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Flawed Strategies: The INS Shift from Border Interdiction to Internal Enforcement Actions

Humberto Benitez
Comment

Flawed Strategies: The INS Shift from Border Interdiction to Internal Enforcement Actions*

Humberto Benitez**

“We don’t get [any assistance] formally, but I would be less than honest if I didn’t say that some of our people occasionally get together with policemen drinking coffee in a restaurant. And one [policeman says, ‘Hey, I think I saw a load [of undocumented aliens] going down the road half an hour ago.’ But we don’t have an official interchange of any kind...We conduct liaison with local law enforcement but we don’t ask for their assistance in any specific cases...”1

I.
INTRODUCTION

The past fifteen years has seen a dramatic increase in illegal immigration to the United States. Some studies estimate that there are between three and ten million illegal border crossings each year.2 At the same time, the 1990 census reveals that twenty-six percent of the population in California are from Latin American descent, the vast majority of which, are legal residents or U.S. citizens. For state and local police who cooperate with the Immigration and Naturalization Service (INS) to enforce immigration laws, it is and will be a formidable task to differentiate between legal residents and undocumented immigrants.3

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** Orange County Deputy Public Defender. B.A., 1990 University of California, Los Angeles; J.D., 1993 University of California at Berkeley, Boalt Hall School of Law. The author would like to thank Carolyn Patty Blum for her advise on researching this comment and the staff of La Raza Law Journal for all of their efforts, particularly Chris Arriola, John Pacheco and Greg Bonilla for their editing.
3. I will refer to people who are in the United States illegally as “undocumented immigrants.” I do not support the legal terminology of “alien” or “illegal alien” to describe someone who is in the country without proper documentation. See Ignatius Bau, Cities of Refuge: No Federal Preemption of Ordinances Restricting Local Government Cooperation with the INS, 2, n.6, LA RAZA L.J. (Prefers use
State and local police cooperation with the INS in the enforcement of immigration laws raises many problems. First, as the lead quote mentions, local police may not have formal procedures or policies which permit cooperation. Even when local police do have these procedures, they are often ignored and violated. Second, local police, and even INS, cannot accurately determine who is in the country in violation of immigration laws. Police and INS are not qualified to determine on appearance alone that a person is in the country illegally.

This paper will analyze the legality of police and INS cooperation in the enforcement of immigration laws. Within this context, I will be discussing the extent to which local police agencies can enforce immigration laws by arresting, detaining, and turning over suspected undocumented immigrants to the INS. Furthermore, I will analyze to what extent local police agencies may assist INS in area control raids and other roundups.

In Section II, I will give a brief history on past government attempts to stem the flow of illegal immigration to the United States. In large part, government failures to curb illegal immigration at the United States-Mexico border explains why many local municipalities and cities are encouraging police to cooperate with the INS.

In Section III, I will provide a factual background to some of the issues and problems that arise when police and INS cooperate to enforce immigration laws. In this section, I will give examples of some situations where police and INS have worked together in apprehending suspected undocumented immigrants.

In Section IV, I will discuss the current law on police and INS cooperation. I will analyze the extent to which local and state police may assist the INS in the enforcement of civil and criminal violations of the Immigration and Nationality Act (INA). I will also be looking at the role, under the law, that local and state police agencies may play in conducting area control raids.

In Section V, I will discuss the implications of having a policy on cooperation between local officials and the INS. The joint cooperation between police and INS, in my opinion, has a detrimental effect on immigrant communities. Cooperation policies discourage immigrants from reporting crimes. Police assistance in raids and other forms of immigration law enforcement also results in violations of individual's civil rights because they are detained for simply "looking Mexican."

of the term "undocumented") [hereinafter Cities of Refuge]. But see Edwin Harwood, In Liberty's Shadow: Illegal Aliens and Immigration Law Enforcement, 193, n.2 (1986) (Prefers "illegal alien" because it is the term most commonly used).
II. RECENT HISTORY

Over the past ten years, the United States government has taken many steps to stem the flow of illegal immigration. These attempts include the passage of sweeping legislation and increased spending on the border. These attempts, however, have all failed. In 1986, Congress passed the Immigration Reform and Control Act (IRCA). Under IRCA's employer sanctions provisions, employers are penalized for knowingly hiring undocumented workers. It was believed that sanctioning employers who hired undocumented immigrants would eliminate jobs available to undocumented immigrants. Without jobs available, the incentive to immigrate to the United States would disappear because jobs would be unavailable. IRCA, however, has not deterred undocumented immigrants from entering the United States. Recent figures demonstrate that illegal immigration continues at very high numbers.

Increased border vigilance has also failed to stem the tide of illegal immigration. The United States Border Patrol is the enforcement branch of the Immigration and Naturalization Service. It is responsible for detecting and preventing the illegal entry and smuggling of undocumented immigrants into the United States. Since 1986, the federal government has allocated billions of dollars to the United States Border Patrol. In the period from 1986 to 1990, the budget of the Border Patrol increased from $150.4 million to $262.6 million. The number of staff within the border patrol also increased from 3,542 staff positions and agents in 1986 to 4,561 staff positions and agents in 1990. On top of the increased budget and staff, the Border Patrol now has access to the most advanced technology in electronic surveillance equipment, helicopters, allterrain cycles, horses, spotter aircraft, and vans for border patrol enforcement. Even this increased spending on the border has not deterred illegal immigration.


5. Statistics show that the number of apprehensions have decreased only slightly since the passage of IRCA. Prior to the passage of IRCA, in 1985, 1,348,000 immigrants were apprehended crossing the border; in 1986, 1,767,000 were apprehended; in 1987, 1,190,000 were apprehended; in 1988, 1,008,000 were apprehended; in 1989, 954,000 were apprehended; and in 1990, 1,169,000 were apprehended. These numbers may be somewhat inflated because many of these apprehensions may be repeat offenders. Therefore, it is difficult to estimate how many undocumented immigrants actually enter the United States each year. Regardless, these figures demonstrate that IRCA failed in its attempt to stem the flow of immigration. UNITED STATES DEPARTMENT OF JUSTICE, STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE, 111, tb. 6.1 (1989). See also, JAMES, supra note 2, at 24.


7. Id. at 40.

8. HARWOOD, supra note 3, at 49.
FLAWED STRATEGIES

III.
ESTABLISHING A FACTUAL BACKGROUND

Since the government has failed to stem the flow of immigration at the border, many cities are requiring their police departments to assist the Immigration and Naturalization Service (INS) in the roundup of undocumented immigrants. This assistance includes providing traffic control for INS during area control or factory raids, "holding" individuals in prison who are suspected of undocumented status, leasing county jail space to the INS in order to detain criminal aliens, and serving as translators for INS officials. In many cases, the police agencies actually enforce immigration laws by arresting, detaining, and then turning over undocumented immigrants to the INS simply because of their undocumented status. The purpose of this section is to describe some of the situations where police cooperate with the INS. The following situations illustrate some of the many problems and issues that arise when local authorities cooperate with federal officials to enforce immigration laws.

A. City of Orange Raid

On September 18, 1991, Border Patrol officers conducted an interior control operation\(^9\) in the City of Orange and an unincorporated area called El Modena, California.\(^10\) It began when Border Patrol officers converged on a street corner frequented by day laborers and it turned into the largest raid in Orange County over the past fifteen years.\(^11\) When a large group of "aliens" fled on foot toward an apartment complex, the Orange Park Villas, Border Patrol officers pursued them.\(^12\) The operation led to the arrest of 216 immigrants.\(^13\)

Witnesses reported that Border Patrol officers entered the Orange Park Villas with guns drawn and began kicking on doors and banging on windows while shouting "Open up! Open up!"\(^14\) It was reported that other officers used City Code Enforcement officers to gain entry into apartment units.\(^15\) One agent, for example, entered into an apartment when he was invited in by a City Code Enforcement officer to translate for him.\(^16\)

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9. Interior or Area Control Operations are conducted by the Border Patrol away from the border. See infra notes 132-37 and accompanying text.
12. Id. See also de la Vina Memorandum, supra note 10, at 1.
13. de la Vina Memorandum, supra note 10, at 1.
15. Id.
Latino officials criticized the raid because of the presence of city police and City Code Enforcement officials. Initially, INS officials claimed that there was no wrongdoing in the raid. They claimed that City Code Enforcement officials were present at the raid merely by coincidence.

