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[Fundamental Fairness: A Report on the Due Process Crisis in New York City Immigration Courts](#), from the **Immigration Court Observation Project of the National Lawyers Guild** (May 2011)

This report is a summary of 414 immigration hearings observed by New York City law students in New York City's Immigration Courts from October 2009 through November 2010. Although numerous sources have documented inadequacies of the United States' immigration laws and Immigration Court system, this report provides a unique perspective on the difficulties experienced by individuals and communities affected by the Immigration Court system in New York City.

- **Findings:**

In the fifty-seven bond hearings observed, ICOP found that denial of bond, or high bond set, contributed to the difficulties immigrants faced in proceedings.

Detainees reported problems in detention facilities, including inadequate medical care and difficulties accessing counsel.

ICOP observations indicate that immigration proceedings frequently fail to comport with the fundamental fairness required by the right to due process. Because of inadequate, incorrect, or unclear interpretation and other deficiencies in language access, respondents who have limited English proficiency could not participate fully in their proceedings.

Of the non-bond hearings observed by ICOP, 37% of observers noted significant conversations held off the record that often weren't translated to the respondent nor summarized properly for the record.

Many respondents lacked representation altogether, and among those who acquired counsel a significant number of attorneys failed to appear in court, appeared unprepared, or otherwise seemed to provide ineffective representation to their clients.

- **Recommendations:**

DHS should minimize detention both by exercising discretion in taking respondents into custody, and by employing alternatives to physical incarceration when monitoring is statutorily required.

Immigration Judges should set affordable bond for all eligible respondents.

EOIR regulations and individual Immigration Judges should ensure adequate language access in Immigration Court proceedings.

EOIR regulations and individual Immigration Judges should promote transparency and professionalism in Immigration Court proceedings.

Congress should establish the right to counsel in immigration proceedings.

[Disappearing Parents: A Report on Immigration Enforcement and the Child Welfare System](#),
from **The University of Arizona Southwest Institute for Research on Women, College of Social and Behavioral Sciences, Bacon Immigration Law and Policy Program, James E. Rogers College of Law** (May 2011)

This report examines the interplay of immigration enforcement and the child welfare system. Immigration enforcement separates parents from their children and leaves the child welfare system to care for the kids whose parents are detained or deported. The child welfare system is inflexible toward the unique needs and constraints of immigrant families. These systemic failures place an immense emotional toll on immigrant parents and children.

- **Findings:**

Child welfare personnel talk about how parents ‘disappear’ once they enter the immigration enforcement system. These parents often find themselves in worse conditions than if they had been incarcerated, because immigration detention facilities lack many of the services and programming available in prisons.

A climate of fear prevents parents from providing kinship placements for their children out of concern for their relatives who may also lack immigration status. This fear is further exacerbated by the intermingling of local, state, and federal immigration enforcement. As a result, children often end up in the foster care system.

The child welfare system lacks guidelines on how to work with undocumented family members, meaning the outcome is highly dependent on the CPS caseworkers, attorneys, and judges involved in the proceeding rather than a set procedure.

Child welfare uses statutory deadlines that are difficult to reconcile with the unpredictable timing of immigration cases.

Consular offices are under-utilized but can play a valuable role in assisting with placing children with family in the parent’s home country.

- **Recommendations:**

Develop a procedure for early identification of cases in which immigrant parents in detention have children in the child welfare system. The use of discretion, parole, and alternatives to detention should be increased in these cases. Train personnel to be familiar with the challenges facing detained parents with children in state custody.

Improve detention facilities to provide more services for parents and children, such as parenting classes. Provide procedures that would allow parents to appear in person at child welfare hearings.

Establish mandatory training for personnel in the child welfare system to be familiar with immigration detention and deportation proceedings. Create liaison in each CPS region for case workers to contact when immigration issues arise.

[The Cost of Failure: The Burden of Immigration Enforcement](#), from the **Drum Major Institute for Public Policy** (April 2011)

This report investigates the local costs of enforcing federal immigration laws. Many communities across the United States are dealing with budget shortfalls while trying to preserve important public services. Despite this fiscal emergency, current immigration laws are being enforced more rigorously than ever—and many economically distressed communities are left bearing the cost.

- **Findings:**

Using local law enforcement to enforce immigration laws places increased strain on local governments. 287(g), a joint federal-local enforcement program, costs many localities more than a million dollars per year that are unreimbursed. Mecklenburg County, NC, spent more than an estimated \$5 million to set up and operate the 287(g) program in its first year. Government Accountability Office reports indicate that 62 percent of local law enforcement agencies that participate in 287(g) receive no federal reimbursement for any costs associated with the program.

Municipalities are reimbursed for less than a quarter of the costs of jailing immigrants who have committed crimes, an expense incurred under every federal-local enforcement programs.

Local immigration enforcement negatively impacts public safety by diverting police time and resources away from serious criminal investigations. In Maricopa County, Arizona, local deputies arrived late two-thirds of the time to the most serious 911 calls when they began performing immigration enforcement duties. Arrest rates for criminal investigations sharply declined.

Local immigration enforcement negatively impacts community policing and deters crime reporting. In Salt Lake City, UT, a study done by the Consortium for Police Leadership in Equity found that one in three city residents refuse to report drug-related crimes when local law enforcement has the power to detain individuals based on immigration status.

Although Immigration and Customs Enforcement (ICE) reportedly targets non-citizens who have committed serious crimes, 57 percent of immigrants identified by the Criminal Alien Program and 65 percent of those identified by 287(g) in FY 2009 were never convicted of a crime. Since October 2008, Secure Communities has placed 52,000 non-criminal immigrants in ICE custody.

- **Recommendations:**

Effective immigration enforcement requires a comprehensive reform of immigration policy. There must a more flexible visa program to facilitate legal entry and a pathway that allows the current undocumented immigrant population to obtain legal residence and citizenship status.

[Sent “Home With Nothing: The Deportation of Jamaicans with Mental Disabilities](#) by Georgetown Law Human Rights Institute Fact & Finding Mission (April 2011)

This report identifies and analyzes the impact of U.S. deportation policies and practices on mentally disabled persons from Jamaica after they are ordered removed and are deported from the United States.

- **Findings:**

The United States does not communicate vital information to Jamaica about persons with mental disabilities in advance of their deportation, which hinders access to mental health treatment, personal property, and travel documents during detention, staging, and the deportation itself.

Family support promotes the wellbeing of persons with mental disabilities in detention after deportation both emotionally and financially. U.S. detention policies and practices impede effective communication between detained persons with mental disabilities and family in the United States and Jamaica prior to deportation.

Access to medication, medical records, and medical treatment is challenging for deported persons with mental disabilities due to limited physical and economic accessibility, low standards of care, and stigma, among other barriers.

Due to low socioeconomic status, stigma, and barriers to receiving family support, deported persons with mental disabilities are at high risk for homelessness and high rates of unemployment and exploitation.

- **Recommendations:**

The U.S. Department of Homeland Security, in consultation with other appropriate government agencies should establish a memorandum of understanding (MOU) with its corresponding branch in the receiving country’s government to advance the best practices, policies, and procedures for the deportation of persons with mental disabilities.

ICE should improve communication with the families of the individual being deported including the U.S.-based family, and the receiving country-based family so they can better assist the individual with a mental disability with reintegration.

ICE should establish a process for obtaining the consent of persons ordered deported to release their medical records to medical professionals in the receiving country for review and analysis.

ICE should provide persons awaiting deportation with at least seven days of medication in appropriate dosages pursuant to ICE/Enforcement and Removal Operations Medical Standards. If it may take longer than seven days to access medication in the receiving country, ICE should provide medication for the estimated amount of time until proper medication is received in the receiving country.

