So I think we should just try to figure out a way. . . . This man is not an immigrant. Immigrants come here to work hard, sweat, and toil. We should be warm in receiving. This man's a foreigner who came here to cause damage. And let's fix our broken immigration system so we can get rid of foreigners that come here to cause damage and harm and welcome the immigrants."

Mr. GUTIERREZ. That was my statement. I would just like to put it in the record once again because apparently Ms. Vaughan did not read it or take the time to read it.

Secondly, for the record, on the floor of the House of Representatives on July 9, and this is in the record, and I would like to put it in the record once again because apparently Ms. Vaughan does not read what actually is said in the English language that I have said. "Now, the anti-immigration wing of the Republican Party in this body and on the air say that Trump may have a point. After all, this woman was shot in cold blood by a Mexican immigrant in San Francisco just last week. Why was he not deported? Why was he not held in jail the last time? Why is it? And you actually hear this on Fox News. 'Why is President Obama letting Mexicans kill beautiful young American women?'

As the father of two daughters about the age of Kate Steinle, the young woman who was shot and killed, I pray every night that no one of any racial or ethnic background ever does them harm, and I can only imagine the grief that her family is feeling. When we have felons in Federal custody or State or local custody with warrants for drug crimes who are deported multiple times and come back, this Congress has not done its job, unfairly leaving States and localities to cope with decades-old inaction on immigration criminal justice and the range of other issues. I have no sympathy for the man accused of this crime. Murderers should rot in hell."

Apparently people have decided to besmirch people's reputation and take their words and exploit the death of a beautiful young American woman, and I will not simply stand here and remain si-

lent while that happens. You may not believe that we should have, Ms. Vaughan, a fixing of our broken immigration system, but do not exploit a young woman's death in order to receive a paycheck to put food on your table. You should find a more decent and practical way to go about earning your living.

So, Mr. Steinle, I am so sorry about the death of your daughter. I assure you, I have a 36 year old and a 27 year old, and I love them dearly. I can never imagine losing them. And I will work to make sure that we fix this immigration system and that situations like the ones you suffer never happen again.

That has been my record in the past in working with Members of the minority and the majority in this House, and I take great offense at anybody suggesting otherwise. Thank you so much.

Mr. GOWDY [presiding]. The gentleman from Illinois yields back. The Chair would now recognize the gentleman from Texas, the past Chairman of this Committee, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. Mr. Steinle, thank you for your heartfelt testimony. It is sad that we need to be here today. The tragic murder of a beautiful young woman, your daughter, I think could have been prevented.

There are also thousands of other victims that did not need to be victims and would not have been victims if this Administration had enforced immigration laws. In my view, someone in this Administration probably should be arrested for negligent homicide or for any of another dozen crimes that are so frequently committed by illegal immigrants in this country who should not even be here.

In the case of the sanctuary cities, in just 8 months last year, they released almost 9,000 individuals who had been either arrested or convicted of serious crimes. Two-thirds of those 9,000 individuals had either committed or been arrested of serious crimes. In just the few months since they were released, one-quarter have committed other crimes. How many others are going to commit more crimes in the coming months, if one-quarter have already been arrested for other crimes.

This Administration last year released 30,000 criminal aliens; 2,000 under the Constitution they had to release, but 28,000 were released voluntarily by this Administration. They committed the worst crimes imaginable, thousands of crimes. So, if anything, you have got an Administration setting an example for sanctuary cities rather than trying to prevent sanctuary cities from trying to escape enforcing immigration laws. Sanctuary cities have increased exponentially under this Administration for one good reason, that is the Administration has done nothing to encourage municipalities and other jurisdictions from becoming sanctuary areas.

Many people claim that by being a sanctuary city or area or jurisdiction that that is somehow going to encourage illegal immigrants to report crimes. In my view, that is a specious argument, apocryphal. It is simply anecdotal, and I have never seen one shred of evidence that that is the case. It is just a simple assertion. And, in fact, every study I have seen, three out of three, have actually demonstrated just the opposite.

One major study found no decline in crime reporting by Hispanics after the implementation of a local police program to screen offenders for immigration status and to refer illegal immigrants to

ICE for removal. Another academic survey found that by far the most commonly mentioned reason or not reporting a crime was a language barrier followed by cultural differences, not fear of being turned over to immigration authorities. And a third study found that significantly more removals of criminal aliens did not affect patterns of crime reporting in immigrant communities. It would be nice if the media would just once cite any of these studies. We only hear the other side.

My question to Ms. Vaughan, who has done some research on this subject, what do you think about the arguments made that somehow we are going to reduce crimes if we allow illegal immigrants to seek sanctuary and stay in this country in violation of current immigration laws? It seems to me it is very clear that more crimes are committed as a result of this policy, not fewer, but I would be interested in your opinion.

Ms. VAUGHAN. This so-called "chilling effect" is a myth and has been refuted by the studies that you mentioned and by the words of immigrants themselves when the ones who have been victims of crimes tell researchers that it is because of language barriers. So access to law enforcement services is something that law enforcement agencies do legitimately need to focus on, but the way to do that is through community outreach programs, having personnel on the staff of these forces who speak the language of the community. Anonymous tip lines. Most law enforcement agencies have these anonymous tip lines. No one need be afraid of reporting a crime.

ICE simply does not target witnesses or victims of crime for immigration enforcement. And I wish that the advocacy organizations that claim to speak for immigrants, who go around telling people that immigrants have to be afraid to report crimes because of cooperation with ICE should be telling them that victims and witnesses are not subjects for immigration enforcement, and that that would be a much more constructive message that would help the immigrant community.

Mr. SMITH. Thank you, Ms. Vaughan. Mr. Chairman, I simply do not understand how anyone could oppose enforcing current immigration laws. These unnecessary victims are not Republicans and not Democrats. They are innocent Americans. And immigration laws should be enforced by everyone in America, and yield back.

