



STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE U.S. SENATE COMMITTEE ON THE JUDICIARY

**HEARING ON “OVERSIGHT OF THE ADMINISTRATION’S MISDIRECTED
IMMIGRATION ENFORCEMENT POLICIES: EXAMINING THE IMPACT ON
PUBLIC SAFETY AND HONORING THE VICTIMS”**

July 21, 2015

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The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our research and analysis regarding immigration enforcement.

The Immigration Council is saddened by the tragic murder of Kathryn Steinle, which has prompted today’s hearing. We share the public’s and policymakers’ desire to understand what happened and whether there are lessons to be learned. At the same time, we caution that anecdotes are no substitute for hard data and that our laws and policies must be grounded in analysis of the facts, thoughtful discussion, and practical solutions.

For too long, U.S. immigration laws and policies have been shaped by fear and stereotype rather than by empirical evidence. Empirical data shows that immigration is associated with *lower* crime rates and immigrants are *less likely* than the native-born to be serious criminals. Yet, we have spent billions of dollars deporting millions of people who have committed only immigration violations, and we have focused on quantity, not quality of deportations, while separating families.

There is no doubt that our nation is safer when everyone is accounted for and fully documented. A major benefit of comprehensive immigration reform is that every person in this country would get documents and be “on the grid” of U.S. life, with driver’s licenses, social security numbers, and other forms of identification. Such a system would help us make smart national security decisions and differentiate those who are law-abiding from those who are not. Comprehensive immigration reform is practical policy, and more productive than finger-pointing at local officials or demonizing an entire group for the mistakes of a few.

Instead of debating the patchwork of local immigration enforcement laws that have developed over the past several years, Congress should get to the important job of passing immigration

reform. Calibrating our system to get everyone on the books would go further towards securing our communities than any other piece-meal measures currently on the table. It also would allow us all to benefit from the economic potential of immigrants.

We submit to you below (1) our recent research regarding the relationship between immigration and crime, which confirms that immigrants are less likely to commit serious crimes or be behind bars than the native-born and that high rates of immigration are associated with lower rates of violent crime and property crime; (2) our paper outlining the legal implications of detainers, and (3) our analysis regarding the failures of the “enforcement first” approach to immigration reform.

I. Immigrants Are Not Likely to Commit Crimes

For more than a century, innumerable studies have confirmed two simple yet powerful truths about the relationship between immigration and crime: immigrants are less likely to commit serious crimes or be behind bars than the native-born, and high rates of immigration are associated with lower rates of violent crime and property crime. This holds true for both legal immigrants and the unauthorized, regardless of their country of origin or level of education. The Immigration Council’s report, *The Criminalization of Immigration in the United States*, by Walter A. Ewing, Ph.D., Daniel E. Martínez, Ph.D., and Rubén G. Rumbaut, Ph.D, available at <http://immigrationpolicy.org/special-reports/criminalization-immigration-united-states>, explains the data and highlights the following:

Higher Immigration is Associated with Lower Crime Rates

- Between 1990 and 2013, the foreign-born share of the U.S. population grew from 7.9 percent to 13.1 percent and the number of unauthorized immigrants more than tripled from 3.5 million to 11.2 million.
- During the same period, FBI data indicate that the violent crime rate declined 48 percent—which included falling rates of aggravated assault, robbery, rape, and murder. Likewise, the property crime rate fell 41 percent, including declining rates of motor vehicle theft, larceny/robbery, and burglary.

Immigrants are Less Likely than the Native-Born to Be Behind Bars

- An analysis of data from the 2010 American Community Survey (ACS) indicates that roughly 1.6 percent of immigrant males age 18-39 are incarcerated, compared to 3.3 percent of the native-born. This disparity in incarceration rates has existed for decades, as evidenced by data from the 1980, 1990, and 2000 decennial censuses.
- The 2010 Census data reveals that incarceration rates among the young, less-educated Mexican, Salvadoran, and Guatemalan men who make up the bulk of the unauthorized population are significantly lower than the incarceration rate among native-born young men without a high-school diploma.
 - In 2010, less-educated native-born men age 18-39 had an incarceration rate of 10.7 percent—more than triple the 2.8 percent rate among foreign-born Mexican men, and five times greater than the 1.7 percent rate among foreign-born Salvadoran and Guatemalan men.