However, an internal investigation of the raid revealed that City Code Enforcement officers, assisted by police, agreed to remove the occupants of any apartment during an inspection. As a result, Border Patrol Agents’ contact with apartment occupants would be conducted in public areas outside the unit in an attempt to evade requirements of a warrant or exigent circumstances which would excuse the absence of a warrant.

But, according to an internal INS memorandum prepared after the raid, Border Patrol officials improperly entered many apartment units. The INS Memorandum revealed that there were 14 warrantless entries into apartments. Approximately, three entries were in the company of aliens who claimed to have immigration documents at home, approximately six were “hot pursuit” entries and approximately five entries were a result of Code enforcement officers referrals. A detailed description of one of the entries appears in the memorandum as follows:

"[O]ur agents were chasing four aliens whom they say ran into an apartment and closed the front door behind them. Our agents knocked on the door and attempted to elicit some response from inside; however, no one responded and we attempted to leave the scene. As they were leaving, the Code Enforcement officers arrived at the apartment having been summoned by the police officers who accompanied our agents. The Code Enforcement officers knocked on the door and were subsequently admitted into the apartment we had seen the four aliens enter. Upon their entry, the Code Enforcement officers requested the assistance or our agents. Our agents then entered the apartment on the assumption that the Code Enforcement officers had the authority to invite us in. Upon our entry, agents saw at least one of the four aliens run into a bedroom and close and lock the door behind him. Our agents then pursued the alien and forcibly entered the bedroom by breaking open the door. . . . It appears that our agents mistakenly believed that the Code Enforcement officers had authority to consent to their entry into the dwelling. As such, our entry into this apartment appears to be improper."

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20. Id.

21. Id. at 2-3.
It is clear from the description above that the Border Patrol violated federal laws barring entry into a home without proper consent from the occupant or a search warrant.

INS documents also revealed extensive involvement by city officials in the raid; the raid was conducted upon request by City of Orange officials. Furthermore, Border Patrol officials met with Orange police and City Code Enforcement officers prior to the operation at a police substation. The Orange Police Department specifically requested the presence of City Code Enforcement officers at the briefing prior to the operation.

At the briefing it was agreed that the Orange Police Department would "provide uniformed motorcycle officers to accompany . . .patrol units for safety and traffic support." However, local police assistance went beyond traffic control. In one case, Border Patrol agents knocked on the door of an apartment and received no response. Subsequently a uniformed police motor officer, assigned for "traffic control", contacted a Code Enforcement Team in the area. The Code Enforcement team knocked on the door, a woman answered and gave the team permission to enter." Thus, it appears that the City of Orange Police provided more that traffic assistance to the Border Patrol.

The INS Memorandum further reveals that it was agreed that Border Patrol agents would provide assistance to Code Enforcement officials with Spanish translation. Five apartments were entered after responding to requests from Code Enforcement officials for translation, which resulted in nine arrests. Of these five, local police entered four of them.

The use of Border Patrol officers for translation purposes appears to be a ploy used to give the Border Patrol officers access to the apartment units. According to the memorandum, City Code Enforcement officers who were present at the initial briefing before the operation:

"initially requested that we (Border Patrol officers) accompany them to the apartment complex. . . . We declined to accompany them to the complex but agreed to provide assistance with Spanish translation upon their request. Further, in the event that Code Enforcement officers did seek our assistance, we understood that the Enforcement officers, with the assistance of the [police], would vacate any apartment during an inspection. As such, any contact by our agents with the occupants of any apartment in response to a

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22. Id.. at 2.
23. Id. at 1.
24. Id. at 2.
25. Id. at 4.
26. Id. at 1-2.
27. Memorandum from Ted A. Swofford, Assistant Patrol Agent in Charge, San Clemente Station, to Patrol Agent in charge, San Clemente Station I (Sept. 23, 1991).
Code Enforcement request would be conducted in public areas outside the unit.” (emphasis added)\textsuperscript{28}
The memorandum then states that Border Patrol officers proceeded to Chapman Avenue allegedly not knowing the whereabouts of the Code Enforcement officers. The memorandum further states that there was no plan to join or meet Enforcement officers at the complex: “At no time did we target this apartment complex, nor did we contact the Code Enforcement officers as a ruse or subterfuge for our agents to enter the complex.”\textsuperscript{29}

When the agents approached Chapman Ave., a large group of aliens fled toward the apartment complex. The Border Patrol pursued these aliens and “it was there that we (Border Patrol officers) ‘coincidentally’ encountered the Code Enforcement Officers who were working at the apartment complex.”\textsuperscript{30}

Given the presence of INS, Orange Police, and City Code Enforcement Officers at the briefing before the operation, it is unlikely that the Border Patrol’s contact with Code Enforcement officials at the complex was merely “coincidental”. The Border Patrol had agreed to translate for Code Enforcement officers at their request. In turn, the fact that Border Patrol agents used Code Enforcement officers’ authority to gain entry into apartment units provides further evidence that the cooperation between them was far from coincidental.

\textbf{B. San Diego County}

In San Diego, police officials introduced a controversial program which required local police to work closely with the INS. The program, which entailed teams consisting of Border Patrol officers and city police officers working in conjunction, reversed the Police Department’s six year old policy not to cooperate with the INS.\textsuperscript{31} Under this new policy, police are allowed to detain and turn over illegal immigrants who are stopped for questioning to the Border Patrol.\textsuperscript{32}

\begin{itemize}
\item \textsuperscript{28} de la Vina Memorandum, supra note 10, at 2.
\item \textsuperscript{29} Id. at 2-3.
\item \textsuperscript{30} Id. at 2.
\item \textsuperscript{32} H.G. Reza, Joint Police - Border Patrol Crackdown Draws Fire, L.A. Times (San Diego), Sept. 10, 1991, at B5; H.G. Reza, Border Patrol Joins Police in Gaslamp Area, L.A. Times (San Diego),
Prior to the official announcement of this new policy, the San Diego Sheriff’s Department\textsuperscript{33} had already adopted a policy of cooperation with Border Patrol officials. The Sheriff Department officers teamed up with Border Patrol officials “. . . to avail themselves of Border Patrol agents’ Spanish-language skills.”\textsuperscript{34} The Sheriff’s department, however, used this policy to turn undocumented immigrants over to the INS. In early August 1990, for example, two farmworkers went to the Sheriff’s Department in East County to report a claim of unpaid wages.\textsuperscript{35} Sheriff’s department officials called Border Patrol officials to interpret. The Border Patrol then proceeded to deport the two farmworkers.\textsuperscript{36}

C. \textit{Los Angeles}

Victims of crimes also are frequently deported. On at least two occasions, Los Angeles Police Department (LAPD) officers, have turned over victims of crimes to the INS for deportation. In July 1990, a caller notified the LAPD that his wife and two children were being held hostage by alien smugglers.\textsuperscript{37} After rescuing them from the smugglers, LAPD officers turned over 20 undocumented immigrants to the INS for deportation.\textsuperscript{38} Among those turned over to the INS was the wife of the caller, his two-year old daughter and his five year old son.\textsuperscript{39}

In another hostage situation in May 1990, twenty-seven undocumented immigrants were being held for ransom by alien smugglers.\textsuperscript{40} The facts of a pending case\textsuperscript{41} filed in a Los Angeles Superior Court, revealed that Moris Anibal Gonzalez-Centeno was kidnapped in Mexico by coyotes, or smugglers, on his way to the United States.\textsuperscript{42} He was held for $1,000 ransom in a house located in Los Angeles, California. When the family was unable to raise the ransom money, they called an attorney at the Central American

\begin{footnotes}
\item\textsuperscript{33} Of course, the San Diego Sheriff’s Department is a separate entity from the San Diego Police Department.
\item\textsuperscript{35} \textit{Id.}
\item\textsuperscript{36} \textit{Id.}
\item\textsuperscript{37} Marita Hernandez, \textit{20 Illegals Rescued, Handed to INS Agents}, L.A. Times, July 20, 1990, at B3.
\item\textsuperscript{38} \textit{Id.}
\item\textsuperscript{39} \textit{Id.}
\item\textsuperscript{40} Edward Boyer, \textit{Immigrants Sent to INS by Police, Suit Alleges}, L.A. Times, May 8, 1991, at B3.
\item\textsuperscript{42} Rebecca Ciao, \textit{Two Sides to Preemption}, 7 \textit{La Raza} L.J. 72, 77 (1994).
\end{footnotes}
Refugee Center who then proceeded to call the LAPD for help. Upon arrival, LAPD officers handcuffed the plaintiff and other hostages held by the coyotes until the INS arrived and placed the victims in custody. The coyotes escaped. Moris Anibal Gonzalez-Centeno, was arrested and detained, despite never being charged with any crime.