Mr. GOWDY. The Chair thanks the former Chairman of the Committee and recognizes the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman and the Ranking Member. Mr. Steinle, I add, again, as I know all Members have done, sympathy to you and your family. The sound of the violent act against your daughter simply penetrated around this Nation and beyond. I would also indicate, Chief Jones, that any time we lose someone in the line of duty, we, too, feel that pain. And frankly, we should try to find the solutions that we need to find.

So let me just offer a few thoughts in the instance of the facts in San Francisco, but I think it is important to join in my colleague from Texas and say that the laws that are on the books that are legal should be enforced as they relate to immigration issues in this country.

Those of us who support comprehensive immigration reform in no way view that reform as coddling criminals. They stand aside

from the population of families, of students, of workers, who have come in this country to do good and not to do harm. And I think that when we get into a process of viewing one group of wanting not to abide by the immigration laws and another group as, then it is a misrepresentation of many of the American people who support our perspective.

And I might just add one thought. When you have deferred adjudication, that is actually a legal use that can be utilized under the term "prosecutorial discretion," which ICE has and a number of other agencies have. It is not in this instance that I think that prosecutorial discretion played out in any way. It did when we speak of these young DREAMers that have been allowed to stay and go to school.

But what I do want to make note of is that I wish the clock could have been turned back on this terrible tragedy, and just make mention that the individual in question in your daughter's tragic circumstances was in the Federal Bureau of Prisons. They did hold this individual, and in March 2015 transferred him to the custody of the San Francisco's sheriff's office on a 20-year-old warrant for a marijuana charge with the expectation that the district attorney would pursue. We wish this had not happened, but what did not happen, which was a simple act, was a phone regarding Mr. Lopez-Sanchez's statement or status.

This bill dealing with the sanctuary cities and removing all opportunity for such cities, and frankly why do we not all agree that that name connotes a problem for many, because it suggests that you are giving sanctuary to everybody, has a right to stay under that umbrella, crooks, and criminals, and bad actors. And I want you to know that is absolutely not the case. It was utilized in a time when people came and did not speak English, and they were afraid of harm. And the only way that law enforcement officers could do their effective job was to be able to find out who did it.

So I want to ask—yes. I am not seeing the name, and I am looking for my list. I always like to call the name, but I will call it in a moment. But, yes, did I characterize if we use a different term other than "sanctuary." We are not giving sanctuary to crooks and criminals, are we?

Chief BIEHL. I am sorry, Congresswoman. I cannot quite hear your question.

Ms. JACKSON LEE. Okay. With respect to sanctuary cities, we are not attempting to give, and I do not particularly hold to the name. It comes out of a religious basis of sanctuary, and I appreciate my faith community who started out trying to help people who are in need.

My question to you, in the law enforcement, it is not a refuge for crooks and criminals. Is that correct? That is not the definition of "sanctuary city."

Chief BIEHL. I am not aware actually what the exact definition for "sanctuary cities." I think the terminology is used as if it is understood what it actually means. Not being a sanctuary community, I cannot really speak to the intent of those who have passed laws and/or other policies to, in fact, be a sanctuary city.

Ms. JACKSON LEE. Well, let me just without not being one, however, an overall position, you do not perceive that anyone is trying

to protect anyone that is a criminal with an established criminal record. You would not perceive that to be the case.

Mr. GOWDY. The gentlelady is out of time, but the chief may answer.

Chief BIEHL. I am sorry.

Mr. GOWDY. The gentlelady is out of time, but you may answer her question.

Chief BIEHL. I cannot think of anyone in professional law enforcement that that would ever be their intent in adopting any policy that may be considered a sanctuary city.

Ms. JACKSON LEE. I thank the Chairman for allowing him to answer, and I have a number of statements from law enforcement that oppose H.R. 3009, Mr. Chairman: The National League of Cities and the National Conference of Mayors; the Major County Sheriffs' Association; and the Fraternal Order of Police. I ask that the statements be put into the record.****

Mr. GOWDY. Without objection.

Mr. GOWDY. The Chair would now recognize the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. I thank the witnesses for your testimony today, and I continue to be amazed at the composure that you are able to bring to this issue, Mr. Steinle.

I wanted to inform you that some of us have been doing some things to try to move this Congress and this country in the right direction. I look back on testimony at this same table about the first year I came here in Congress, which would be around 2003 or 2004. The witnesses were testifying then of the number of people who died trying to get across the Arizona desert.

I asked a witness who was seated in your seat, Chief Biehl— actually I asked each of the witnesses—he had an answer. I said, do you know how many Americans died at the hands of those who did make it into the United States. And his answer to me on September 11th was fresher in our minds than it is today. He said, I do not know the number, but I can tell you it would be in multiples of the victims of September 11.

And at that point, I began the effort to get a GAO study, which Ms. Lofgren cooperated with me on. In April of 2005 we got a study out. It was not quite apples to apples because we do not keep records well enough to have it exactly apples to apples. We refreshed that study again in March of 2011. I continued to bring amendments that cut off funding to sanctuary cities.

I never believed that there should be a separation between the levels of law enforcement in this country. I grew up in a law enforcement family, and I understand the interrelationships that are part of the testimony we have heard here today.

I wrote an op-ed last year dated August 26. It is in the National Review: "The ACLU Reverses the Rule of Law." In it I objected to the ICE detainer decision. What has been missing here is that then acting director of ICE, Dan Ragsdale, issued a statement, a letter to the political jurisdictions on February 25, 2014, that said that ICE detainers are not mandatory as a matter of law. And so, this is initiated not by ICE reacting to the ACLU's threat of lawsuits.

****Note: The material referred to was previously submitted. See pages 18, 20, and 27.

That letter from ICE, contributed to this tragedy that we have here before us. And they changed the word "shall" to now it is a suggestion.

The last sentence in that op-ed says, as I wrote, "If we bow to the outrageous demand of the ACLU and ignore detainer orders, the price will be paid by thousands of crime victims who would otherwise have been protected by law." I think we have clearly heard today the effect of that, and we have heard it from expert testimony and very painful experiences.

