



Testimony of

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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 most 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.