IV.
DISCUSSION OF THE LAW

The preemption doctrine states that when the federal government, in the exercise of its authority in a particular field, enacts a broad and complete body of regulations, states cannot further develop laws in the area. When a system of federal regulation is so extensive that no room for state activity remains, an intent to preclude state or local officials from enforcing federal law is inferred. States may not contradict or complement such extensive regulation.

The Immigration and Nationality Act (INA) is a comprehensive legislative scheme that governs all aspects of the admission of undocumented immigrants to the United States. It provides the legal authority for the interrogation, arrest, detention, and removal of non-citizens from the United States.

The INA contains both civil and criminal provisions. The civil provisions of the Act regulate authorized entry, length of stay, residency status, and deportations. The civil provisions of the INA constitute an extensive

43. Id.
44. Id.
45. Id. Critics of the detention and subsequent transfer of Gonzalez-Centeno to the INS claim that the LAPD violated their own policy. LAPD Manual Sec. 264.50, Special Order No. 40 "Undocumented Aliens" provides that: "Undocumented alien status in itself is not a matter for police action. Officers shall not arrest nor book persons for violation of Title 8, Section 1325 of the United States Immigration Code (Illegal Entry). When an undocumented alien is booked for multiple misdemeanor offenses, a high grade felony offense, or has been previously arrested for a similar offense, the arresting officer shall notify Detective Headquarters Division (DHD) of the arrest which...relays the information to INS via teletype." But since Gonzalez-Centeno was never officially charged with a crime, the police arguably enforced the civil provisions of the INA by detaining, then turning him over to the INS for deportation. Id.
47. Gonzalez v. City of Peoria, 722 F.2d, 468, 474 (9th Cir. 1983).
50. Id.
51. Id.
regulatory scheme. In fact, the Supreme Court has "repeatedly emphasized that 'over no conceivable subject is the legislative power of Congress more complete than it is over' the admission of aliens." As an extensive regulatory scheme, the federal government has exclusive authority to enforce the civil provisions of the INA.

A. Local and State Enforcement of Criminal Provisions of the Immigration and Nationality Act

The federal preemption doctrine does not preclude local and state officials from enforcing criminal violations of the INA. Unlike the civil provisions of the INA which are so broad and extensive that there is no room for state activity, the statutes relating to the regulation of criminal violations are few in number and simple in their terms. They are not, and could not be, supported by a complex administrative structure. Therefore, it could not be inferred that the federal government has occupied the field of criminal immigration enforcement. As such, local police are authorized to enforce criminal provisions of the INA.

An arrest for a violation of federal law by state peace officers is determined by reference to state law. An undocumented immigrant who illegally enters the country, eludes examination or inspection by federal officials, or gains entry by willful or misleading representation is guilty of a federal misdemeanor offense. However, the court in United States v. Rincon Jimenez, 595 F.2d 1192, 1194 (9th Cir. 1979) ruled that violating §1325 is not a continuing offense. Once an alien has remained within the country for more than five years, the statute of limitations runs and the

53. Gonzalez v. City of Peoria, 722 F.2d at 475.
58. Id.
59. Id. See also People v. Barajas, 81 Cal. App. 3d at 1004-1007.
60. Gonzalez v. City of Peoria, 722 F.2d at 475.; See also People v. Barajas, 81 Cal. App. 3d at 1005-1007.
62. The statute provides that: (a) Any alien, who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall for the first commission of any such offense, be fined not more than $2,000... or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 2 years, or both. 8 U.S.C. § 1325 (a) (1994).
Thus, pursuant to California law, a police officer may not arrest for misdemeanor violations of § 1325 (1), (2), and (3) unless he was present when the offense was committed. This requires the police officer to actually witness the illegal crossing at the border. An undocumented immigrant who reaches a place of repose, is no longer violating criminal provisions of the INA. He is merely illegally present in the United States, which is a civil violation of the INA. Local police, at this point, have no authority to arrest suspected undocumented immigrants based solely on their status or without probable cause that they committed another offense.

State and local police do have authority to assist in the enforcement of federal criminal laws in their jurisdiction. This authority to assist, however, is merely discretionary, and not required. Attorney General Smith, in an advisory opinion issued in 1983, declared that "[i]t is Department of Justice policy for the Immigration and Naturalization Service to cooperate with local and state law enforcement officers who notify the Service of suspected violations of the immigration laws. The service will review the immigration status of individuals detained by local or state law enforcement authorities for other than immigration violations upon request and as available resources permit." The following year, the California Attorney General declared that peace officers and judges have no general affirmative duty to report to the INS any knowledge they might have about persons who entered the United States by violating Section 1325. However, while there was no general duty to report violation of Section 1325, the Attorney General encouraged peace officers and judges to do so. Attorney General Van De Kamp wrote in his advisory opinion: "[A]s a matter of comity and

63. United States v. Rincon-Jimenez, 595 F.2d 1192, 1194 (9th Cir. 1979).
64. Cal. Pen. Code § 836 (West 1994). Section 836 provides: A peace officer may make an arrest in obedience to a warrant, or may pursuant to the authority granted him by the provisions of Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, arrest a person: 1. Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence. 2. When a person arrested has committed a felony, although not in his presence. 3. Whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed. See also Barry v. Fowler, 902 F.2d 770, 772, (9th Cir. 1990); Gates v. Superior Court, 193 Cal. App. 3d at 216; United States v. Rincon-Jimenez, 595 F.2d at 1194.
65. See infra notes 96-99 and accompanying text on illegal presence.
66. See infra note 98.
67. See infra note 99 and accompanying text. In questioning someone suspected of undocumented status, lack of proper documentation is not sufficient to form probable cause of illegal entry. In Gonzalez v. City of Peoria, the court concluded that an arresting police officer cannot assume that an alien who lacks proper documentation has violated § 1325 of the Immigration and Nationality Act. 722 F.2d at 476. While the lack of documentation may be evidence of illegal entry, it does not provide probable cause of illegal entry. Id. at 477.
69. Id.
70. 60 INTERPRETER RELEASES, 172-73 (March 4, 1983).
good citizenship such officials may report knowledge they might have of a foreign national present in the United States following an entry in violation of Section 1325..."72

When an undocumented immigrant commits certain criminal offenses, state and local police are required by statute to notify the INS. It is mandatory. Under California law, for example, when an individual has been arrested for certain specified narcotics offenses and the police have probable cause to believe that the suspect is not a citizen, local police must contact the INS.73 A person must first be arrested for a narcotics violation. Once an individual is booked and there is probable cause to believe that the individual is not a citizen, the arresting agency is required to notify the INS.74 If the individual is not booked for a narcotics violation, then the arresting agency cannot notify the INS. Notifying the INS without charging the suspected undocumented immigrant of any crimes, arguably constitutes enforcement of the civil provisions of the Immigration and Nationality Act.75

The exchange of information between local police and INS is permitted, but not required.76 A local police department may transfer legitimately obtained information to the INS.77 In Gates v. Superior Court, 193 Cal. App. 3d 205 (Cal. Ct. App. 2 Dist. 1987), the court held the transfer of