Mr. Steinle, on the day that I saw the news of your daughter's death, long before I knew it would be a national story, I sent out a tweet, and it is dated July 3. And it says this, "100 percent preventable crime. Just enforce the law. This will make you cry, too." And it happens every day. That was the Breitbart article from that day, and I sent out a subsequent tweet the following day, and it says this: "This story happens every day in the U.S."

And as of 2011, 25,064 criminal aliens were arrested for homicide in the United States. That is as of the end of 2010. How many since then? How big is that number? I look at the report and I do the math. That number comes to perhaps 48,000. I look at the crimes that have been committed by criminal aliens. This report, coupled with a subsequent report, brings us to a number in the area of 7,200,000 crimes for perhaps less than around half of that many as crime victims.

The devastation in this country because we refuse to enforce the law is breathtaking when you look at the statistics, and it is a tragedy that causes my heart to cry when I see what happened. And we knew it. This Congress knew it. I saw it 12 or 13 years ago. Many of us have seen it, but because of political desires people that gain a political advantage from having the political support, they are pandering to and catering to people that they know are lawbreakers. And this tragedy was 100 percent preventable.

I feel like I ought to ask a question, so I want to say, Sheriff Jones, I think your testimony has been very specific and well informed. And I would ask if you could comment on what I said about ICE detainer orders.

Sheriff JONES. Yeah, absolutely. First of all, it is important to note that even under the Priority Enforcement Program prior removal felonies, any felon conviction, as long it is not aggravated, extensive gang activity, and any misdemeanor convictions will not get you into the first priority. But even if you were in the first priority, ICE detainers are not working.

It is naive to believe, to assert, that for the most offensive crimes that we are able to hold the person until ICE can get down. Even if we notify them, if Ms. Steinle's murderer were somehow released from court today, they would not hold them 1 minute for them to get out of custody. I cannot even honor an ICE detainer for the person that killed my officer that is currently in custody. If he were to somehow get released or charges dismissed, he would get out before ICE would ever come down to the jail.

By ICE's own numbers, their in-custody arrests are down 95 percent over a year ago. That is 95 percent. That is more than just folks that are falling in the first priority. That is almost every sin-

gle person escaping a consequence for being in this country illegally or whatever crimes they may have committed.

Mr. KING. Thank you, Sheriff. I would just say to the Chairman that the families that have suffered this kind of tragedy that it was 100 percent preventable are becoming the equivalent of gold star families here in this country. And I want to honor you and thank you. And I yield back.

Mr. GOWDY. The gentleman yields back. The Chair would now recognize the gentleman from Colorado, the former district attorney, Mr. Buck.

Mr. BUCK. Thank you, Mr. Chairman. Sheriff Jones, have long have you been with the sheriff's office? I heard earlier, but I forgot.

Sheriff JONES. Since 1989.

Mr. BUCK. Okay. And in your office or in your jail, I take it that you implement a program with ICE.

Sheriff JONES. We do. We cooperate with ICE to the extent we are able to.

Mr. BUCK. And that program, at least when I was in local law enforcement, used to be known as the 297 Program or 287G Program?

Sheriff JONES. That is correct.

Mr. BUCK. And it requires you to send some of your deputies to be trained with ICE. Is that my understanding?

Sheriff JONES. There is a training component. I am not certain as I sit here today what it is. We have a large jail. We are right next to a Federal courthouse, and so we have a pretty handy ICE presence in our jail. They are able to be in our jail unlike many jails.

Mr. BUCK. And when I was district attorney, I inquired of ICE how they found out about individuals' nationality and made their determination. And I was concerned with profiling issues because they were raised to me. My understanding is that ICE asks neutral questions to begin their questioning. They will ask something like, where were you born, and they will ask that of everyone that they interview in custody. Is that your understanding?

Sheriff JONES. That is correct, but because of Secure Communities and its progeny, they will already have an indication many times if there is a fingerprint match, if someone is in the country illegally.

Mr. BUCK. And if they do not have that indication——

Sheriff JONES. Right.

Mr. BUCK [continuing]. They would still ask the neutral question of everyone.

Sheriff JONES. Right.

Mr. BUCK. They will not just ask people who speak Spanish or people who speak a foreign language. They will ask that question of everyone that is in custody taken in that day, for example.

Sheriff JONES. That is correct, or folks that have self-indicated that they were born outside of the United States or are here illegally.

Mr. BUCK. Okay. And I have seen in my experience changes in the morale of the ICE agents that are working there. Many of the ICE agents that I deal with feel like they have been handcuffed by

this Administration recently. Do you have that feeling also with the ICE agents that you work with?

Sheriff JONES. Absolutely I do. The line level officers in both ICE and us have the same desire, and that is to keep the community safe. They took an oath. They have a mission. They are not being allowed to carry out that mission. That morale issue was discussed and addressed by the Administration with the raise, but that is not what is giving the ICE at the line level poor morale.

Mr. BUCK. Can you pay a law enforcement officer enough to ignore crime?

Sheriff JONES. No.

Mr. BUCK. We do it. I did it or we do it for other reasons. We do it because we feel like we make our communities safer. We do it because we want to help people around us. We do not do it for another $1,000 a year in pay. Is that fair to say?

Sheriff JONES. Yes. I said earlier, it is a calling. We do not choose law enforcement. It chooses us.

Mr. BUCK. And you have mentioned a statistic that shows decreased crime, but it is also your sense that there is decreased enforcement as a result of changes in Administration policy.

Sheriff JONES. There is undoubtedly less enforcement on immigration issues and certainly detainers as a result of——

Mr. BUCK. And that is what you hear anecdotally from the people that you deal with in ICE.

Sheriff JONES. Oh, absolutely.

Mr. BUCK. Chief Biehl, as part of your job as a—oh, I am sorry. I wanted to mention something also, Sheriff Jones. I really appreciate you drawing the distinction between sheriffs and chiefs, and it I something that I have noticed. Chiefs are appointed by mayors typically or city councils or administrators who work for mayors and city councils in urban areas. And they tend to be more liberal, and they tend to have more liberal policies. Sheriffs run for election. They deal with individuals. They have a sense of the community that far exceeds, at least in my experience, that of a police chief.