ICE should work to identify and assist with securing appropriate housing and employment for mentally disabled persons awaiting deportation before they arrive to the receiving country.

[Police and Immigration: How Chiefs Are Leading their Communities through the Challenges](#), from the **Police Executive Research Forum** (March 2011)

This report explores the role of six leading police departments in their communities' immigration debates, and how they navigated the challenges and pressures surrounding the immigration issue. It provides information about what is currently being done regarding immigration enforcement.

- **Findings:**

Local police and sheriffs' departments increasingly are being drawn into a national debate about how to enforce federal immigration laws.

The current system creates a number of challenges for local police, such as understanding an extremely complicated set of federal laws and policies, and working to develop trust and cooperation with undocumented immigrants who are victims of or witnesses to crime.

Many local communities and police agencies are struggling to devise local policies and strategies that reflect their own values and are consistent with the federal government's efforts, which seem to ebb and flow with changing Administrations.

- **Recommendations:**

Federal agencies and the Congress should consult with state and local police agencies as they craft immigration policies and legislation. The inclusion of local law enforcement in the policy-making process will result in more realistic practical and informed policies that have the support of local communities.

National comprehensive immigration reform legislation should not be delayed any longer. New legislation should include provisions regarding guest workers, provision of permanent legal status, and employer and family-based visa systems.

Local police should be both (1) consulted prior to major enforcement actions in their communities and (2) informed about arrests in their communities.

ICE should increase its coordination and responsiveness to local police agencies.

[Deeper Into the Shadows: The Unintended Consequences of Immigration Worksite Enforcement](#), from the **Immigration Policy Center** (February 2011)

This report examines the effects of increased enforcement of immigration laws at worksites. As Immigration and Customs Enforcement (ICE) has shifted their enforcement strategy to focus on employment status, adverse consequences have resulted. Many undocumented immigrants have

lost their jobs and been driven into the underground economy. This trend hurts not only undocumented immigrants but also harms the entire population of the United States.

- **Findings:**

ICE has shifted its enforcement tactics from using worker raids and roundups to checking the documents of new hires must submit to employers when filling out I-9 “Employment Eligibility Verification” forms. If these papers do not pass inspection, the company is forced to fire them. In fiscal year 2010, auditors requested the records of 2,196 employers. The review examined nearly 300,000 I-9 forms, and found nearly nine percent of them to be fraudulent. ICE auditors identified a total of 25,690 forms containing suspected fake documents.

Individuals who lose their jobs as a result of worksite enforcement policy are not likely to return home on their own volition, especially if they face bleak economic prospects or possible violence. Instead, these individuals enter America’s underground cash economy, estimated at one trillion dollars a year.

The underground cash economy poses a myriad of problems to immigrants as well as U.S. citizens. Within this environment, immigrants are more vulnerable to worker exploitation. Crimes are more likely to go unreported. Furthermore, billions in tax revenue are lost each year as immigrants are paid under the table.

- **Recommendations:**

The current immigration system is harming both immigrants and U.S. citizens. Worksite enforcement is only driving undocumented immigrants into the underground cash economy. The only way to properly address these issues is to overhaul the current immigration system so it can properly meet the needs of the 21st century.

[Costs and Consequences: The High Price of Policing Immigrant Communities](#), from the **ACLU of Northern California** (February 2011)

This report examines the costs and consequences incurred by local law enforcement in California as a result of enforcing federal immigration law. When police interact with individuals, routine procedures, such as traffic stops, can result in immigration-related consequences. In a time requiring great fiscal restraint, it is essential that law enforcement agencies are able to minimize the monetary and social costs of incidental immigration enforcement.

- **Findings:**

Between 2008 and 2010, of all those deported nationwide under Secure Communities, only 28 percent were convicted of crimes under ICE’s “Level 1 Priority” group and 25 percent were “non-criminals.” Over 30,000 immigrants deported were stopped by Local Law Enforcement Agencies (LLEA) for common traffic violations.

Police and sheriff’s departments that participate in federal immigration enforcement risk isolating large portions of the population through unlawful racial profiling since

at least 50 percent of California residents are Asian or Latino and 9.9 million are foreign born. This leads to discriminatory arrests and stops at vehicle checkpoints.

Many of the LLEAs in Northern California who claim not to engage in immigration enforcement incur costs through policy choices regarding immigration—for example, through “optional” detainer programs. With a statewide \$25.4 billion budget deficit, this is pushing LLEAs to cut staff and sometimes shut down completely.

When immigrant victims believe that local officers act as immigration officers, their distrust often deters them from seeking help thus endangering the public.

- **Recommendations:**

Provide LLEAs with detailed information about detainers, including their voluntary nature, lack of reimbursement, and encourage them to limit detainers to those who may have committed serious or violent crimes in an effort to preserve their resources.

Provide training and procedures to ensure uniform application of department policies in order to prevent racial discrimination. LLEAs should monitor compliance by tracking indicators including the name of the arresting officer, the place of the stop or arrest, the stated reason for the stop, etc.

Notify inmates about their rights and consulate information especially when ICE agents attempt to seek access to the immigrants.

[Immigration Enforcement Fiscal Overview: Where are We, and Where are We Going](#), from the **National Immigration Forum** (February 2011)

This report analyzes the immigration enforcement strategy that is currently being employed by the United States government. The immigration system is broken and is in desperate need of reform. Increasing spending on enforcement measures is an inadequate remedy that fails to consider the scope and reality of immigration issues.

- **Findings:**

Record amounts of money are being spent on border and immigration enforcement. Since their creation in 2003, Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) have grown steadily. The budget for Fiscal Year 2011 requested \$11.1 billion for CBP and \$5.8 billion for ICE. Since the passage of the Secure Fence Act in 2006, nearly \$50 billion has been spent on border security alone.

Interior enforcement has also risen to record levels. In FY 2010, the Obama Administration deported 392,000 individuals. Although the stated goal is to focus on individual who pose a safety threat to the United States, more than half of those deported in FY 2010 had no criminal record. The government spends an average of \$23,000 to deport a single individual.

The immigration detention system has rapidly expanded as a result of increased enforcement measures. By the beginning of FY 2011, ICE was expecting to detain

430,000 individuals—more than five times the number of individuals detained in 1994. This is especially problematic given the numerous complaints about the conditions at these detention centers.

- **Recommendations:**

Government funding should be shifted from the border line to ports of entry. This would be a better allocation of resources and would help prevent smuggling.

Immigration and Customs Enforcement (ICE) should adhere to the stated priorities of the administration and focus enforcement efforts, particularly through the 287(g) and Secure Communities programs, on serious offenders. Discretion should be properly applied in enforcement and prosecutorial activities.

Funding for immigration courts should be increased to help keep pace with increased caseloads. Helpful programs and cost-saving initiatives, such as the Legal Orientation Program, which helps detainees represent themselves, should receive increased funding.

Additional enforcement spending should be justified. Any new measures should be examined for effectiveness and efficiency. Stakeholders and community members should be consulted to identify what types of programs and funding would best help their municipalities.

[Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Minors](#), from **Appleseed** (January 2011)

This report analyzes the extent to which the Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008 has improved the screening and protection of unaccompanied Mexican minors at the border and after repatriation. Appleseed concludes that the promise of the TVPRA remains unfulfilled. Appleseed presents several recommendations that they argue, if implemented, will turn the TVPRA's mandate into reality at the border.

- **Findings:**

CBP is the wrong agency to interview unaccompanied Mexican children since they are a law enforcement agency charged with detecting and apprehending undocumented aliens at the border, with no child welfare expertise.

Communications between U.S. and Mexican officials are geared towards repatriation and not the best interests of the child. Upon repatriation, U.S. officials often do not communicate with Mexican authorities and make use of their valuable information that might assist in the child's safe return.

