

[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.