We have had so many times in the Colorado legislature bills that have been supported by sheriffs and opposed by chiefs, bill that have been supported by chiefs and opposed by sheriffs. Two very different spokesmen or women for law enforcement, and I appreciate you drawing that distinction.

Chief Biehl, I want to ask you really quickly, do you have a task force, for example, with DEA when you deal with drug cases?

Chief BIEHL. Absolutely.

Mr. BUCK. And in those task forces, you gather intelligence and share that intelligence with DEA.

Chief BIEHL. That is correct. We actually are on the DEA task force.

Mr. BUCK. Okay. And the same is true if you know of a large gun running organization, national gun running, you would share information with ATF.

Chief BIEHL. That is correct.

Mr. BUCK. And I take it if you heard of some international terrorist organization, you would share information with the FBI.

Chief BIEHL. We are a member of the FBI/JTTF, Joint Terrorism Task Force.

Mr. BUCK. And but when your officer shows up at a domestic violence situation, what you are telling me is they do not make inquiries about nationality, and they would not share information if they had a suspicion about someone being in this country illegally.

Chief BIEHL. For the victim, absolutely not. In fact, what we do is try to work with victims to have an advocate work with them and see if they are eligible for a U visa application. So that is one of the community partnerships we have. If the person is a suspect, it would really depend on the circumstances if the insistence of the immigration would be helpful in our investigation. Did it bring something additional to the table that will help us in this case or not? We have the authority to act on that case and take that person into custody. When they get to jail, they will be screened through ICE.

Mr. BUCK. I am out of time, but you distinguish between the various types of crime and how you interact with the Federal Government.

Chief BIEHL. Correct. Correct.

Mr. BUCK. Thank you.

Mr. GOWDY. The gentleman from Colorado yields back. The Chair will now recognize the gentleman from Texas, the former U.S. attorney, Mr. Ratcliffe.

Mr. RATCLIFFE. Thank you, Mr. Chairman. Mr. Steinle, as the father of two daughters, I cannot begin to comprehend the grief that you have endured over the last 3 weeks. And I would like to join all of my colleagues, many of them, in expressing my deepest condolences to you and to your entire family.

Can I ask you whether in the last 3 weeks President Obama has expressed his condolences to you?

Mr. STEINLE. I did not hear the question.

Mr. RATCLIFFE. Can I ask you if in the last 3 weeks President Obama has expressed his condolences to you or your family?

Mr. STEINLE. [Nonverbal negative response.]

Mr. RATCLIFFE. Well, I am very sorry to hear that. When there have been other very public deaths in this country, like Michael Brown and Trayvon Martin and Freddie Gray, the President has expressed his condolences to the family. I would have expected him to do that here. He did more than express his condolences in those cases. He had a lot to say about those circumstances I think because they tied into policies that he cared about like gun control and alleged police profiling. And yet when one of his policies with respect to immigration enforcement is at the root of a problem here that we are all discussing today, we do not hear anything from him, and you did not hear anything from him.

About the kindest thing I can say about that is that is incredibly disheartening and troubling to me because I very much believe that the loss that you have experienced is unacceptable if for no other reason that it was entirely preventable had the immigration laws in our country been enforced. And this Administration has, frankly, refused to uphold the law, and its inaction has emboldened cities across the country like San Francisco to ignore and, in some cases, actually obstruct enforcement of our immigration laws. And we all

know that the status quo is not working, and since the Administration is not going to apparently do anything about that, Congress has to step in and act.

You know, today the House is expected to vote on a bill that would deny certain Federal funds to sanctuary cities, and I do think that is a good first step. I agree with Ms. Vaughan that that is all it is, that it is just a good first step and that we certainly have to do more, and that we have to have the courage and conviction not just to do more, but to do what is right.

So, Ms. Vaughan, let me ask you a question. In your testimony, you noted that detainers have been used for decades and have been viewed by law enforcement as mandatory rather than just optional. In your opinion, what do you think is at the root of this dramatic departure from prior interpretations?

Ms. VAUGHAN. I believe that this whole series of events of more and more jurisdictions becoming sanctuaries was set off by the policy change at ICE to suddenly declare that detainers were optional. In this letter that Mr. King referred to from Dan Ragsdale to just suddenly declare that they were optional, not mandatory, with no legal foundation whatsoever that to my knowledge has ever been made public as to what, you know, legal reasoning they had for changing that policy.

But once that was done, that then provided legal cover for all of these other jurisdictions around the country to change their policies to stop complying with the detainers. And it also provided an opening for groups like the ACLU to threaten litigation against those sheriffs who are complying with detainers. And I think that is why it is very important that language such as that in the Davis-Oliver Act be included in any effort to address the sanctuaries to protect those law enforcement agencies that are doing the right thing and complying with all detainers all the time so that they are not going to be held responsible.

Knowing that ICE's policy nowadays is not to assist them in litigation, even if it is ICE's mistake, we have to give them cover, and protection, and qualified immunity to do the right thing in these cases in complying with detainers.

Mr. RATCLIFFE. Thank you, Ms. Vaughan, and I appreciate you being here. I found your testimony earlier compelling. Sheriff Jones, I found yours compelling as well, and I would like to give you an opportunity because you talked about this same issue about detainers being interpreted as mandatory previously rather than just requests. And I would like to ask you the same question about whether you have an opinion about what has caused this dramatic shift.

Mr. GOWDY. The gentleman is out of time, Sheriff, but you may answer the gentleman's question.

Sheriff JONES. Thank you, Mr. Chair. Clearly it is policy differences, and obviously as the Member pointed out, these policy and the preferences came about long before the decision in Clackamas County, Oregon. That was just a catalyst and vehicle for them to make that a nationwide policy shift.