DHS does not publish, and appears not to maintain, important data regarding the unaccompanied minors apprehended at the Border. Mexico lacks a shared, integrated database to identify repatriated minors and help prevent their further exploitation.

- **Recommendations:**

Interviews of children should be conducted by USCIS since they are already trained to conduct asylum interviews of all unaccompanied minors who fear persecution.

U.S. officials should provide prompt notification to the Mexican consulate upon initial apprehension and upon any change in the custodial status of an unaccompanied Mexican minor. The intergovernmental role played by the Mexican consular officials should be clarified and understood to allow them to provide factual information to CBP concerning children in U.S. custody, but not to influence the determination of whether a minor should be repatriated under TVPRA.

DHS should establish a national database of all detained unaccompanied minors, which would include sufficient information to allow U.S. officials and others to discern and track unaccompanied minor migration patterns, and allow U.S. agencies to identify repeat crossers, as well as those who were previously repatriated but were not successfully reintegrated into a stable family or other local structure.

The Mexican agencies that handle repatriated minors should develop a shared, integrated database which maintains a record of each repatriated minor and would serve to identify repeat crossers and promote child welfare beyond family reunification.

[Delegation and Divergence: A Study of 287\(g\) State and Local Immigration Enforcement](#), from the **Migration Policy Institute** (January 2011)

This report analyzes the effects of the 287(g) program, a program that allows local and state officers to screen individuals for immigration status, issue detainers, and hold them until the federal government assumes custody. It also considers whether 287(g) should follow a targeted approach in which it focuses on serious criminals or a universal approach in which it blindly aims to remove as many undocumented immigrants as possible.

- **Findings:**

At the national level, the 287(g) program does not focus mainly, or even mostly, on serious criminals. The universal approach, which does not prioritize serious offenders, is particularly concentrated in jurisdictions in the Southeast.

Although ICE supervised 287(g) officers within the study sites, state and local law enforcement set their own enforcement priorities. As a result, these enforcement priorities have been shaped a great deal by political pressure. The availability of resources also influences how 287(g) operates within jurisdictions.

Jurisdictions that have used a universal approach in implementing 287(g) have experienced significant negative community impacts. Immigrants have voiced fear of entering public spaces and reporting crimes. Some immigrants have even left jurisdictions as a result of controversial 287(g) programs. Such jurisdictions could improve their communities by implementing a targeted 287(g) approach and conducting outreach to explain the proper scope of the program.

- **Recommendations:**

ICE should make sure that 287(g) officers issue detainers only for noncitizens who have committed serious offenses and not minor misdemeanors.

ICE should work with the United States Department of Justice to investigate claims of racial and ethnic profiling in 287(g) jurisdictions.

287(g) should be discontinued in jurisdictions that employ a universal approach and do not target serious offenders. It should also be discontinued in jurisdictions that have exhibited racial profiling or other civil rights violations.

Jurisdictions with a history of racial profiling or seem unlikely to implement 287(g) in a targeted fashion should not be allowed to implement the program.

Consider different options by performing a cost-benefit analysis of 287(g) to other government programs and enforcement strategies. This analysis should also consider community impact. ICE field offices and local communities should maintain an open dialogue, holding regular meetings with key constituencies engaging in direct outreach and establishing a meaningful steering system.

[Promises To Keep: Diplomatic Assurances Against Torture in U.S. Terrorism Transfers](#), from **Columbia Law School Human Rights Initiative** (December 2010)

This report investigates the use of diplomatic assurances by the United States government. Diplomatic assurances are guarantees not to torture that are obtained when detainees are transferred from the custody of one government to another. The United States needs to reform its assurances policy to properly reflect international human rights principles.

- **Findings:**

The U.S. government has failed to disclose key components of its assurances policy. Aside from a general assertion that it does not send people to be tortured, the government has been vague on its practices. There has been a failure to establish any known legal constraints on the practice of assurances.

Other nations, such as the United Kingdom and Canada, have established more transparent assurances policy and have required accountability to courts. The United States desperately needs to improve its policies in these areas.

- **Recommendations:**

The United States should publicly describe assurances policy and address human rights concerns, including standards for negotiating assurances and procedure for post-return monitoring.

The government should institutionalize reform and restrict agency decision-making authority by codifying the State Department's role in negotiating and assessing

assurances. Other agencies should be prohibited from conducting transfers without consulting high-level State Department officials.

Assurances should be ruled out as an option where their effectiveness is questionable, such as locations where torture is practiced systematically or the receiving government may have previously breached assurances. Individuals should also not be transferred when they belong or are believed to belong to a group that the receiving government has a history of torturing.

The U.S. should set requirements for valid assurances, including written, explicit guarantees of rights. Detention conditions should also meet certain minimum requirements.

U.S. courts should be able to review Convention Against Torture claims in immigration, extradition, and military detention cases.

Systemic monitoring needs to be established. Receiving governments should be required to agree to a broad monitoring mandate—including letting the monitoring team conduct regular, unimpeded, and unannounced visits.

[Operation Streamline: Drowning Justice and Draining Dollars along the Rio Grande](#), from **Grassroots Leadership**, (July 2010)

This report evaluates Operation Streamline's financial toll on federal and state law enforcement and judicial resources, as well as the human toll on American and immigrant families. The report notes inherent problems in unaccountable, for-profit prison facilities that are the only beneficiaries of the policy.

- **Findings:**
Operation Streamline has exposed undocumented immigrants crossing the southern border to unprecedented rates of incarceration; overburdened the federal criminal justice system in the districts where it has been implemented; and added enormous costs to the American taxpayer while providing a boon to the for-profit private prison industry.

Largely due to Operation Streamline, 54% of all federal prosecutions nationwide were for immigration offenses in 2009. Data in this report show an increase in criminal prosecutions of undocumented border-crossers even as the estimated number of migrants to the United States has dropped.

Operation Streamline undermines due process. Dozens of immigrants are brought before judges at the same time. In 2009, two Texas border-districts prosecuted approximately 186 entry and re-entry cases in federal courts every day.

Operation Streamline creates turmoil for families, and actually deters immigrants presently undocumented in the US from returning to their countries of origin.

- **Recommendations:**

The Department of Homeland Security should repeal Operation Streamline.

Successor policies to Operation Streamline addressing undocumented border crossers should return jurisdiction over immigration violations to civil immigration authorities, reduce the use of incarceration for border crossing violations, and promote a pathway for legal and reasonable means for immigrants to obtain legal status in the United States.

[Removing Refugees: U.S. Deportation Policy and the Cambodian-American Community](#), from **Leitner Center for International Law and Justice, Fordham Law School** (Spring 2010)

This report examines the ongoing deportation of Cambodian-American Lawful Permanent Residents (LPRs) following criminal convictions. It examines current U.S. deportation laws and repatriation agreements between Cambodia and the United States, ultimately concluding that U.S. deportation policies conflict with international human rights law. Data was collected from interviews with deported individuals in Cambodia.

- **Findings:**

Mandatory deportation categories established by U.S. immigration law have led to the separation of families, the deportation of non-violent offenders and the mentally ill, and the disruption of entire Cambodian-American communities.

LPRs who are deported often face a traumatic return to Cambodia. They confront discrimination and social exclusion, unemployment and economic insecurity, separation from their loved ones, and severe emotional distress. Families remaining in the U.S. are often left in situations of severe financial and emotional difficulty.

U.S. deportation policy is no longer in line with international human rights standards of proportionality and *non-refoulement*.

- **Recommendations:**

Immigrants who initially fled Cambodia as refugees should not be deported back to Cambodia.

The Department of State should modify the U.S. - Cambodia Repatriation Agreement to exclude deportations of individuals who arrived in the U.S. as a refugee.

Congress should amend U.S. immigration law to reflect pre-1996 categories of deportable offenses and it should reinstate judicial discretion in the removal process.