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72. Id. at 332.
73. When there is reason to believe any person arrested for violation of Section 11350 [Unlawful possession], 11352 [Unlawful transportation, sale, administration, etc.], 11353 [Inducement of minor’s violation by person 18 years of age or over], 11355 [Unlawful sale or transportation pursuant to agreement], 11357 [Possession], 11360 [Unlawful transportation, sale, or gift of marijuana], 11361 [Transportation, sale, distribution or marijuana by or to a minor], 11363 [Unlawful planting, harvesting or processing], 11366 [Opening or maintaining place for trafficking in controlled substance], 11368 [Prescription for narcotic drug], or 11550 [Use of controlled substance; licensed drug rehabilitation program; possession of firearm while under influence, punishment, probation], may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters. Cal. Health and Safety Code § 11369 (1994).
74. 8 U.S.C. § 1357(a) (1994) is the federal equivalent to California Health and Safety Code § 11369 (1994). However, the federal and California statutes differ in that federal law contemplates that local police may report illegal aliens who have committed drug offenses to federal authorities, while California requires reporting criminal drug offenders. American G.I. Forum v. Miller, 218 Cal. App. 3d 859, 865 (1990).
75. Id. See also 67 Ops. Att’y Gen. Cal. 331 (1984).
76. See infra notes 96-99 and accompanying text.
77. Id. But see San Francisco City of Sanctuary Ordinance, which prohibited the exchange of information between local police and the INS "...unless such assistance is required by federal or state statute". SAN FRANCISCO, CAL., Ordinance No. 375-89, Ch. 12H § 2.1 (1989). Under this ordinance, police were able only to report the names of people who were arrested for drug offenses. This did not include aggravated felonies. Susan Freinkel, Jordan: Report All Felons to INS, THE RECORDER, Aug. 6, 1992, at 4; Reynolds Holding, Cops Want New Policy on Illegal Immigrants, S.F. CHRON., Apr. 25, 1991, at A21.

legitimately obtained arrest information to the INS does not constitute enforcement of the civil provision of the INA.\textsuperscript{78} The Court concluded that where a police officer legitimately comes across information in the course of investigating a crime which reasonably leads to the belief that the person arrested is illegally present in this country, nothing in either the state or federal constitution prevents the officer from advising the INS of this data.\textsuperscript{79} It would be unreasonable to deny such an exchange between local police and the INS and would reward those federal violators arrested by local, rather than federal officers.\textsuperscript{80}

The 1990 amendments to the Immigration and Nationality Act provided for greater coordination in the exchange of information between local police and the INS.\textsuperscript{81} The amended statute establishes a process of fingerprinting and photographing all persons over the age of fourteen in deportation proceedings and making that information available to federal, state, and local enforcement personnel.\textsuperscript{82}

B. The Federal Government's Exclusive Authority in Enforcing Civil Provisions of the Immigration and Nationality Act

Violations of the INA which result in deportation from the United States are civil in nature.\textsuperscript{83} Civil violations of immigration laws relate to illegal presence in the United States.\textsuperscript{84} Any persons who are illegally present in the United States, either because they entered without inspection or overstayed their visa, are subject to civil deportation proceedings under the INA.\textsuperscript{85} Thus, a local or state police officer who arrests, detains, or places an "immigration hold" on an individual based solely on suspected undocumented status for purposes of deportation, is enforcing the civil provisions

\textit{Law Called Invalid}, S.F. Chron., Nov. 20, 1992, at A28 (The opinion is not binding, but must be given great weight by courts considering the issue).

The San Francisco Board of Supervisors amended the ordinance to permit local police to exchange information with the INS when an individual is convicted of a felony. \textit{San Francisco, Cal}, Ordinance No. 282-92, Ch. 12H § 2.1 (1992).

\textsuperscript{78} Gates v. Superior Court, 193 Cal. App. 3d at 600-601.

\textsuperscript{79} \textit{Id}.

\textsuperscript{80} \textit{Id}.


\textsuperscript{82} \textit{Id}. \textit{See also} 8 U.S.C. § 1357(f) (1994).

\textsuperscript{83} Harisiades v. Shaughnessy, 342 U.S. 580, 594 (1952). \textit{See also} IMMIGRATION LAW AND PROCEDURE § 72.02[3], supra note 81.

\textsuperscript{84} INS MISCONDUCT MANUAL, STATE AND LOCAL POLICE ENFORCEMENT OF IMMIGRATION LAWS, § 8.2. \textit{See also} San Diego Police Department Procedure on Undocumented Aliens, § 6.18, (1987) (on file with \textit{La Raza Law Journal}).

\textsuperscript{85} Gonzalez v. City of Peoria, 722 F.2d at 476. There are numerous reasons why a person could be illegally present in the United States without violating 8 U.S.C. § 1325. These include the expiration of a visitor's visa, change of student status, or acquisition of prohibited employment. \textit{Id}. \textit{See 67 Ops. Att'y Gen. Cal. 331, 332 (1984).
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of the INA. For example, Gates v. Superior Court, held that arresting individuals based solely on undocumented status was unconstitutional. In Gates, a police officer for the LAPD turned over the plaintiff Rivera and two other suspects to the INS without arresting or booking them for any state or local crime. The arresting officer based his decision to arrest the three suspects upon the belief that they were involved in criminal activity and transported them to the INS only because they were illegal aliens. The court found that Rivera was arrested solely on account of his undocumented status. As a result, the court concluded that the LAPD improperly engaged in the civil enforcement of the Immigration and Nationality Act.

Similarly, in Gonzalez v. City of Peoria, 722 F.2d 468 (9th Cir. 1983), the court held that police departments do not have authority to arrest, detain, or hold individuals solely because of their immigration status. In Gonzalez, eleven plaintiffs brought an action challenging the City of Peoria’s policy regarding arrests for immigration law violations. The plaintiffs alleged that the city police, acting under the policies adopted by the City of Peoria, engaged in a practice of stopping and arresting persons of Mexican descent based solely on their race and appearance without probable cause or reasonable suspicion. The facts of the cases revealed that in six separate incidents, Peoria police officers either questioned, detained, or turned over to the Border Patrol, individuals of Mexican “appearance”.

Peoria police questioned plaintiffs as to their immigration status solely be-

86. 193 Cal. App. 3d at 210.
87. Id.
88. Id.
89. Id. at 221.
90. Id.
91. Gonzalez v City of Peoria, 722 F.2d at 476.
92. Id. at 472. The City of Peoria adopted Operations Order No. B-4 in 1978, which stated that “only INS agents can take suspected aliens into custody” but “[v]iolators of Federal Immigration Laws will be arrested and booked” and held for pick up by the Border Patrol. Id.

After the filing of this action, the policy changed a number of times before Operations Order D-9 was adopted on January 1, 1982. In Operations Order D-9, officers were instructed “to refrain from stopping, questioning, arresting, or placing an immigration hold on suspects ‘solely on the grounds that they may be deportable aliens.’” The policy did authorize officers to temporarily detain, up to a period of twenty-four hours, persons suspected of illegal entry. Id. at 473.

93. Id. at 472.
94. Id. For example, on September 13, 1977, several officers were dispatched to Saliba’s Market at the request of the Border Patrol to arrest persons arriving in a blue pickup truck. Peoria police officers arrested four person in the market, despite not being charged with any state or local criminal offense. They were held for release to the Border Patrol. Id.

In another situation that occurred on April 15, 1978, Peoria police officers were dispatched to a fight. Upon arrival, they questioned on-lookers as to their identities and immigration status. Two individuals were taken into custody. Another on-looker was detained five to ten minutes. A police officer held him by the neck, causing him injury, and questioned him as to his immigration status. He was released after he convinced the officer that he was a United States citizen. Id.
cause they “fit the profile of . . . illegal alien[s].” Furthermore, none of the six plaintiffs had committed any offenses.95

In concluding that local police were enforcing civil provisions of the INA, the court distinguished illegal presence in the United States from illegal entry in the United States.96 Illegal entry is a criminal violation under 8 U.S.C. § 1325.97 A person who is illegally present in the country is guilty only of a civil violation of federal immigration laws.98 As a result, the court concluded that police officers have no authority to arrest, detain, or hold individuals based solely on immigration status.99

C. Detentions and Arrests

Courts have been confronted with situation which have caused them to address the use of detentions and arrests by local police in attempting to enforce immigration laws. For the most part, courts have upheld the Fourth Amendment requirements of reasonable suspicion to justify short detentions and probable cause for arrests. These cases provide good examples of why local police enforcement of the civil provisions of the INA should be restricted - the lack of training and the amount of discretion vested in police to stop individuals leads to unlawful and unconstitutional detentions and arrests.