You have to understand that the DHS assistant secretary over State and local law enforcement is Heather Fong. She is the former police chief of San Francisco. So not saying anything about her

competence as police chief or in the position she currently holds, but that does give you some insight into the political will and mindset of this Administration.

Mr. RATCLIFFE. Thank you. I appreciate you all being here, and I yield back, Mr. Chairman.

Mr. GOWDY. The Chair thanks the former U.S. attorney, and recognizes the gentleman from Michigan, Mr. Trott.

Mr. TROTT. I thank the Chair for organizing this hearing today, and all the witnesses for sharing their insight. I also want to thank my good friend from Texas for his question. Mr. Steinle, I was going to ask you if the President had reached out to you, but I decided not to do that because I assumed that, of course, he had done that. So I am sorry that has not happened.

I thank you for your courage in being here today, and I, too, hope this is just a beginning. And my question is to Ms. Vaughan. One of my concerns is I am going to support H.R. 3009. I am going to vote for it this afternoon. But it really has to be just the beginning because it targets about $800 million of money for law enforcement.

And my concern, and I would like you to speak to it, is it has to be just a first step because many times law enforcement, sheriffs, and police chiefs are following the directive of a city council, or a mayor, or a county commission. And I think we have to go further upstream and withhold TIGER grant money for road funding for sanctuary cities that decide to ignore Federal law. I think we have to make the repercussions of a sanctuary city deciding to ignore Federal law much more severe than H.R. 3009. Can you give you any suggestions or thoughts in that regard?

Ms. VAUGHAN. Well, again, I think the language that is in the Davis-Oliver Act is very comprehensive in addressing this problem. I do agree with you that, you know, money talks. In most cases, sanctuary policies are not something that law enforcement agencies ask for. They are imposed on them usually by political elected officials. And so, but money is a way to target them that we can come up with objective ways to define what a sanctuary is. And I think it should be a jurisdiction that does not comply with all detainers all the time for all types of people who are removable, whether they have committed serious crimes or not.

And I do think that the policies of the Obama administration in enabling sanctuary jurisdictions and greatly restricting what ICE agents can do, despite the plain language of the law, also ought to be given attention through legislation from Congress because we know that the Administration is not going to make an effort. They have said as much. They are not going to address this on their own. And so, Congress needs to reassert its constitutional authority over these matters.

Mr. TROTT. Thank you. Chief Biehl, during your testimony you commented that, you know, resources are finite. It is difficult for police departments to balance the different needs, and the Federal immigration laws on some level are a distraction perhaps in balancing all the different demands on your police officers. That is true of so many things today in State and Federal Government, so it is not unique to whether we should enforce our immigration laws. Do you agree with that?

Chief BIEHL. I think it raises the issue of where we spend our enforcement resources always. How do we prioritize what we do? In fact, that is what every police chief and every sheriff across this country does. That is what the Federal administration is attempting to do. I would believe as it relates to immigration and enforcement policy to try to do everything, we do nothing well. So we focus and are very strategic in how we deploy resources. That is how we are effective.

Mr. TROTT. But if we boil it down where we are talking about with respect to today's tragedy that led to this hearing is a phone call, right?

Chief BIEHL. I think I have already testified to the effect that the notification should have been made. In fact, I think we need to move just a little back upstream that the Federal Government had the capability to act on that deportation without ever involving San Francisco authorities. And I have not heard that comment much today. The authority existed. The capability and ability to take action existed, and somehow that is not being recognized I think.

Mr. TROTT. In your testimony you kind of suggested that sanctuary cities maybe are helpful insofar as unlawful immigrants are not afraid to report crimes. Ms. Vaughan disagrees with that, suggests it is a myth. Do you want to comment on that?

Chief BIEHL. I think we just see this differently. Mine is based on my actual experience with my city, so I yield to my experience.

Mr. TROTT. Sheriff Jones, the President's policy is just to seek custody of folks that have been convicted of crimes, not charged. Do you want to comment on that?

Sheriff JONES. Well, I can say that the only vehicle for that to happen, the only vehicle for the Federal Government or ICE to be notified of that is the detainer process. And as I have tried to illustrate, the detainer process is not working. We are not able to honor ICE detainers for 1 second after the local charges are cleared.

Now, if someone is sentenced to local time, doing time in jail, then ICE can have a pretty decent idea, relatively accurate idea of when they are getting out. And for those folks it might still be effective. But for the 58,000 people that I book in my jail every year that overwhelmingly mostly get out on their own recognizance, bail perhaps, they are able to bail, they get released from court, that happens with no notice or warning to ICE, and they do not have the ability to run down to the jail before I have to release them.

Mr. TROTT. Thank you, Sheriff. And, Mr. Steinle, I will close with this. I am out of time. But the head of Amtrak apparently could not find time a few months back after the tragedy in Philadelphia to call the eight families that were affected by that. So apparently there is a pattern and practice here in Washington of people not being considerate of the tragedies that affect our citizens.

Thank you. I yield back.

Mr. GOWDY. The gentleman from Michigan yields back. The Chair recognizes himself for 5 minutes.

Mr. Steinle, I want to thank you for beautifully capturing the essence of your daughter was. And I have read everything that I can get my hands on, and I last night watched the clips of various family members describing your daughter, and she is precisely the

kind of person that our country desperately needs. So I want to thank you for sharing her with us today.

Mr. STEINLE. If I may, I would like to recognize my sisters here in grief that supported us during this. They have been there, done that, and we are going to carry this forward, and hopefully some good will come from Kate's death. Thank you.

Mr. GOWDY. Yes, sir, which is a perfect segue. I was going to thank Chief Biehl and Sheriff Jones and ask that they specifically tell the women and men that work with them how grateful all of us for folks who go into that profession and that calling. And I suspect that both the chief, and the sheriff, and the women and men that work with them would tell you that there are lots of really hard parts of being in law enforcement. The crime scene photos never leave your head. You never get them out. The crimes scenes themselves you never get out.