Congress should amend U.S. immigration laws to reflect the ruling of the United Nations High Commissioner for Refugees (UNHCR) that adjustment of status does not remove refugee protections under international law.

[Death at the Border](#), from **National Foundation for American Policy** (May 2010)

The policy brief argues that our “enforcement only” approach has failed to curtail immigration, has contributed to fatal attempts at crossing, and has empowered criminal gangs by creating a constant revenue stream derived through human smuggling and kidnapping.

- **Findings:**

Approximately one person dies trying to cross the border every day, on average, and the number of deaths has increased even as the number of people entering illegally has decreased.

As the number of agents and the amount of resources dedicated to border enforcement has increased, so has the number of deaths at the border, because people trying to enter the country have taken riskier paths to get in, and have been compelled to rely on smuggling operations run by criminal gangs, who derive profit from these operations, and often kidnap immigrants for ransom.

Enforcement policy has not deterred illegal immigration, but has caused illegal immigrants to stay in the United States for longer than they otherwise would. Immigration flows are primarily influenced by wage disparities between nations. Only increasing legal channels will reduce border fatalities and undermine criminal gangs.

- **Recommendations:**

Provide new temporary visas for lesser skilled foreign workers, particularly from Mexico, and increase the number of H-2B visas for temporary non-agricultural workers.

Congress should pass AgJOBS, and should increase the allotment of green cards for low-skilled workers, but should avoid creating a commission to regulate the flow of foreign-born workers to the United States.

[Caught Between Systems: The Intersection of Immigration and Child Welfare Policies: The Impact of Immigration Enforcement on Child Welfare- Part I](#), from **First Focus** (March 2010)

The first section of this three-part report synthesizes research conducted by government, academia, and public interest organizations, and examines the impact of immigration enforcement measures on the nation’s 5.5 million children who live with at least one undocumented parent.

- **Findings:**

The DHS Inspector General’s Office estimates that over 108,000 undocumented parents of U.S. citizen children were removed from the United States between 1997-2007. Another study, published in *Children and Youth Services Review* and focusing

on deportation of Lawful Permanent Residents, found that over the same period, at least 88,000 children were affected by parental deportation, and that a third of these children were under the age of five.

Separation from a parent threatens a child's safety, economic security, and overall well-being in the short and long term. Housing insecurity, food shortages, emotional trauma, and increased fear and anxiety are typical examples of the difficulties that children separated from their parents confront.

Humanitarian guidelines developed by ICE in 2007 have generally proven effective in preventing or minimizing the duration of child-parent separation. But the guidelines do not apply to enforcement activities targeting individuals or small groups, typically associated with 287(g) programs, Fugitive Operation Teams, and other criminal screening initiatives.

Immigrant parents attempting to reunify with their children face difficult challenges, including language and cultural barriers, limited access to services, and family court judges who improperly predicate their decision on a parent's immigration status rather than a demonstrated parenting capacity. Once a parent is detained, meeting the required case plan becomes virtually impossible, and placing children with family members is complicated by undocumented adults' ineligibility to become foster parents under most child welfare agencies' rules.

- **Recommendations:**

Immigration judges should be granted discretion in determining the removal of a parent, and a national network of deportation defense lawyers should be established and should coordinate with the child welfare system. The report also details an extensive set of recommendations for ICE regarding arrest and detention procedures.

Child Welfare agencies should implement protocols guiding federal, state, and local staff in handling cases of separation caused by immigration enforcement efforts. Guidelines for privacy and confidentiality should be established. When in the best interest of the child, exceptions to the Adoption and Safe Families Act, which imposes a strict timetable on filing termination of parental rights petitions, should be allowed in complex cases, and undocumented children should be provided with welfare services when needed.

The second part of this report examines the challenges and shortcomings of child welfare agencies attempting to meet the diverse linguistic and cultural needs of immigrant families and children. Part three provides an overview of public benefits, placement, and financing issues affecting immigrant families within the child welfare system.

[The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287\(g\)](#) from **American Civil Liberties Union of Georgia** (March 2010)

This report aims to demonstrate the impact of the 287(g) program on the Gwinnett County, Georgia community. Through interviews with both U.S. citizen and non-citizen community members and data from the Gwinnett County Sheriff's Office, the report documents the exacerbation of racial profiling that has taken place after the implementation of 287(g).

- **Findings:**

In Gwinnett County, testimonies affirm that officers disproportionately target people of color for pretextual stops, investigations, and enforcement. The incidents of racial profiling have increased after the implementation of the 287(g) program.

Law enforcement in Gwinnett County have abused their power, both given through 287(g) and generally, by engaging in racial profiling and human rights violations. As a result, families have been torn apart and communities have learned not to trust the police.

- **Recommendations:**

The 287(g) agreement in Gwinnett County must end. This program has merely exacerbated racial profiling concerns.

The Gwinnett County Sheriff's Office should hold a community outreach meeting pursuant to section VII of the 287(g) Memorandum of Agreement.

The Georgia General Assembly should pass pending anti-racial profiling legislation. This will send a clear message to the public that racial profiling is unacceptable. It will also add a level of accountability and oversight to the policies of the Gwinnett police departments.

The Gwinnett County Sheriff's Department, as well as the municipal police departments within Gwinnett, should document all investigatory stops that the officers make, even if these stops do not result in a citation, arrest, or police report. Without this information it is difficult to tell which individuals are being stopped and why the officers chose to stop them.

[A Program in Flux: New Priorities and Implementation Challenges for 287\(g\)](#) from **Migration Policy Institute** (March 2010)

This report compares the pre-2009 287(g) Memoranda of Agreement (MOAs) with the Obama Administration's new standardized MOA template and provides an analytical framework for determining whether the 287(g) program generates greater benefits than costs and whether its costs argue against maintaining the program.

- **Findings:**

The new MOA template emphasizes targeting noncitizens who have committed serious offenses. The emphasis reflects the Administration's intent to return the 287(g) program to its original purpose of focusing on noncitizen criminals who pose a threat to national security and public safety, rather than on unauthorized immigrants generally. The

changes in the MOA template, primarily the requirements for greater federal supervision, may help address some criticisms of the program.

However, a shift in emphasis may not be enough to fix a flawed program and the new MOA introduces features into the program that could further complicate its implementation. It does not set a minimum time limit on the training received by law enforcement agencies, and it eliminates the requirement that officers in the program have at least two years of experience, which could result in undertrained officers implementing the program.

Another potential problem with the new MOA is the prohibition of law enforcement agencies releasing any data they collect during enforcement operations, potentially conflicting with state and local public records laws and undermining transparency.

- **Recommendations:**

The formal changes made to the MOA template may bring greater direction and structure to the program. But political pressure from law enforcement agencies, Congress, and the public may make it difficult to narrow the program's focus to serious criminal immigrants. Outcomes will ultimately depend on how Immigration and Customs Enforcement and local law enforcement agencies operationalize the formal terms of the MOAs. Field studies are crucial to determining whether 287(g) serves its stated objectives without interfering with the goals of local law enforcement or threatening civil rights protections.

[Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases](#) (Executive Summary) from **American Bar Association Commission on Immigration** (Feb. 2010)

This report comprehensively reviews multiple facets of the legal system governing deportation decisions. It focuses on DHS, immigration judges and immigration courts, the Board of Immigration Appeals (BIA), judicial review by circuit courts, legal representation for immigrants, and proposals for systemic restructuring.