1. Detentions — The Need for Reasonable Suspicion

Detentions or short interrogatory stops for immigration violations must be supported by reasonable suspicion that the individual is not a United

95. Id.
96. Id. at 477.
97. Id. at 476.
98. Id. at 476.
99. Id. In 1978, the United States Attorney General Griffin Bell issued guidelines for local police officials in the enforcement of immigration laws. The guidelines instructed officers not to stop, question, detain, or place an “immigration hold” on any persons not suspected of crimes, solely on the grounds that they may be deportable aliens. See Department of Justice Press Release, reported in 60 INTERPRETER RELEASES 172 (Mar. 4, 1983). This position was reiterated by the California Attorney General, “there is no duty for state and local officials to enforce the civil aspects of federal immigration laws.” 67 Ops. Cal. Att’y Gen. 311, 336 (1984). See also 1983 Op. Att’y Gen. Nev. 79, (1983) (State or local law enforcement officers should not detain or arrest a person absent probable cause to suspect state criminal activity solely on the basis that this individual might be a deportable alien); 38 Op. Att’y Gen. Ore. 759, (1977) (A state or local law enforcement officer may only stop and detain a suspected alien if the officer has independent reason to do so for possible violation of a state or local ordinance). See also Vivanco-Zepeda v. Fish, No. C82-1199C (W.D. Wash. Jan 13, 1984) (consent decree), reprinted in 61 INTERPRETER RELEASES 103, 118-19 (1984) (Permanently enjoining local police from stopping, detaining, interrogating, holding, or arresting persons of Mexican, Latin American or Hispanic ancestry for the purpose of ascertaining their immigration status or in any other way attempting to enforce immigration laws); Nunez v. Sanders, No. PB-C-82-228 (E.D. Ark. Dec. 18, 1983) (consent decree), reprinted in 61 INTERPRETER RELEASES 334-36 (1984) (Precludes police participation in the enforcement of civil provisions of the INA).
States citizen. Detentions are a special category of Fourth Amendment seizures that are substantially less intrusive than arrests. Because detention represents only a limited intrusion, it can be justified by a reasonable suspicion of criminal activity.

The suspicion of criminal activity, however, justifies only a brief stop and interrogation. A police officer who accosts an individual and restrains his freedom to walk away, has "seized" that person. Even though the individual is not arrested and taken to the police station, courts have held that the Fourth Amendment governs such seizures.

Reasonable suspicion must be supported by specific articulable facts that the person is illegally in the United States. Specific articulable facts include foreign manner of dress or grooming, geographic location, the officer's knowledge of a high concentration of aliens, or a specific tip from an informant. Furthermore, these specific articulable facts must meet the objective reasonable person standard, and not the subjective impression of the officer.

In United States v. Mallides, 473 F.2d 859 (9th Cir. 1989), two police officers in a patrol car passed the defendant's automobile, which was traveling in the opposite direction and occupied by six males who appeared to be Mexicans. The occupants were seated three in the front and three in the back. As the officers passed the automobile, they noticed that the occupants were sitting very erect and that they did not turn to look at the patrol car. Based on the suspicion that the car contained illegal aliens, the officers stopped the defendant's automobile. The officers testified that the defendant, Mallides, was driving normally and that there were no traffic violations. After interrogating the driver and the passengers, the police officers determined that five of the occupants of the vehicle were Mexican

100. Immigration Law and Procedure, supra note 81 § at 72.03(4)[a]; INS Misconduct Manual, supra note 84 at § 4.3; Terry v. Ohio, 392 U.S. 1, 27 (1968); Gonzalez v. City of Peoria, 722 F.2d at 477.
101. Gonzalez v. City of Peoria, 722 F.2d at 477. An interrogation is not in itself an arrest. Immigration Law and Procedure, supra note 81 § at 72.03(4)[a].
102. Gonzalez v. City of Peoria, 722 F.2d at 477.
103. Id. See also United States v. Brignoni-Ponce, 422 U.S. 873, 881-82 (1975); Terry v. Ohio, 392 U.S. at 27.
104. Terry v. Ohio, 392 U.S. at 16.
105. Id.
107. Ramirez v. Webb, 599 F.Supp. at 1284. See also United States v. Ramirez-Sandoval, 872 F.2d 1392, 1394-95 (9th Cir. 1989) (Police officer received a tip from an informant which was sufficient to establish reasonable suspicion that defendants were transporting illegal aliens in a van).
109. Id. at 860.
110. Id.
nationals, and the driver, Mallides, was from Iraq. Mallides was convicted of aiding and abetting illegal entry of aliens and he appealed.\textsuperscript{111} The United States Court of Appeals for the Ninth Circuit reversed the conviction holding that the stop and detention of Mallides' vehicle was illegal.\textsuperscript{112} The court determined that under an objective standard, there was nothing suspicious about six non-white persons in a sedan, who sat up straight and did not look at a passing car.\textsuperscript{113} According to the Ninth Circuit, "[n]either the Supreme Court nor this court has ever upheld the legality of a detention based on an officer's unsupported intuition. . ."\textsuperscript{114}

Ethnic appearance alone is not sufficient to establish reasonable suspicion to stop an individual.\textsuperscript{115} In United States v. Brignoni-Ponce, 422 U.S. 873 (1975), a roving patrol of the Border Patrol stopped the defendant's car without a warrant because the three occupants looked Mexican.\textsuperscript{116} The officers questioned the driver and the two passengers about their citizenship status and learned that they had entered the country illegally. The driver was subsequently charged with two counts of knowingly transporting illegal immigrants. The court concluded that a roving patrol could stop vehicles only if they are aware of specific articulable facts that reasonably warrant suspicion that the vehicles contain aliens who might be illegally in the country.\textsuperscript{117} Furthermore, the court held that Mexican appearance alone was not sufficient to furnish reasonable suspicion to believe that the three occupants of the car were aliens and did not justify stopping the car.\textsuperscript{118}

2. Immigration Holds and Arrests — The Need for Probable Cause

A seizure that involves more than a brief and narrowly defined intrusion must be justified by probable cause.\textsuperscript{119} In Dunaway v. New York, 422 U.S. 198 (1978), the Court held that transporting the defendant to a police station and placing him in a cell for interrogation, constitutes an arrest that must be supported by probable cause.\textsuperscript{120} Similarly, a police officer who

\begin{itemize}
\item \textsuperscript{111} Id.
\item \textsuperscript{112} Id. at 862.
\item \textsuperscript{113} Id.
\item \textsuperscript{114} Id. at 862.
\item \textsuperscript{115} Ramirez v. Webb, 599 F.Supp. at 1284; IMMIGRATION LAW AND PROCEDURE, supra note 81 § 72.02[2][a].
\item \textsuperscript{116} U.S. v. Brignoni-Ponce, 422 U.S. at 886-887.
\item \textsuperscript{117} Id. at 884-885.
\item \textsuperscript{118} Id. Other factors that may be taken into account in determining whether a stop is justified are characteristics of the area, patterns of traffic on the particular road, proximity to the border, previous illegal traffic, appearance of vehicle, behavior of the driver, and appearance of the passengers. Id. See also IMMIGRATION LAW AND PROCEDURE, supra note 81 § 72.02[2][a].
\item \textsuperscript{119} Gonzalez v. City of Peoria, 722 F.2d at 477; Dunaway v. New York, 422 U.S. 198, 210 (1979).
\item \textsuperscript{120} Dunaway v. New York, 422 U.S. at 212-213 (the court stated that the petitioner was "taken from a neighbor's home to a police car, transported to a police station, and placed in an interrogation room. He was never informed that he was 'free to go'; indeed, he would have
places a suspected undocumented immigrant in jail and holds him for the Border Patrol for interrogation, is conducting an arrest. As in Dunaway, an individual held for the Border Patrol, will likely be restrained if he tries to escape or refuses to accompany the officers. An immigration hold, therefore is a seizure that constitutes an arrest. It must be supported by probable cause that an illegal entry has occurred or that some other offense has been committed.