But the hardest part for most law enforcement officers that I have talked to is having to talk to the families, like the four ladies sitting right behind you because they have got really good questions. Why? Why did this happen? How did this happen? And those questions go all the way up to the theological. Those are not just law enforcement questions. They are life altering, lifelong questions. So tell the folks that you work with how grateful we are.

Sheriff, this is something that I am struggling to understand. ICE had probable cause for Mr. Francisco Lopez-Sanchez, correct? I mean, he is a five-time convicted illegal entrant. I think even some of the members of this panel could have won that case in court. So they had probable cause.

Sheriff JONES. That is my understanding.

Mr. GOWDY. Why not a warrant? Why a detainer?

Sheriff JONES. You know, I would not claim to be an insider into the dynamics. I have talked to some of my friends in ICE about that particular case. There were certainly failures, but it is an overarching policy-level decision to not challenge or enforce the existing immigration laws or challenge contrary laws that led, at least in part, to the release of this suspect.

Mr. GOWDY. But surely even sanctuary cities like San Francisco would have to honor a Federal warrant.

Sheriff JONES. Clearly.

Mr. GOWDY. Because the Bureau of Prisons honored a local warrant.

Sheriff JONES. Yes, and we had this discussion about why do you not just create the detainer process into somewhat of a probable cause declaration and have them reviewed by a magistrate. It is case load prohibitive, but there are 93 Federal districts in this country, including three territorial district courts. And if we were to supply one additional magistrate to each of those districts, I am sure they could handle the workload of reviewing the probable cause detainer declarations. These things are easily fixable. There just has to be a desire and the political will to be able to do that.

Mr. GOWDY. Well, I want to give you one other way to fix it, Chief, and I will go to you for this one. San Francisco wound up dismissing that warrant, correct?

Chief BIEHL. And I would have expected that. Quite honestly in my experience, I would be shocked if that case would have gone forward.

Mr. GOWDY. But they could have dismissed it while he was halfway through his Federal prison sentence.

Chief BIEHL. Absolutely.

Mr. GOWDY. They could have dismissed it when he had a month to go on his Federal prison sentence.

Chief BIEHL. That is correct.

Mr. GOWDY. They could have dismissed it at any point in his Federal prison sentence. Therefore, he never would have been returned to the City of San Francisco.

Chief BIEHL. That is a fact.

Mr. GOWDY. And if I were Mr. Steinle, those are some of the question that I probably would be asking is you knew you were going to dismiss this warrant. You knew that. Hell, I am not even sure drugs are still illegal in San Francisco. So you knew that case was not going to be prosecuted. Why did you wait until he was in your custody to dismiss it, leading to this result?

All right. I want to move to one other thing. To both my law enforcement officers, have you ever noticed throughout the pendency of your careers that folks start with misdemeanors, and then they kind of work their way up to aggravated misdemeanors, and then they get into felonies. Rarely do you go from zero to 100 miles an hour. Rarely. And when you do go from zero to 100 miles an hour and commit a murder or a sexual assault or a kidnapping, you are in jail. If you have got a decent prosecutor and a halfway decent case, those folks are already locked up.

So since we accept the fact that you do not go from zero to 100, I think we are missing the boat if we focus solely on felonies when it comes to background checks for folks who want to be in this country. Look, all misdemeanors are not the same. Speeding is a violation. DUI is worse. Recidivist DUIs are worse. Property damage DUI is even worse. Personal injury DUI is even worse. I get all that. But this obsession that we have with only felons, we can only deport felons. Sheriff, has that been your experience, that people who commit misdemeanors always learn their lessons and never graduate?

Sheriff JONES. Clearly some do, but the best predictor of future behavior is past behavior. And I think there are studies that will demonstrate that generally is an escalation of criminality, especially when you do not have the consequences to try and deter the behavior. And it is not just felonies that are getting deported. It is only aggravated felonies. So there are many felony convictions that escape scrutiny whatsoever, even under the highest priority of the Priority Enforcement Program.

Mr. GOWDY. All right. I am out of time, but I want to ask one final question because this deals with broader issues of immigration. I want to assume for the sake of argument that there are 11 million undocumented folks in the country. Let us assume that. And I do not know what the percentage is. Ms. Vaughan, maybe you do. Of that 11 million, what percentage have either felony or what we could consider to be serious misdemeanor criminal histories?

Ms. VAUGHAN. I do not know the exact answer to that. ICE estimates that there are more than 2 million criminal aliens in the United States.

Mr. GOWDY. All right. Let us do this.

Ms. VAUGHAN. Twenty-nine million are removable because some of them have green cards.

Mr. GOWDY. Well, let us do this. Just for the sake of conservatism, let us cut that in half. Let us say it is a million. Let us err on the side of being conservative. What is the Administration's plan for removing those 1 million? To wait until they reoffend? Does anyone know the plan?

[No response.]

Mr. GOWDY. This is not a rhetorical question. I am honestly asking if the strategy is to wait until those 1 million reoffend. Somebody is going to be apologizing to a whole lot of moms and dads. Is there another strategy that either of the law enforcement professionals or Ms. Vaughan, is there a strategy other than simply waiting for that 1 million to reoffend?

If you cannot ask about status, if you cannot place a detainer, how are we going to identify that universe, however small it may be? If you are Mr. Steinle, it does not matter if it is one. What is our plan to identify that universe before they reoffend? Not all at once.

Chief BIEHL. Mr. Chairman, I just would suggest that the Federal Government, ICE, certainly should have an idea based on their database, which is not shared with local law enforcement, of who those individuals are and who poses significant risk. And they have the ability to take action, and if they need the assistance of local law enforcement, they certainly can request that.

Mr. GOWDY. When you say "take action," you mean wait for them to do something else wrong where they interact with law enforcement?

Chief BIEHL. They have the ability to take proactive action just like any police officer does.

Mr. GOWDY. But there are less ICE agents than there are officers in certain big cities in the United States. There are 5,000. All right. I am out of time. I cannot ask about U visas. I will close in just a second.