- **Findings:**

- (1) DHS: Coordination problems and an overburdened and woefully over-resourced removal adjudication system plagues DHS. Unfair laws governing removal of noncitizens exacerbate the problem, and DHS has consequentially increased its reliance on expedited removal and administrative proceedings that lack sufficient oversight.
- (2) Immigration Judges and Courts: Resource problems undermine immigration courts and judges, including large caseloads, insufficient resources, unqualified judges selected through a misguided process, a lack of training and development, and inadequate supervision and discipline.
- (3) BIA: Previous reforms that streamlined proceedings at the Board raise serious concerns. The Board over-utilizes Single Member Review, issues decisions lacking

in detail, applies an overly deferential standard of review to initial proceedings, and fails to develop a necessary body of consistent case law through precedent. It lacks independence from the Executive Branch, and suffers from a lack of credibility, resources, training, and disciplinary mechanisms.

- (4) **Judicial Review by Circuit Courts:** In 2005, Congressional amendments to the INA restricted Article III Courts from fact-finding or remanding immigration decisions for such fact-finding. Additionally, the Executive branch has successfully avoided judicial review by categorizing many decisions as “discretionary.” Even with these limitations, the 2d and 9th Circuit dockets are increasingly flooded with immigration appeals.
- (5) **Legal Representation:** The outcomes of asylum and deportation cases are very strongly influenced by presence of counsel representing noncitizens, yet the government does not provide counsel to those who cannot afford it. Legal Orientation Programs have shown signs of success, but can only be accessed by a minute proportion of immigrants in detention. Frequent transfers to distant facilities, exorbitant telephone fees, and severe visitation restrictions limit noncitizens’ capacity to retain adequate representation.
- (6) **Systemic Restructuring:** Detention proceedings and determinations are handled within Executive Branch agencies, and are reviewed by the Judiciary on a limited basis. This system compromises independence, contributes to perceptions of bias, undermines the quality and professionalism of judges, raises issues of accountability, and results in a higher number of appeals to article III courts.

- **Recommendations:**

Increase hiring of additional immigration judges and law clerks to reduce the case load. Also, permit all eligible noncitizens to adjust to lawful permanent resident status while remaining in the US, or eliminate bars to reentry.

Amend the ever-expanding definitions of “aggravated felon” and “crime involving moral turpitude” so as to reduce initiation of removal proceedings effected against noncitizens convicted of minor crimes in which imprisonment was not sought.

Curtail the increasing use of administrative removal without administrative or judicial review, and without adequate due process protections, and dramatically reduce expedited removal proceedings effected against noncitizens apprehended near the border and within the United States.

Eliminate or substantially restrict mandatory detention provisions to exclusively target individuals who pose a flight risk or danger to the community, and expand alternatives to detention where practicable.

Restore judicial review of discretionary decisions under an “abuse of discretion” review standard, and amend the INA to permit Appellate Courts to remand cases to

the BIA for further fact-finding. Furthermore, the deadline for filing a petition for review of a BIA decision with a court of appeals should be extended.

Establish a right to representation in adversarial removal proceedings, and for individuals in groups with special needs. Additionally, access to the Legal Orientation Program should be expanded, and the program itself should be modified to screen and assist all indigent noncitizens in removal proceedings

Increase prosecutorial discretion for DHS officers and attorneys, and grant DHS attorneys greater control over removal proceedings.

Require more written, reasoned decisions by immigration judges, increase judge training, and increase three-member panel review by BIA. Also, minimize the use of video-conferencing as a substitute for personal presence.

[The 287\(g\) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities](#) from **University of North Carolina at Chapel Hill** (February 2010)

This report examines the available data on the 287(g) program and estimates the costs and efficacy of the program in North Carolina. The research addresses issues about public safety, financial cost, and the relationship between immigration and crime.

- **Findings:**

To test the validity of the perception that immigrants are more prone to criminal behavior, the report examines the rates of crime, immigration, and Hispanic population growth, the fastest growing immigrant population in the state. The analysis of both crime incidents and rates over time found no evidence that Hispanic population growth or greater rates of immigration in North Carolina are associated with higher crime rates. In fact, the report notes, violent crime has decreased since 1993, during the time period in which the largest volume of immigrants entered.

The report further examines the efficacy of the program in meeting its stated goals of improving public safety and prioritizing resources on high-risk criminal immigrants. The study found that traffic violations are the most common charge for individuals incarcerated through the 287(g) program, representing 32.7% of the total charges. The second most common charge was driving while intoxicated (DWI), accounting for 22.5% of the charges. Thus, over 55% of the charges leading to 287(g) incarceration involve driving-related charges. Further, 86.7% of all individuals booked through the program were charged with misdemeanors, while only 13.3% were charged with felonies. The focus on deporting immigrants for driving-related incidents and misdemeanors suggest that the program is not prioritizing high-risk criminals.

The report also examines effects on community relationships between police and Hispanic populations. Focus groups and interviews with Hispanic and non-Hispanic individuals, including police officers in 287(g) jurisdictions, revealed trends of deteriorating relationships between communities and police, and growing reluctance of Hispanics (regardless of immigration status) to report crime and provide information as

witnesses. Individuals also reported an increase in vulnerability of immigrants as crime victims.

Finally, the report analyzes the costs of implementing the program. In the first two counties to adopt 287(g) programs in the state, Alamance and Mecklenburg counties, the direct cost of implementing the program for the first full year was estimated to be \$4.8 million and \$5.5 million, respectively. Beyond direct costs, there are also indirect costs associated with policing civil immigration violators, including litigation fees, reduction in local business revenue, lower sales tax revenue, and higher costs of services and goods.

- **Recommendations:**

Comprehensive federal immigration reform is a critical step toward more systemic solutions to the challenges of undocumented immigration in local communities. Until this reform is passed, community leaders should improve existing programs or seek alternatives to the 287(g) program.

Existing 287(g) agreements should be limited to processing people convicted of felonies as opposed to misdemeanors or traffic infractions, in order to comply with the stated goal of the program. This will reaffirm the primary duty of local law enforcement to serve and protect all residents from crime, rather than to enforce immigration laws. This will help minimize fear and distrust of law enforcement, which has resulted in the underreporting of crime and increased vulnerability of immigrants as targets of crime.

State and local jurisdictions should consider cost-reducing alternatives to 287(g) that would prevent and fight crime without isolating immigrant and Hispanic communities and jeopardizing public safety. Alternative strategies that have proven efficacy nationwide include community policing, outreach programs, and prevention education.

[Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States](#) from **Human Rights First** (November 2009)

This report critiques the impact of U.S. immigration laws' "terrorism bars" on asylum seekers and refugees. Changes to the Immigration and Naturalization Act (INA) as part of the USA PATRIOT Act in 2001 and the REAL ID Act in 2005 expanded provisions relating to terrorism and drew attention to the over-breadth of the INA's pre-existing definition of "terrorist activity."

- **Findings:**

Over the past eight years, thousands of legitimate refugees who pose no threat to the United States have had their application for asylum, permanent residence, and family reunification denied or delayed due to overly broad provisions of U.S. immigration law related to terrorism. Terrorist activity under the INA is now interpreted as including any refugee who ever fought against military forces of an established government. Some of these refugees were fighting alongside U.S. forces in their home countries.

Over 18,000 refugee and asylum seekers have been directly affected by these provisions to date. At present, more than 7,500 cases pending before the Department of Homeland Security (DHS) are on indefinite hold based on some actual or perceived issue relating to

the terrorism provisions of the INA. Most affected cases are applications for permanent residence or family reunification for asylees or refugees, who are already in the U.S, thus no security purpose is effectively served.

- **Recommendations:**

Eliminate the overly broad designation of “terrorist activities” and “terrorist organizations.” The USA PATRIOT Act created a new and sweeping definition of a “terrorist organization,” by adding a category designating “any group of two or more individuals, whether organized or not, which engages in” acts that the immigration law defines as “terrorist activity” – including any unlawful use of a weapon for purposes other than personal enrichment. This definition includes, for example, groups who have used force in self-defense against a military regime that does not allow its citizens to change their government by peaceful means.