Lack of proper documentation is not sufficient to establish probable cause that the undocumented immigrant has violated 8 U.S.C. § 1325, illegal entry. Lack of proper documentation may provide some indication of illegal entry, but alone it is not sufficient to establish probable cause of the criminal violation of illegal entry. For example, if a passenger in a vehicle stopped by the police cannot produce proper documentation of legal status, it is not sufficient to establish probable cause that the individual is illegally in the country. A police officer would not be justified in arresting the individual and transporting him to the police station for further questioning without additional evidence.

Certain actions by suspected undocumented immigrants are sufficient to establish probable cause. These actions may give the officers a reason to suspect that the person is an undocumented alien, which would allow the officer to detain and hold the person for further questioning. Failing to provide valid documents, attempting to run away, and attempting to hide are actions that constitute probable cause.

been physically restrained if he had refused to accompany the officers or had tried to escape their custody. The application of the Fourth Amendment’s requirement of probable cause does not depend on whether an intrusion of this magnitude is termed an ‘arrest’ under state law. The mere fact that a petitioner was not told he was under arrest, was not ‘booked,’ and would not have had an arrest record if the interrogation had proved fruitless... obviously do not make petitioner’s seizure even roughly analogous to the narrowly defined [stop and frisk] intrusions in Terry...”

442 U.S. at 212-213.

121. Gonzalez v. City of Peoria, 722 F.2d at 477.
122. Dunaway v. New York, 422 U.S. at 212.
123. 8 U.S.C. § 1357(a) (1994) authorizes immigration officials to request that state, county, or other local law enforcement agency detain a person for the INS for future proceedings under immigration laws. Under § 1357(a) an INS officer may request a detention of an individual when there is probable cause to believe that the person held is (1) an alien, (2) in the United States in violation of immigration laws, and (3) likely to escape before a warrant can be obtained for his or her arrest. INS MISCONDUCT MANUAL, supra note 84, at § 8.4. A police officer may not hold an individual for more than 24 hours. See also Gates v. Superior Court, 193 Cal. App. 3d at 601.; Chairez v. Van Buren, 542 F.Supp. 706 (W.D. Mich. 1982); 8 C.F.R. 287.3 (1992).
125. id.
126. id.
127. id.
128. id.
129. id.
130. INS MISCONDUCT MANUAL, supra note 84, at 4-7.
131. id at 4-8.
may raise the agent’s suspicion as to the citizenship status of an individual. For example, when INS conducts a raid in a place where undocumented immigrants congregate, the Border Patrol does not have sufficient probable cause to arrest individuals merely on their Mexican appearance. But when an individuals at the raid attempts to run away, the arresting officer then has probable cause to believe that the fleeing individual is undocumented and may arrest him or her.

D. Area Control Raids

Since the inception of the Border Patrol, area control raids have been a common enforcement tool for the INS. During the Great Depression, for example, “Operation Deportation” resulted in the repatriation of over 500,000 Mexicans, primarily through area raids. Many of those deported were legal residents and citizens of the United States. In 1954, the INS launched Operation Wetback. With the assistance of local enforcement agencies and other federal agencies, the INS deported over 2 million illegal Mexican migrants over a two year period. In the late-1970s President Carter declared a census moratorium, which put residential neighborhoods off-limits to area control raids. However, when that ban was lifted in 1980, many cities began conducting area control raids once again. In 1991, leaders in the Latino community alleged that the number of area control raids conducted in 1989 and 1990 were on the rise.

132. There are different types of area control raids that the Border Patrol may conduct. The most common are raids of business establishments or factories, ranches and farms, street corners, and residential areas. For the purposes of the paper, I will be focusing on raids conducted on street corners and residential areas.

133. See Rudolfo Acuna, Occupied America (1989); Albert Camarillo, Chicanos in California (1988). But see Harwood, supra note 9, at 3. Harwood argues that tens of thousands of Mexicans left voluntarily because jobs were drying up and because there was pressure from local officials and citizens to expel Mexicans. However, he underestimates the heavy handed tactics and influence used by local officials to expel Mexicans. Id. at 195.

134. Many Mexicans were required to prove their citizenship. Those who could not, which included many lawful immigrants, were deported. Jorge A. Bustamante, The Historical Context of Undocumented Immigration to the United States, 3 AZTLAN 257-81 (1972).

135. Harwood at 5.

136. Harwood at 97.

137. Tracy Wilkinson, Critics Charge That the INS Raids Waste Manpower and Sabotage Statistics, L.A. TIMES, Oct. 30, 1991, at A3. The number of stories printed in newspapers may support the assertion by Latino officials that area control raids are on the rise. Most of these raids were conducted by local police, or with the assistance of local police. See generally Santiago O'Donnell and Carlos V. Lozano, 8 Day Laborers Arrested in Moorpark, L.A. TIMES (VENTURA COUNTY EDITION), Jan. 16, 1992, at B1; Mike Ward, Working Out a Solution, L.A. TIMES, Nov. 10, 1991, at J1 (fifty-five arrests over two month period); Santiago O'Donnell, Mayor of Orange Refuses to Halt Arrests, L.A. TIMES (ORANGE COUNTY EDITION), April 9, 1988, at B3 (over 200 arrests during a six week period); Barry S. Surman, City Defines Police Role in Helping Police, L.A. TIMES (ORANGE COUNTY EDITION), June 7, 1986, at B8 (175 arrests in two raids); Lily Eng, Latinos Protest New Arrests in Costa Mesa, L.A. TIMES (ORANGE COUNTY EDITION), April 18, 1991, at B1; Marita Hernandez, Advocates Assaults of Street Corner Laborers, L.A. TIMES, Feb. 18, 1989, at A23 (more than two dozen arrested); Eric Lichtblau and
It is lawful for local police agencies to assist Border Patrol officials during raids. The practices of local and state agencies in assisting INS agents during area control raids vary from state to state, and even city to city. While in some cities, local police agencies cooperate with the INS, other cities have passed ordinances limiting INS and police cooperation.

California state law provides that state and local agencies, acting on their own, lack authority to enforce immigration laws. Local police cannot initiate immigration-related enforcement activities. Police officers may not approach and ask for citizenship status, simply on a suspicion that the person is undocumented. A police officer who does, is violating federal law. City police officers, therefore, may not conduct raids on their own for the sole purpose of enforcing immigration laws.

Local police agencies, however, may assist INS in enforcement operations that are initiated and directed by the INS. In such situations, if INS officers are employing the assistance of local police agencies, the police agencies are acting under the direction of the INS. For example, in Zepeda v. United States Immigration and Naturalization Service, 753 F.2d 719 (9th Cir. 1983), the United States Court of Appeals for the Ninth Circuit ruled that the district court abused its discretion in granting a preliminary injunction that prevented INS officials from seeking the assistance of local or state agencies in the enforcement activities conducted pursuant to 8

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Gebe Martinez, INS Raid Tactics To Be Investigated, L.A. TIMES (ORANGE COUNTY EDITION), Sept. 20, 1991, at A1 (216 arrests); INS Raids Latino Neighborhoods in Wake of Los Angeles Riots, NOTIMEX, May 5, 1992 (raids conducted in Latino neighborhoods by Los Angeles police officers, the National Guard, and federal troops); First Riot, Then Duty, USA TODAY, May 7, 1992, at 3A (Los Angeles police turned over nearly 500 immigrants to INS).

138. IMMIGRATION LAW AND CRIMES, supra note 81, § 8.2. For example, the San Diego Sheriff’s Department follows a different policy than the San Diego Police Department.