I want to recognize my colleague from California for any closing remarks she may have.

Ms. LOFGREN. Thank you, Mr. Chairman. I first would like to ask unanimous consent to put in the record the priorities for removal.

[The information referred to follows:]

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

November 20, 2014

MEMORANDUM FOR: Thomas S. Winkowski
Acting Director
U.S. Immigration and Customs Enforcement

R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection

Leon Rodriguez
Director
U.S. Citizenship and Immigration Services

Alan D. Bersin
Acting Assistant Secretary for Policy

FROM: Jeh Charles Johnson
Secretary

SUBJECT: **Policies for the Apprehension, Detention and Removal of Undocumented Immigrants**

This memorandum reflects new policies for the apprehension, detention, and removal of aliens in this country. This memorandum should be considered Department-wide guidance, applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). This memorandum should inform enforcement and removal activity, detention decisions, budget requests and execution, and strategic planning.

In general, our enforcement and removal policies should continue to prioritize threats to national security, public safety, and border security. The intent of this new policy is to provide clearer and more effective guidance in the pursuit of those priorities. To promote public confidence in our enforcement activities, I am also directing herein greater transparency in the annual reporting of our removal statistics, to include data that tracks the priorities outlined below.

The Department of Homeland Security (DHS) and its immigration components-CBP, ICE, and USCIS-are responsible for enforcing the nation's immigration laws. Due to limited resources, DHS and its Components cannot respond to all immigration violations or remove all persons illegally in the United States. As is true of virtually every other law enforcement agency, DHS must exercise prosecutorial discretion in the enforcement of the law. And, in the exercise of that discretion, DHS can and should develop smart enforcement priorities, and ensure that use of its limited resources is devoted to the pursuit of those priorities. DHS's enforcement priorities are, have been, and will continue to be national security, border security, and public safety. DHS personnel are directed to prioritize the use of enforcement personnel, detention space, and removal assets accordingly.

In the immigration context, prosecutorial discretion should apply not only to the decision to issue, serve, file, or cancel a Notice to Appear, but also to a broad range of other discretionary enforcement decisions, including deciding: whom to stop, question, and arrest; whom to detain or release; whether to settle, dismiss, appeal, or join in a motion on a case; and whether to grant deferred action, parole, or a stay of removal instead of pursuing removal in a case. While DHS may exercise prosecutorial discretion at any stage of an enforcement proceeding, it is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources that would otherwise be expended in pursuing enforcement and removal of higher priority cases. Thus, DHS personnel are expected to exercise discretion and pursue these priorities at all stages of the enforcement process-from the earliest investigative stage to enforcing final orders of removal-subject to their chains of command and to the particular responsibilities and authorities applicable to their specific position.

Except as noted below, the following memoranda are hereby rescinded and superseded: John Morton, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, March 2, 2011; John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Enforcement Priorities of the Agency for the Apprehension, Detention and Removal of Aliens*, June 17, 2011; Peter Vincent, *Case-by-Case Review of Incoming and Certain Pending Cases*, November 17, 2011; *Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems*, December 21, 2012; *National Fugitive Operations Program: Priorities, Goals, and Expectations*, December 8, 2009.

A. Civil Immigration Enforcement Priorities

The following shall constitute the Department's civil immigration enforcement priorities:

Priority 1 (threats to national security, border security, and public safety)

Aliens described in this priority represent the highest priority to which enforcement resources should be directed:

(a) aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;

(b) aliens apprehended at the border or ports of entry while attempting to unlawfully enter the United States;

(c) aliens convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or aliens not younger than 16 years of age who intentionally participated in an organized criminal gang to further the illegal activity of the gang;

(d) aliens convicted of an offense classified as a felony in the convicting jurisdiction, other than a state or local offense for which an essential element was the alien's immigration status; and

(e) aliens convicted of an "aggravated felony," as that term is defined in section 101(a)(43) of the *Immigration and Nationality Act* at the time of the conviction.

The removal of these aliens must be prioritized unless they qualify for asylum or another form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority.

Priority 2 (misdemeanants and new immigration violators)

Aliens described in this priority , who are also not described in Priority 1, represent the second-highest priority for apprehension and removal. Resources should be dedicated accordingly to the removal of the following:

(a) aliens convicted of three or more misdemeanor offenses, other than minor traffic offenses or state or local offenses for which an essential element

was the alien's immigration status, provided the offenses arise out of three separate incidents;

(b) aliens convicted of a "significant misdemeanor," which for these purposes is an offense of domestic violence;[1] sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or driving under the influence; or if not an offense listed above, one for which the individual was sentenced to time in custody of 90 days or more (the sentence must involve time to be served in custody, and does not include a suspended sentence);

(c) aliens apprehended anywhere in the United States after unlawfully entering or re-entering the United States and who cannot establish to the satisfaction of an immigration officer that they have been physically present in the United States continuously since January 1, 2014; and

(d) aliens who, in the judgment of an ICE Field Office Director, USCIS District Director, or USCIS Service Center Director, have significantly abused the visa or visa waiver programs.

These aliens should be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, CBP Director of Field Operations, USCIS District Director, or users Service Center Director, there are factors indicating the alien is not a threat to national security, border security, or public safety, and should not therefore be an enforcement priority.

Priority 3 (other immigration violations)

Priority 3 aliens are those who have been issued a final order of removal[2] on or after January 1, 2014. Aliens described in this priority, who are not also described in Priority 1 or 2, represent the third and lowest priority for apprehension and removal. Resources should be dedicated accordingly to aliens in this priority. Priority 3 aliens should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the alien is not a threat to the integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.

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[1] In evaluating whether the offense is a significant misdemeanor involving "domestic violence," careful consideration should be given to whether the convicted alien was also the victim of domestic violence; if so, this should be a mitigating factor. *See generally*, John Morton, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, June 17, 2011.

[2] For present purposes, "final order" is defined as it is in 8 C.F.R. § 1241.1.