Congress should amend the definition of “terrorist activity,” which currently covers any unlawful use of armed force by a non-state actor against anyone and anything. The definition should target only the use of violence for purposes of intimidation or coercion. It should not apply to uses of armed force that would not be unlawful under international humanitarian law.

The Departments of Homeland Security, Justice, and State should support statutory amendments and facilitate a more effective and fair approach to waivers for those inadvertently affected by the broad interpretation of terrorism.

[ICED Out: How Immigration Enforcement Has Interfered with Workers’ Rights](#) from **National Employment Law Project; AFL-CIO; and American Rights at Work Education Fund** (October 2009)

This report outlines the serious impact on workers, both native and immigrant, of allowing immigration enforcement to overshadow the equally important goal of protecting labor rights.

- **Findings:**

Immigration and Customs Enforcement (ICE) worksite raids have prevented meaningful enforcement of labor standards for all workers. ICE’s actions have created incentives for some employers to continue hiring and abusing undocumented workers, since the deportation of their employees may preclude employers from being held accountable under labor laws.

ICE purports to focus worksite enforcement on employers that “egregiously violate immigration laws.” However, data shows only 2.1% of arrests ICE made at workplaces in 2008 were of employers or their agents. More common were criminal arrests of workers for using work authorization documents that did not belong to them. These actions have predictably created an effect of chilling the assertion and exercise of workplace rights, a result that hurts all workers, regardless of their immigration status.

- **Recommendations:**

The balance between worksite immigration enforcement and labor standards enforcement must be recalibrated.

ICE should improve agency protocol in worksite investigations. The Obama Administration should establish a taskforce to oversee the development and implementation of policies so immigration enforcement does not impede on workers' rights. The taskforce should include representatives from the Departments of Labor, Homeland Security, Justice, State, and the Domestic Policy Council.

There is a need to identify and assist workers who are victims of labor trafficking, rather than focusing on their deportation. Worksite enforcement must not undermine the Trafficking Victims Protection Act and other worker labor rights. Federal agencies need to take a cooperative approach to identifying and protecting victims.

[Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border](#) from **ACLU of San Diego & Imperial Counties and Mexico's National Commission of Human Rights** (October 2009)

This report describes the international human rights violations that take place daily in the border region between the United States and Mexico. It highlights the correlation between increased U.S. Border Patrol enforcement efforts and migrant deaths.

- **Findings:**

The deaths of undocumented migrants have been a predictable and inhumane outcome of border security policies on the U.S.-Mexico border. The risk of death for migrant crossers has increased in spite of government programs to reduce the harmful effects of border deterrence strategies.

The undocumented immigrant population has expanded significantly at the same time that border enforcement resources have escalated. In the last five years, the border enforcement budget expanded from \$6 billion to \$10.1 billion, the number of agents jumped to 20,000; 630 miles of new fencing was completed around urban areas; 300 miles of vehicle barriers were erected; a "virtual fence" of technological infrastructure was installed. The long-term results have been to strengthen migrant reliance on smugglers, decrease return trips to home countries, and multiply migrant deaths.

Ongoing migrant deaths have exposed government neglect in complying with international obligations for dignified care of the dead and their families. The management of migrant deaths lacks uniform standards or a centralized database to recover remains, to identify the dead, to determine the cause of death, to prepare the dead for burial, and to notify families of the whereabouts of their relatives.

- **Recommendations:**

Border deaths should be recognized as an international humanitarian crisis. More U.S. Border Patrol resources should be shifted to search and rescue efforts. There should be a binational one-stop resource for rescue and recovery calls.

The Inter-American Commission on Human Rights (IACHR) should be involved and should conduct onsite visits and investigations of the region. A report on the crisis should be made for the General Assembly of the Organization of American States. The IACHR report should include recommendations to the U.S. and Mexican governments on the necessity of respecting human rights.

The U.S. government should adopt sensible, humane immigration and border policies. Reforms should provide legal and safe avenues for crossing the border and should not include policies that force migrants to assume the risk of death to reunite with their families, fill essential labor needs, or seek asylum. Immigration and border enforcement reforms must prioritize human life.

[Immigration on ICE: A Report on Immigration Home Raid Operations](#), from **Cardozo Immigration Justice Clinic** (July 2009)

This report analyzes ICE arrest records from home raids in NY and NJ, finding a far-reaching pattern of misconduct and constitutional violations by ICE agents. The report analyzes the factors contributing to the problem, and makes recommendations on how to improve training, supervision, and accountability of ICE agents to ensure that when home raids are conducted, they are conducted legally and within the confines of the Constitution.

- **Findings:**

ICE arrest records establish a pattern of misconduct by ICE agents, specifically within NY and NJ offices, and suggest such patterns are widespread and are being repeated on a national scale. The data shows a large discrepancy between field offices as to how often ICE obtained consent prior to entering a home. Additionally, data obtained from arrest records shows a high percentage of both “collateral arrests” and situations where no basis was noted for seizing and questioning individuals, indicating that ICE agents frequently exceeded the scope of the initial intrusion. Generally, ICE agents entered homes without legal authority, illegally seized non-target individuals during home raid operations, searched homes without legal authority, and illegally seized individuals based on racial or ethnic appearance or based on limited English proficiency. This misconduct most likely stems from several factors, including: a series of 2006 ICE policy changes that changed arrest expectations of enforcement squads; suppression motions have been an ineffective deterrent to ICE officers; the vulnerable target population of ICE home raids faces barriers to traditional civil remedies for government misconduct; and management, training, and supervision failures by ICE.

- **Recommendations:**

ICE should: a) use home raids only as a last resort tactic, and then only to make arrests for targets who pose a real risk to national security or have violent criminal records; b) obtain judicial warrants in advance of any raid; c) require field offices to obtain high-level, centralized pre-approval for any home raid; d) ensure that home entry without a warrant includes valid consent from residents informed of their right to refuse consent and obtaining written consent before entry is made; e) only conduct pre-dawn/nighttime raids with judicial warrants; f) require a high-level supervisor to be on site for all home

raids; g) videotape home raids; h) retrain agents on home raid procedures and require periodic re-training; i) notify relevant local police agencies of the planning and results of ICE operations; j) not request assistance of local police for the purpose of deceiving residents as to the identity of the agency conducting a home raid operation; k) ensure that ICE enforcement teams focus on dangerous targets by setting realistic performance goals and providing incentives; l) issue clear guidance that the sole objective of a home raid is to apprehend primary target; m) issue a new regulation to require officers to note the reason why they seized or questioned any individual in their arrest report; n) issue clear guidance that race, ethnic appearance, or limited English proficiency are never a sufficient sole basis for seizing or questioning; o) establish a revised public complaint procedure; and p) enact regulations that exclude evidence in removal proceedings obtained in violation of the Constitution.

The DHS Office of the Inspector General should investigate the pattern of misconduct established in the report to assess the scope of the problem.

[Assembly Line Injustice: A Call for Immigration Courts Reform](#), from **Appleseed** (June 2009)

This report highlights problems with the current Immigration Court system and offers solutions to improve the entire adjudicatory system. Appleseed conducted over 100 interviews with immigration practitioners, judges, and experts, and attended more than 100 hours of immigration hearings in preparation of this report.

- **Findings:**

There are not enough Immigration Court judges to manage the current caseload, and the process for selecting and appointing these judges is politicized and not transparent. There must be sufficient oversight of judges and trial attorneys in order to develop an appropriate culture of professionalism and impartiality. The widespread use of videoconferencing, the lack of effective translation and pre-hearing conferences, and the difficulty of accessing court records impedes accurate rulings. The BIA (Board of Immigration Appeals) does not have the necessary resources to ensure a fair appeal of inaccurate rulings. Finally, immigrants experience a great deal of difficulty when it comes to securing pro bono representation, while those representing themselves do not have critical information on court procedures, including filing and pleading standards.