139. See SAN FRANCISCO, CAL., ORDINANCE ch. 12H. Other cities that have passed ordinances that limit INS and police cooperation include, Los Angeles, CA, reprinted in 63 INTERPRETER RELEASES 118, 135-36 (Feb. 7, 1986); Seattle, WA, reprinted in 63 INTERPRETER RELEASES 118, 136-38 (Feb. 7, 1986); Oakland, CA, reprinted in 63 INTERPRETER RELEASES 643-46 (July 28, 1986); Cambridge, MA, reprinted in 62 INTERPRETER RELEASES 364, 382-85 (April 19, 1985); See also New York Mayor Memorandum, reprinted in 62 INTERPRETER RELEASES, 1056, 1070-71 (Nov. 1, 1985) (prohibiting city agencies from cooperating with the INS). Other cities that have passed Sanctuary Ordinances include Madison, Wis.; Sacramento, West Hollywood, San Jose, and Santa Barbara, Cal.; Olympia, Wash.; Santa Fe, N.M.; Chicago, Ill.; Duluth, Minn.; Burlington, Vt.; Ithaca, N.Y.; Takoma Park, Md.; State of New Mexico and the State of Massachusetts. Ignatius Bau, Cities of Refuge: No Federal Preemption of Ordinance Restricting Local Government Cooperation with the INS, 7 La Raza L.J. 5, 52 (1994).

140. See IMMIGRATION LAW AND CRIMES, supra note 81 at 8-2; See also Gates v. Superior Court, 193 Cal. App. 3d at 214-15; Gonzalez v. City of Peoria, 722 F.2d at 476-77.

141. See IMMIGRATION LAW AND CRIMES, supra note 81 at 8-3.


143. Id.

144. See IMMIGRATION LAW AND CRIMES, supra note 81 at 8-3.

U.S.C. § 1357. The Ninth Circuit reasoned that the California Penal Code does not prohibit police officers from aiding INS officers. Furthermore, the Court reasoned that cooperation between local and INS officials may help avert problems that arise during INS investigations, such as crowd control difficulties or traffic tie-ups.

Similarly, Attorney General Smith encouraged cooperation during raids between local and federal officials in his advisory opinion issued on February 10, 1983. The policy guidelines for state and local law enforcement officials in the enforcement of federal immigration laws read as follows:

INS agents and local officers may also engage in joint operations which are expected to uncover violations of both immigration and state laws. The INS recognizes that local authorities provide valuable support for mutual law enforcement efforts. Within this scope of such cooperative efforts, INS agents will remain responsible for all arrests of immigration violations.

Local police may cooperate with INS officials in the enforcement of immigration laws. This cooperation, however, is limited to providing assistance to INS during raids and to the exchange of information. Local police may place immigration holds on criminal offenders who are suspected to be undocumented immigrants, but this is limited to a 24 hour period. When conducting area control raids, local police are limited in the scope of their participation. They may provide traffic control or other types of support, but they may not directly arrest for immigration related offenses. When local police and other city officials detain, question, or arrest undocumented immigrants solely for suspected undocumented status, they are enforcing the civil provision of the INA which is beyond their authority.

V.

Policy Reasons for Abolishing Local Police Cooperation With the INS

While the law permits state and local police cooperation with the INS, policy concerns dictate that some aspects of police and INS cooperation be abolished. Police, for example, should not be permitted to assist Border Patrol agents in conducting raids. This type of cooperation, in my opinion,

146. 753 F.2d at 73; see also People v. Sanchez, 195 Cal. App. 3d 42, 46 (1987) (indicating that cooperation between different law enforcement agencies from the Narcotics Task Force and the Border Patrol was permissible).
147. Id.
148. Id.
149. See 60 INTERPRETER RELEASES, 172-73 (Mar. 4, 1983).
150. In my opinion, it is difficult to argue for prohibiting police and INS to exchange information when it comes criminal offenders. For example, police should be allowed to exchange information with INS when an undocumented immigrant has committed an aggravated felony. However, if an undocumented immigrant has committed a misdemeanor, then there should be no exchange of information. See San Francisco, Cal., Ordinance ch. 12H, sec.2.
does more harm than good. It results in the increased victimization of immi-
igrants. Furthermore, because local police agencies are not trained to en-
force immigration laws, the civil rights of many legal permanent residents
and United States citizens are violated.

A. Immigrants as Victims of Crimes

Perhaps the most compelling reason to eliminate police and INS coop-
eration is to assure the undocumented immigrant community that the police
is not the INS. Because immigrants many times equate local police with
INS, they will not report crimes committed against them because they fear
doing so will result in deportation.

Undocumented immigrants are perhaps the most under represented
population in the United States. They are ignored by politicians because
they cannot vote; they are ignored by the legal system because they have no
money. They are not, however, ignored by criminals. Undocumented im-
migrants are the perfect victims of crimes. A recent study entitled “The
Color of Justice,” supports this assertion. The study reports that undocu-
mented immigrants are easy targets for employer exploitation, consumer
fraud, housing discrimination, and criminal victimization.\footnote{151}

The under reporting of crimes by victims is a serious problem. In the
general population, a national survey conducted in 1988 by the United
States Department of Justice found that victims report crimes less than half
the time.\footnote{152} Violent crimes, such as robberies and assaults, were reported
almost 50\% of the time, while household crimes, such as burglaries were
reported about 40\% of the time.\footnote{153} The study also found that reporting
levels were even less in poor and minority communities.\footnote{154}

While no study has ever been done on the under reporting of crimes
against undocumented immigrant communities, most experts concede that
the reporting levels for immigrants and refugees are much lower than the
general population statistics.\footnote{155} Instances of sexual harassment and slav-

\footnote{151. DR. BRIAN OGAWA, COLOR OF JUSTICE, 96 (1992).}
A14.}
\footnote{153. Id.}
\footnote{154. Id.}
\footnote{155. See Rotella, supra note 152 (“Even with people with legal status, there is a low reporting
level. What about people who aren’t here legally? You could have a crime wave going on and have
little knowledge of it.”).}
ery, rape, economic exploitation, thefts, and physical assaults have been well documented. In most of these instances, the victims did not report the crimes to police authorities. In 1991, for example, the Pacoima Police Department determined that more than half of the robberies of pushcart vendors were probably unreported.

Because many undocumented immigrants do not report crimes committed against them, criminals prey on them. A four month investigation by the San Francisco Examiner revealed that immigrants in the San Francisco Bay Area are beaten, abused and intimidated because of their legal status in

156. Claudia Garate, a Chilean immigrant, testified at a hearing on undocumented immigrant women that she was enslaved for thirteen months by her employers. Ms. Garate testified that she was on call 24 hours a day, slept on an air mattress on the floor, was responsible for taking care of the baby at night, and served breakfast in bed. Her employer agreed to pay for her living expenses and agreed to place $50 a month into a bank account for her. However, no money was ever placed in the bank account. She was constantly told not to talk to anyone about her situation and was threatened that she would be turned over to the INS for deportation if she did. See Carla Maranucci, INS Pressed to Allow Some Aliens, S.F. EXAMINER, May 2, 1993, at B1; Carla Maranucci, A Dream Turned to Slavery: Immigrant Women Tell Tales of Horror, S.F. EXAMINER, Mar. 9, 1993, at A1; Suzanne Espinosa, Remembering the Pain: Female Immigrants Tell of Abuse, S.F. CHRON., Mar. 9, 1993, at A11.

157. Maria de Jesus Ramos, a Mexican immigrant who was hired as a housekeeper, testified as a witness in a court hearing that she was repeatedly raped by her employer. Carla Maranucci, Shattered Dreams-Exploited Immigrants: Despair Drove Her to Come Forward, S.F. EXAMINER, Jan. 10, 1993, at A11. The fact that Ms. Ramos brought charges against the employer (that were later dropped) and testified as a witness in another charge of rape against the same employer, however, was the exception, and not the rule. Most undocumented women who are raped, harassed, or victims of domestic violence rarely report the crimes to the local authorities. Id. See also Michael Connelly, Jury Acquits INS Officer in Rapes, L.A. TIMES, Feb. 28, 1992, at B1; James Quinn, Woman Says Ex-INS Agent Raped Her, L.A. TIMES, Jan. 14, 1992, at B3; Sebastian Rotella, Crime, Abuses Hound Latino Immigrants, L.A. TIMES, Dec. 30, 1991, at A1; Jorge Banales, Abuse Among Immigrants, WASH. POST, Oct. 16, 1990, at ES; OGAWA, supra note 151 at 97. Recently, an INS officer, James Riley, was charged with six counts of rape, six counts of kidnapping and seven counts of false imprisonment committed against seven Latina women. He was acquitted of all charges, with the exception of one count of kidnapping. All his victims were undocumented immigrant women. One of the troubling aspects of this case is that only one of his victims initially reported the rapes or attempted rapes to the local authorities. When police searched Riley's apartment, they found dozens of identification cards belonging to young women. These women possibly were also victims who failed to report the crimes. Michael Connelly, Jury Acquits INS Officer in Rapes, L.A. TIMES, Feb. 28, 1992, at B3.