B. Apprehension, Detention, and Removal of Other Aliens Unlawfully in the United States

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of aliens unlawfully in the United States who are not identified as priorities herein. However, resources should be dedicated, to the greatest degree possible, to the removal of aliens described in the priorities set forth above, commensurate with the level of prioritization identified. Immigration officers and attorneys may pursue removal of an alien not identified as a priority herein, provided, in the judgment of an ICE Field Office Director, removing such an alien would serve an important federal interest.

C. Detention

As a general rule, DHS detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirement of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, who are disabled, elderly, pregnant, or nursing, who demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, DHS officers or special agents must obtain approval from the ICE Field Office Director. If an alien falls within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

D. Exercising Prosecutorial Discretion

Section A, above, requires DHS personnel to exercise discretion based on individual circumstances. As noted above, aliens in Priority 1 must be prioritized for removal unless they qualify for asylum or other form of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, or CBP Director of Field Operations, there are compelling and exceptional factors that clearly indicate the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority. Likewise, aliens in Priority 2 should be removed unless they qualify for asylum or other forms of relief under our laws, or unless, in the judgment of an ICE Field Office Director, CBP Sector Chief, CBP Director of Field Operations, USCIS District Director, or USCIS Service Center Director, there are factors indicating the alien is not a threat to national security, border security, or public safety and should not therefore be an enforcement priority. Similarly, aliens in Priority 3 should generally be removed unless they qualify for asylum or another form of relief under our laws or, unless, in the judgment of an immigration officer, the alien is not a threat to the

integrity of the immigration system or there are factors suggesting the alien should not be an enforcement priority.

In making such judgments, DHS personnel should consider factors such as: extenuating circumstances involving the offense of conviction; extended length of time since the offense of conviction; length of time in the United States; military service; family or community ties in the United States; status as a victim, witness or plaintiff in civil or criminal proceedings; or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative. These factors are not intended to be dispositive nor is this list intended to be exhaustive. Decisions should be based on the totality of the circumstances.

E. Implementation

The revised guidance shall be effective on January 5, 2015. Implementing training and guidance will be provided to the workforce prior to the effective date. The revised guidance in this memorandum applies only to aliens encountered or apprehended on or after the effective date, and aliens detained, in removal proceedings, or subject to removal orders who have not been removed from the United States as of the effective date. Nothing in this guidance is intended to modify USCIS Notice to Appear policies, which remain in force and effect to the extent they are not inconsistent with this memorandum.

F. Data

By this memorandum I am directing the Office of Immigration Statistics to create the capability to collect, maintain, and report to the Secretary data reflecting the numbers of those apprehended, removed, returned, or otherwise repatriated by any component of DHS and to report that data in accordance with the priorities set forth above. I direct CBP, ICE, and USCIS to cooperate in this effort. I intend for this data to be part of the package of data released by DHS to the public annually.

G. No Private Right Statement

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

Ms. LOFGREN. There have been several comments made her that are just not correct. The priorities for removal are Priority 1A, B, C, D, and E, and Priority 2A and B. And what that is, terrorism, gang, any felony as well as any aggravated felony. Under Priority 2, and this is equal with 1, three or more misdemeanors other than traffic, and significant misdemeanors, which includes a single DUI, no matter when that offense was included. Those are all priorities for removal.

I would just note that no system is perfect, and clearly there was a failure here in San Francisco. I mean, there is no question about that. I think your question about the warrant is a good one and one we ought to explore. One of the reasons I think every jurisdiction has a multiplicity of bench warrants that have been issues, and there generally is no process for going back and taking a look at old bench warrants to see whether they ought to be dismissed. Maybe that is part of the answer.

On the other hand, if the bench warrant was not for a drug offense but for a rape, you would not want that dismissed. So, you know, we need to sort through with some granularity to make sure that we are actually solving a problem and not creating new ones.

And I would just close with saying that although the system is far from perfect, it is often the case that individuals who have either no status or they gain status who commit an offense are the subject of enforcement action. In fat, I have met a number of people who are legal permanent residents of the United States who have lost their legal permanent residence because they have been convicted of a crime that allows them to be removed. So I am not saying it is perfect, but it is far from rare.

I think that as we move forward in this, we have plenty of questions and an opportunity to work together to make sure that this whole system works better for the safety of our community. And I thank you, Mr. Chairman, for recognizing me, and I yield back.

Mr. GOWDY. The gentlelady yields back. And with respect to the warrants, the gentlelady is exactly right. I do want them enforced, particularly if there is a victim involved. But it is really easy. You just tell the prosecutor and the local law enforcement agency you have X amount of time with which to resolve this warrant. You can try it. You can plead it. You can dismiss it. That is up to you. But you are going to return this person back to the Agency or entity from which they came. You are not going to release them. That is an easy fix. Give California, give San Francisco 30 days. It is 20 years old. Good luck finding the witnesses. My concern more is that all of that could have been done while that person was serving a prison sentence. All of it could have been done.

So let me just in closing, Chief Biehl, Sheriff Jones, I want to tell you, I think you have got folks on task forces. I do not know if you have folks on task forces that are not. They are probably Federal task forces. They may be RICO. They may be OCDETF. Those are pretty complex matters, too, if you have ever tried to unlock a Federal RICO case. Hell, for that matter State DUI laws are 16 pages long, and your guys are smart enough to do DUI laws. So I reject the notion that somehow immigration law is too complex for State and local law enforcement.

But I want to end the same way I started, Mr. Steinle, by thanking you for your courage. For those of us that are parents or, frankly, even if you are not a parent, I could not do what you have done. I could not have the grace. I could not do it. So thank you.

Mr. STEINLE. Thank you.

Mr. GOWDY. Ms. Vaughan, thank you. And, Sheriff Jones and Chief Biehl, if you would be kind enough to let the women and men that work with you know how grateful we are for their service.

With that, Members have 5 legislative days to put whatever they want in the record and with that, we are adjourned.

[Whereupon, at 12:07 p.m., the Subcommittee was adjourned.]