Immigrants are Less Likely Than the Native-Born to Engage in Criminal Behavior

- Several studies have found that immigrants are less likely than the native-born to engage in either violent or nonviolent “antisocial” behaviors; that immigrants are less likely than the native-born to be repeat offenders among “high risk” adolescents; and that immigrant youth who were students in U.S. middle and high schools in the mid-1990s and are now young adults have among the lowest delinquency rates of all young people.
- Immigrants are a self-selected group of people who tend to be highly motivated. They have left their homes and moved to a new country to improve their lives and the lives of their children. There is a great incentive to stay out of trouble.

II. Detainers Raise a Host of Legal Questions

In considering state and local responses to Immigration and Custom’s (ICE) practice of issuing “detainer” requests—a request to local law enforcement to hold a noncitizen—it is important to remember that immigration detainers, as ICE practiced them until November 2014, have been ruled illegal and unconstitutional by several courts. Those rulings are a major reason why, among others, the Secretary of Homeland Security Jeh Johnson stated that the previous system wasn’t working. Returning to that system, or legislatively mandating it, is not a viable legal option.

The Immigration Council’s report, *The Faulty Legal Arguments Behind Immigration Detainers*, by law professor Christopher Lasch, available at <http://www.immigrationpolicy.org/perspectives/faulty-legal-arguments-behind-immigration-detainers>, explains how immigration detainers work and why they were unconstitutional. Put simply, a detainer must be based on probable cause of a violation—which ICE detainers were not. Localities were subjecting themselves to risk for liability for holding someone under an ICE detainer.

Under ICE’s new Priority Enforcement Program (PEP), the federal government now will request notification of release rather than a detainer for many individuals meeting its priorities. ICE has said that will provide probable cause to justify detainers in “special circumstances.” Nonetheless, many concerns persist regarding whether this program satisfies the Fourth Amendment requirements. One thing that is clear is that returning to the pre-PEP use of detainers is not an option.

III. “Enforcement First” Has Proven to be Unsuccessful

As explained in the Immigration Council’s report, *The Fallacy of “Enforcement First”* at <http://www.immigrationpolicy.org/just-facts/fallacy-enforcement-first>, the United States has been pursuing an “enforcement first” approach to immigration control for more than two-and-a-half decades—and it has yet to work. The U.S. currently spends more on immigration enforcement—\$18 billion per year—than all other federal law enforcement combined.¹ Since the last major legalization program for unauthorized immigrants in 1986, the federal government

¹ Consolidated Appropriations Act, 2014, P.L. 113-76, 128 Stat. 5, 248-52 (Jan. 17, 2014), at <http://www.gpo.gov/fdsys/pkg/PLAW-113publ76/pdf/PLAW-113publ76.pdf>; Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, MIGRATION POLICY INSTITUTE (2013), www.migrationpolicy.org/pubs/enforcementpillars.pdf.

has spent over \$200 billion on immigration enforcement.² Yet during that time, the unauthorized population has tripled in size to 11 million. This is a testament that enforcement measures alone pale in the face of a strong economy where the demand for foreign workers outstrips the available visas. Meanwhile, punitive laws separate families unnecessarily despite the natural desire of immigrants to be reunited with their families.

The American Immigration Council hopes that our research and analysis helps foster a practical, fact-based conversation about what we can do to ensure that our immigration system works for everyone. “Enforcement-only” proposals rely on stereotypes, not evidence, and ignore that this approach has proven unsuccessful. Congress has the power to make our communities safer by passing comprehensive immigration reform.

² Marc R. Rosenblum, Migration Policy Institute, Testimony to House Judiciary Committee, *Examining the Adequacy and Enforcement of Our Nation’s Immigration Laws* (Feb. 3, 2015), p. 18, at http://judiciary.house.gov/?a=Files.Serve&File_id=31971212-6FDB-4FE6-ABBB-406B7C673B21.