- **Recommendations:**

Reform the selection process for Immigration Judges and BIA members to promote impartiality; provide judges with the necessary staff and resources to achieve justice and cultivate a culture of professionalism in the Immigration Courts; empower trial attorneys to handle cases more professionally and more efficiently; help the unrepresented by facilitating access to pro bono practitioners and by providing critical information on court procedures; improve court processes to advance fairness and efficiency by: enhancing the accuracy of proceedings through effective translation, reducing unfairness in video conferencing, and improving the reliability and availability of court records; ensure that the BIA has the resources necessary to make the correct ruling on appeal.

[Forced Apart \(By the Numbers\): Non-Citizens Deported Mostly for Nonviolent Offenses](#), from **Human Rights Watch** (April 2009)

This report analyzes deficiencies in ICE enforcement and reporting policies, specifically relating to deportation of non-citizens on criminal grounds, revealing which kinds of non-citizens have been deported between 1997 and 2007 and for what types of crimes.

- **Findings:**

ICE has failed to keep accurate data on deportations from the U.S., especially with regards to legally present non-citizens (20 percent of total deported individuals), the group with the most pressing rights issues at stake. ICE has kept records on the criminal conduct that forms the basis of removal for only approximately 10 percent of legally present non-citizens, compared to more than 62 percent of those illegally present. The available data does reveal that a significant majority of non-citizens deported on criminal grounds committed only non-violent offenses (72 percent for those illegally present and 77 percent for those legally present). However, in 1996 Congress drastically limited the ability to take this factor, as well as other extenuating circumstances such as family relationships, into account during deportation hearings. This inability to protect family relationships has had a dramatic impact on the family members of those deported with an estimated one million spouses and children who have faced separation.

- **Recommendations:**

The President should encourage Congress to amend U.S. immigration law to ensure that all non-citizens will have access to a hearing before an impartial adjudicator who weighs the non-citizen's interest in remaining in the U.S. against the U.S. interest in deportation; until laws are amended, instruct ICE to focus enforcement resources on deportation of undocumented non-citizen's convicted of serious, violent crimes.

Congress should amend immigration laws to provide access to such a balancing hearing and ensure that the following are weighed in favor of the non-citizen remaining in the U.S.: family relationships, hardship on family resulting from deportation, best interest of children, legal presence in the U.S., length of time in the U.S., evidence of rehabilitation, investment in community, and lack of connection to country of origin. Immigration law should also be amended to ensure that deportees are protected from return to persecution unless convicted of a particularly serious crime and dangerous to the U.S.

DHS should publish annual statistics on what criminal convictions form the basis for all removals on criminal grounds, the immigration status of all persons removed on such grounds, and whether removed non-citizens have nuclear family relationships with U.S. citizens or lawful permanent residents.

[The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties](#), from the **Police Foundation** (April 2009)

This report discusses the implications of state and local police enforcing federal immigration laws through the ICE 287(g) program, and the effect this enforcement has on the ability of local police to maintain trust and cooperation with immigrant communities. The Police Foundation

hosted focus groups, a national conference, and conducted a survey of law enforcement executives in preparation of this report.

- **Findings:**

Currently there are sixty-three local and state law enforcement agencies participating in the 287(g) program, which has trained more than 840 officers and identified more than 70,000 people suspected of violating immigration law. However, a majority of law enforcement executives believe the costs of participation in civil immigration enforcement outweigh the potential benefits, and could jeopardize local law enforcement's ability to gain trust and cooperation in immigrant communities. Furthermore, a majority of respondents to the Police Foundation's survey felt that local law enforcement should not even be partially responsible for enforcement of immigration laws. Benefits associated with the program include reduced jail populations resulting in decreased detention costs; deterrent effects; help with criminal enforcement and counterterrorism efforts; access of local police to Federal databases to verify identity; and help for police catching undocumented immigrants. Costs include reduced trust and cooperation in immigrant communities, which in turn undermines public safety by disincentivising immigrants from helping police for fear of being arrested; increased victimization and exploitation of immigrants; increased police misconduct; large financial costs that divert funds from traditional law enforcement; complexity of federal immigration law; racial profiling; and increased fear among immigrants about accessing municipal services.

- **Recommendations:**

Local law enforcement agencies should: be prohibited from arresting and detaining individuals solely to investigate immigration status—immigration enforcement should be limited to contacts incident to a lawful arrest; limit participation in the 287(g) program to jail-based programs, and use the delegated enforcement powers selectively to target serious felony offenders; implement procedures for monitoring and enforcing racial profiling violations; involve community members in developing immigration policies in order to preserve trust within the community; improve police-community relations with immigrant communities and resolve tensions caused by the growth of the immigrant population by using problem-solving tactics such as town halls, immigrant outreach, and Spanish-language signs in order to promote understanding.

Research should be conducted in order to more objectively evaluate the success of the 287(g) program and other local immigration enforcement initiatives, including their outcomes and their impact on local police and communities.

The Federal Government must enact comprehensive border security and immigration reforms in order to alleviate the burdens on local law enforcement.

[NSEERS: The Consequences of America's Efforts to Secure its Borders](#), from the **American-Arab Anti-Discrimination Committee** and **Penn State University's Dickinson School of Law** (March 2009)

This report discusses the failures of the National Security Entry-Exit Registration System (NSEERS) program, and makes recommendations to the Obama Administration on ways to overhaul the program, bringing U.S. policies more in line with our core values. This report was based on interviews with immigration attorneys, advocates, and policy makers, as well as an examination of governing statutes, regulations, statistics, previous reports, and more than forty federal court decisions.

- **Findings:**

At the time of the “suspension” of the NSEERS program in December 2003, of the 80,000 individuals who complied with call-in registration—solicited from men on temporary visas from Muslim-majority countries—13,799 were referred to investigations and received notices to appear in Immigration Court. Of those, 2,870 were detained. The program itself was unsuccessful as a counterterrorism tool as not one actual terrorist was caught, and the few charges that were brought were all unrelated to terrorism. Also, despite the program’s “suspension,” NSEERS continues to impact many individuals, and the government’s practice of profiling communities based largely on national origin and religion through NSEERS and other law enforcement programs endures.

- **Recommendations:**

The Administration should: terminate the NSEERS program and repeal related regulations; make sure that individuals who did not comply with NSEERS due to lack of knowledge or fear are not denied a relief or benefit for which they otherwise would be eligible; provide relief to individuals who were placed in removal proceedings because of their participation in NSEERS; allow individuals who were removed due to NSEERS to return to the U.S. if they have a basis for re-entry, with special consideration given to those individuals with immediate family members in the U.S. or those with pending benefits applications; eliminate programs that target people based on ethnic origin, race, nationality, religion, and/or gender; insure that agencies adhere to a standard of individualized suspicion; issue a formal apology upon termination of NSEERS to foreign visitors subject to the program.

DHS should release statistics showing the number of terrorists identified through the NSEERS program and related data, in order to assess the government’s claimed success of the program.

[Severing a Lifeline: The Neglect of Citizen Children in America's Immigration Enforcement Policy](#), from **Dorsey & Whitney LLP** to the **Urban Institute** (March 2009)

This report focuses on U.S.-citizen children impacted by ICE enforcement and detention of non-citizen parents.

- **Findings:**

The report highlights the lack of legal alternatives for low-income immigrant parents; the negative effects to citizen children's well-being by ICE enforcement through worksite raids, home raids, and coercive detention practices; the long-term harmful effects to children; and the effective deportation of citizen children. The report notes that there is no path to legalization for undocumented parents of citizen children, to the detriment of family unity, due to bars on re-entry and inability of citizen children under 21 to petition for admission of family members.