158. Many instances arise where employers refuse to pay or underpay undocumented immigrants for work performed. This is common among farmworkers, day laborers, and domestic employment. In one situation, Mexican laborers were paid $1 an hour at a Ventura County flower farm surrounded by barbed wired. The laborers were controlled through a "regimen of psychological abuse and terror." Their heads were shaved and they worked all the time. Employers screamed at them constantly and threatened them with deportation. OGAWA, supra note 151 at 96.

159. Pushcart vendors are often targeted of crimes. Because they are distrustful of banks or are unable to secure bank accounts due to their illegal status, many carry all their earnings. This makes them perfect targets. See Rotella, supra note 152.

160. Dr. Brian Ogawa describes a situation where a twenty year old Mexican day laborer enters a small San Diego market to purchase groceries. When he enters the store, several white males throw "... a plastic grocery bag over his head, knotting it tightly around his neck so that he has difficulty breathing. They then punch and kick him repeatedly." OGAWA, supra note 151 at 96-97.

161. See Rotella, supra note 152.
the United States.\textsuperscript{162} Many fear that reporting crimes to local authorities will result in their deportation.\textsuperscript{163}

When police conduct joint raids with INS, and when police turn over victims of crimes to immigration authorities, they are sending the wrong message to immigrant communities. That message is: If you report crimes to the police, you will be deported. These cases also demonstrate the tremendous amount of distrust toward local authorities. Pushcart vendors who are robbed, women who are raped, domestics who are trapped as indentured servants, day laborers who are not paid wages, and those who are physically assaulted will not report these crimes to the police if they fear deportation. Immigrants fail to report these crimes for this reason.\textsuperscript{164}

Police and INS cooperation will not lead to an increase in trust between the immigrant community and local police. It will not lead to an increase in the reporting of crimes committed against them. Rather, it has the reverse effect. Immigrants who witness a raid, such as the Orange Park Villas or the City of Corona raids, are going to equate the police with "La Migra." As such, they will not report to the police when they are victimized. Not only will they fail to report crimes committed against them, but they are not likely to report crimes they witness committed against legal residents or citizens. Local police actually do themselves a disservice by alienating a large sector of the Latino population which might otherwise cooperate with local law enforcement agencies in solving crimes against others. In the process, they not only hurt undocumented persons, but society as a whole.

Unless the policy of cooperation changes, immigrants will continue to underreport crimes committed against them and crimes which they witness committed against others. Furthermore, criminals will continue to prey on them with impunity because there will be no consequence. Undocumented immigrants have to know that reporting crimes to local authorities will not result in their deportation. The only way to accomplish this is to limit police cooperation with the INS.

\begin{itemize}
  \item \textsuperscript{163} The Chilean immigrant, Claudia Garate, who testified that her employers abused her, has been ordered deported by U.S immigration authorities. Carla Maranucci, \textit{INS Pressed to Allow Some Aliens}, S.F. EXAMINER, May 2, 1993, at B1. Some instances have been reported where police cooperate with the INS, which contributes to the fear of deportation. For example, when two farmworkers sought the help of San Diego Sheriff officers to recover unpaid wages, they were turned over to the INS. See Smith, supra note 34. The raids at the Orange Park Villas, where local police and city code enforcement officials assisted Border Patrol officials in arresting suspected undocumented immigrants, also contributed to distrust of the police. Witnesses to these joint efforts lead many immigrants to suspect that police and INS are the same. See Reyes, supra note 11.
  \item \textsuperscript{164} \textit{See supra}, notes 152,157 and 163.
  \item \textsuperscript{165} "La Migra" is slang for the INS.
\end{itemize}
**B. Local Police Are Not Adequately Trained to Enforce Immigration Laws**

Immigration and Naturalization officers are specifically authorized by the Immigration and Nationality Act to enforce immigration laws.\(^{166}\) As such, they receive special training to enforce immigration laws. Part of this training includes being familiar with the wide variety of documents which indicate that someone is in the U.S. legally. INS agents receive intensive instruction in immigration and naturalization law, training in service operational tactics, and in field training.\(^{167}\)

Local police, on the other hand, receive no specialized training or instruction to enforce immigration laws.\(^{168}\) At most, they will receive a cursory briefing on a very complex issue, the issue of immigration enforcement.\(^{169}\) Without special training, local police are not capable of determining who is “legal” and who is “illegal.”\(^{170}\) They are not capable of determining when it is appropriate to detain or arrest an individual for immigration violations.

Because local police are not trained to enforce federal immigration law, the rights of many people are violated. It is a common occurrence that local police and other officials make arrests based strictly on an individual’s physical appearance. U.S. citizens and legal permanent residents may be detained for simply “looking Mexican.”\(^{171}\) When this is done, local officials, and even Border Patrol agents, are violating the law.\(^{172}\) For example, in *United States v. Mallides*, it was pointed out that local police made it a practice to “stop ‘all cars with Mexicans in them that appear to be sitting [erect] and packed in [three in the front and three in the back]. . .’ ”\(^{173}\) In

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166. 8 U.S.C. § 1357 authorizes immigration officers to enforce violations of the INA.
167. People v. Barajas, 81 Cal. App. 3d at 1015 (Cruz, J., dissenting).
168. Id.
169. See de la Vina Memorandum *supra* note 10.
170. Justice Reynoso in his dissenting opinion in People v. Barajas, 81 Cal. App. 3d at 999, points out the complexities in enforcing immigration laws. He states: “[d]elicate legal factual determinations must be made distinguishing between ‘legal’ and ‘illegal aliens;’ among those who are ‘illegal’ there are categories of persons who are non-deportable and others who are deportable. . . .If a person is a citizen, he may not be deported; if he is not a citizen, he may be deported. Citizenship, in turn, often depends on the citizenship of the parents, place of birth, registry, or non-registry of the individual’s birth. Suffice it to say the complexities are not those within the competence of local enforcement officers.” Id., at 1016-17.
171. H.G. Reza, *Joint Police-Border Patrol Crackdown Draws Fire*, L.A. TIMES (San Diego County Edition), Sept. 10, 1991, at B5. One report estimated the 52% of people detained or questioned by Border Patrol officials were legal residents. Id.
172. See *supra* notes 101-118 and accompanying text.
the City of Orange raids, at least two individuals, who were legal residents, were detained by Border Patrol officials and escorted to their apartment unit to provide documentation on their legal status.\textsuperscript{174}

Local police and other city authorities are not properly trained to enforce federal immigration laws. They do not have the expertise in distinguishing between legal residents and undocumented immigrants. When local police enforce or assist the INS, the potential for abuse of individual's civil rights is great. Individuals will continue to be imprisoned simply on suspicion that they are undocumented without being charged for any crime. Those most affected by this policy, will continue to be legal residents and U.S. citizens of Mexican or Hispanic descent.

VI.
CONCLUSION

State and local police are authorized to enforce federal immigration law. This authority, however, is limited to the enforcement of criminal violations of the INA. Local police may also assist the INS in conducting raids, placing immigration holds on individuals suspected of undocumented status, and exchanging information with INS officials. They can also assist INS. State and local police, however, may not enforce the civil provisions of the INA.

Policy concerns dictate that police cooperation with INS be further limited. While it would be unfeasible to restrict all cooperation between local and federal agencies, it is reasonable to prohibit local police assistance in conducting raids. Visible police assistance to the INS may result in many undocumented immigrants equating local police with the INS. This will discourage immigrants from reporting crimes when they are victimized and crimes which they witness, and will lead to more abuses against them and against the communities in which they reside.

Finally, because local police do not have the expertise in the enforcement of immigration laws, the rights of many individuals may be violated. Legal residents and U.S. citizens of Hispanic descent may be detained, questioned, or arrested for simply looking Mexican, which is a violation of our Constitutional and Human Rights.

\textsuperscript{174} See, de la Vina Memorandum \emph{supra} note 10.