- **Recommendations:**

Reduce barriers for legal entry to the U.S. Allow undocumented immigrant parents of citizen children to appeal to the "best interests" of the U.S.-citizen child when appealing to stay in the U.S. Minimize harm to children by changing apprehension and detention practices without compromising law enforcement.

[The Policies and Politics of Local Immigration Enforcement Laws: 287\(g\) Program in North Carolina](#), from the **ACLU of North Carolina Legal Foundation** and the **Immigration & Human Rights Policy Clinic, University of North Carolina at Chapel Hill** (February 2009)

This policy review analyzes 287(g) agreements in North Carolina communities.

- **Findings:**

The review highlights potential violations of state, federal, constitutional and international law through 287(g) programs. In the MOAs themselves, the review finds shortcomings in complaint mechanisms, designation of functions, nomination of personnel, training of personnel, certification and authorization, ICE supervision, civil rights standards and provision of interpreters, required steering committee, community outreach, media relations/discretion, modification, and duration.

- **Recommendations:**

The authors recommend: greater program transparency, compliance and community participation; revision of all 287(g) programs and for all future 287(g) agreements to only permit processing convicted felons; amending the complaint mechanism of the MOA to clarify the process; clarifying the civil rights standards; transparency for the steering committee; increasing community outreach and input; improving media relations; and updating officer training.

The review concludes that until 287(g) programs are reformed to achieve the stated goal of targeting convicted felons, it will continue to be rife with the "deficiencies and illegalities" outlined in the report.

[Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement](#), from **Justice Strategies** (February 2009)

This report looks at the 287(g) program and what it calls the "devolution" of ICE.

- **Quote:** “Legally, the 287(g) program is equivalent to requiring police to check the tax returns of every person stopped for a speeding ticket.”
- **Findings:**
287(g) programs were not targeted at high-crime areas but did target race: 87 percent of participating localities had a rate of Latino population growth higher than the national average, and has a disproportionate focus in the South. The study finds that local law enforcement has inverted deportation priorities and points to examples of sheriffs in Ohio and Arizona notorious for anti-immigrant politics and racial profiling. ICE doesn’t fund 287(g) participants—287(g) does not produce net fiscal gains, as ICE purports. ICE fails to supervise 287(g) participants. Program participants engage in racial profiling, particularly for day laborers. The report finds deleterious effects of blurring civil immigration and criminal law jurisdictions, and calls Arizona the prime example of what it characterizes as a failed program.
- **Recommendations:**
Terminate the 287(g) program; have GAO investigate the 287(g) program; have the Justice Department investigate racial profiling associated with the program; require a racial impact analysis before authorizing new 287(g) agreements; create obligatory reporting requirements for all ICE operations.

[Collateral Damage: An Examination of ICE’s Fugitive Operations Program](#), from **Migration Policy Institute** (February 2009)

This report examines the National Fugitive Operations Program (NFOP), run by ICE, comparing apprehension and detention data from Fugitive Operations Teams (FOTs) to stated program objectives.

- **Findings:**
73 percent of FOT apprehensions from the beginning of the program in 2003 to FY 2008 had no criminal conviction. Over time, fugitive aliens represented a decreasing percentage of FOT arrests (steadily down from 32 percent in FY 2003 to 9 percent in FY 2007). From 2003 to 2005, non-fugitives (i.e. people who ICE suspected to be in the U.S. unlawfully, but never charged in immigration court) were 22 percent of total FOT apprehensions. After 2006, ICE implemented a new quota system and arrests of non-fugitives grew to 35 percent, then 40 percent in 2007. In ICE parlance these are “collateral arrests.”

The report concludes that NFOP misdirected resources and misplaced priorities, thus failing to fulfill its stated purpose by going for easy targets instead of dangerous criminals.

- **Recommendations:**
NFOP should end the 1,000-person quota and prioritize arresting dangerous fugitives. FOTs should only seek targeted houses and individuals. NFOP should train FOT agents to comply with constitutional and human rights concerns. NFOP should consider non-criminal immigrants with no removal orders as lowest priority. ICE should invest

considerably in improving the NFOP database. NFOP should redeploy FOTs when they are not able to target high-priority fugitives.

[Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws](#), from the **U.S. Government Accountability Office** (January 2009)

This GAO report examines the 287(g) program by researching: (1) the level of ICE oversight and, (2) the use of program resources and review of memoranda of agreement between ICE and the 29 participating local agencies.

- **Findings:**

287(g) lacks “documented program objectives.” ICE states the priority is to address serious crime but this objective is not documented in program materials. 4 of 29 287(g) participants reviewed used the agreement to process minor crimes, such as speeding. ICE does not describe in detail its supervision over 287(g) participants, creating a “wide variation in the perception” of supervisory responsibilities for ICE field officials. While ICE’s MOAs state that participants must track data, for 20 out of 29 program participants, ICE doesn’t specify which data should be tracked, nor does it describe collection and reporting processes. Over half of the 29 agencies surveyed reported concerns from community members that local law enforcement would engage in racial profiling and intimidation.

- **Recommendations:**

The GAO recommends: better documentation of ICE program objectives; more clarity of supervisory requirements; more specificity and uniformity for data collection and data reporting. DHS and ICE agreed with GAO’s recommendations.

[Removals Involving Illegal Alien Parents of United States Citizen Children](#), from the **Department of Homeland Security, Office of the Inspector General** (January 2009)

- **Findings:**

This report from the office of the DHS Inspector General finds that between FYs 1998 and 2007, the U.S. deported 2,199,138 immigrants. Of those, 108,434 were the parents of U.S.-citizen children. ICE reported detaining no U.S.-citizen children.

- **Recommendation:**

ICE should track the number of deportees with U.S.-citizen children and the age of their children to determine if they are minors or adults.

[U.S.-Mexico Border Policy Report](#), from the **U.S.-Mexico Border and Immigration Task Force** (November 2008)

- **Recommendations:**

Enforcement should focus on criminals. Independent oversight of enforcement is necessary. Ports of Entry should receive more staff and infrastructure to be more efficient. Enforcement should be “sensible” (read as: not militarized). Border wall construction should stop. Local law enforcement should not enforce federal immigration law. The military should not enforce civilian law. Detention practices and detention conditions should be improved and be subject to greater oversight. Economic development should be emphasized as a long-term solution.

[Immigration Enforcement’s Newest Strategy: Prosecution for Federal Crimes and Swift Deportation](#), from the **National Immigrant Justice Center** on behalf of the DHS Enforcement Working Group (Fall 2008)

This brief analyzes the ICE raids of Agriprocessors in Postville, IA, of May 2008.

- **Findings:**

302 workers, 23 juveniles, 2 supervisors, 1 owner and 4 managers were arrested in the raid. Detainees were pressured to accept charges and were not given a full legal orientation as required by international law. Federal identity theft and document fraud charges were applied more broadly in the Postville raids than in previous worksite enforcement actions, despite evidence that workers did not display intent to commit identity theft or document fraud. Due process rights may have been violated through the use of group hearings (sentenced 10 at a time while shackled) and dependence on faraway nonprofits for counsel.

[Equal Treatment Denied: United States Immigration Enforcement Polices](#), by **Rights Working Group** (January 2008). (A Shadow Report to the U.N. Committee on the Elimination of Racial Discrimination.)

This report to the U.N. outlines human rights violations resulting from immigration enforcement measures in the U.S., including racial profiling, unlawful search and seizure, selective persecution by national origin, violation of children’s rights, and state and local laws promoting racial profiling.

- **Recommendations:**

The U.S. government should revise immigration policies to refrain from discriminating based on race, color, descent, nationality, or ethnicity. There should be clear prohibition against racial profiling in immigration enforcement activities. Special measures should be adopted to protect the rights of children whose family members are under investigation for immigration law violations.