

**THE “COLLATERAL” DAMAGE
OF ENFORCEMENT-ONLY IMMIGRATION POLICY**

Presented at

Hearing on the
Strengthen and Fortify Enforcement Act (H.R. 2278)

Submitted to
House Committee on the Judiciary

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Chairman Goodlatte and Ranking Member Lofgren, thank you for the opportunity to appear before the committee today and provide testimony on behalf of the National Council of La Raza (NCLR). NCLR is the largest national Hispanic civil rights and advocacy organization in the United States, an American institution recognized in the book *Forces for Good* as one of the highest-impact nonprofits in the nation. We represent some 300 Affiliates—local, community-based organizations in 41 states, the District of Columbia, and Puerto Rico—that provide education, healthcare, housing, workforce development, and other services to millions of Americans and immigrants, annually.

NCLR has a long history of fighting for sensible immigration laws, evidenced through our work in the Hispanic community, in the states and in Washington, DC. Most of our Affiliates teach English, provide health care services, promote financial literacy, and otherwise ease the integration of immigrants into the mainstream. We support and complement the work of our Affiliates in communities by advocating for public policies here in Washington and increasingly at the state level.

The nation's immigration system is experiencing a systemic failure. Its multiple components are designed to work in tandem to (1) achieve a legal and regulated flow of workers and the reunification of families, (2) implement enforcement measures that advance national security and public safety and help ensure employers maintain a legal workforce, (3) support the successful integration of immigrants into society, and (4) conduct itself in way that upholds the nation's values and traditions respecting the legal and civil rights of America's diverse community. A breakdown in any one area has an impact on the effectiveness of all the others, and on the ability to maintain a legal and orderly process.

Congress has a unique and historic opportunity to pass immigration reform this year and deliver real solutions to a problem that has festered too long. Not only does fixing our broken immigration system benefit immigrants themselves, it is in the best interest of our country. Immigration to the United States should be orderly and legal, promote economic growth and family unity, and reflect our nation's values. The moral, economic and political imperatives for action are aligned, and Congress has an opportunity and a responsibility to deliver immigration reform that:

- **Restores the rule of law** by creating a roadmap to legalization and citizenship for 11 million aspiring Americans, and promoting smart enforcement that improves safety, supports legal immigration channels, and prevents discrimination;
- **Preserves the rule of law** by creating workable legal immigration channels that reunite families, strengthen our economy, and protect workers' rights; and
- **Strengthens the fabric of our society** by adopting proactive measures that advance the successful integration of new immigrants

HR 2278

For the last two decades, the growing inadequacies of our immigration system to meet changing economic, societal, and global conditions have largely prompted one sole prescription: enforcement. And while enforcement strategies are an essential component of maintaining a legal and orderly immigration system, these strategies alone cannot address the challenges we

face—which are solvable so long as we do not keep insisting in providing a one-dimensional response no matter its consequences.

The Strengthen and Fortify Enforcement Act (H.R. 2278), unfortunately, largely focuses on adding strength to an old prescription that has not cured our ills and will have detrimental side-effects. While it includes provisions to fight criminal and human smuggling rings, prosecute predatory practices, and ensure our men and women on the front lines have the armor and weapons appropriate for their functions, those benefits are offset by highly concerning provisions in other areas. This testimony focuses on Title I of the bill, which contains most of those provisions. Some of its sections echo a previous bill, HR 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, which generated the largest peaceful demonstrations our country has ever seen with millions participating in over 100 cities. In addition, this bill would make Arizona’s SB 1070 the law of the land. Widely known as the “show me your papers” law, SB 1070 in 2010 galvanized the country’s civil rights and social justice communities, led to multiple boycotts, and widespread condemnation from many sectors of our society, including criticism from local governments and law enforcement, because it legitimized and codified racial profiling.

Frustration over federal inaction to fix our broken immigration system led many Americans to express support for such legislation. Not because they thought it would fix the problem, but because they wanted action. Since then, we have reaffirmed that two wrongs do not make a right. Similarly, the overarching message coming from states that debated similar laws—and it should be noted that 31 states rejected that approach,¹ while the six that moved forward faced a slew of lawsuits and injunctions—was that they needed the federal government to act and fix our immigration system. But unlike those state legislatures and those of us in the American public, you represent the legislative branch of our federal government and thus have within your power the ability to provide the multi-dimensional solutions that are required to fix this problem. It is imperative that you exercise the stewardship needed fix the immigration system, and not make things worse.

Rather than assert this Congressional role and responsibility to ensure we have an orderly and regulated immigration system, HR 2278 proposes a massive delegation of authority that is unnecessary, given:

- Enormous buildup in enforcement, particularly border enforcement, in recent years, as documented in the following section (Current Enforcement Levels).
- Contemplated increases in pending bipartisan immigration reform proposals, including a proposed massive expansion of E-Verify and other interior enforcement efforts.

The effect of this delegation of authority will be to create a patchwork of laws that will add more chaos, not more order, to our immigration system.

¹ In 2001, for example, state legislatures ranging from Democrat control to Republican supermajorities rejected the SB 1070 approach, including CA, NV, WA, CO, IA, KY, LA, MS, VA, ME, NC, TN, FL, KS, OK, NH, SD, TX, and WY. For more detail, see NCLR’s 2012 report *The Wrong Approach: State Anti-Immigration Legislation in 2011*. http://www.nclr.org/index.php/publications/the_wrong_approach_state_anti-immigration_legislation_in_2011-1/

Furthermore, HR 2278 is harmful. There is widespread evidence that interior enforcement of immigration laws generally, and its delegation to states and localities in particular, inherently threaten civil rights and violate other core American values (as documented in the section below, Latino Community Concerns). By condoning and expanding such practices, HR 2278 would:

- **Lead to racial profiling and wrongful detention**, because everyone who “looks illegal” is presumed so and subject to law enforcement stops, arrest and detention. On the heels of a court ruling against Sheriff Joe Arpaio, the poster child for these policies, determining that patterns of racial profiling and discrimination were widespread in the pursuit of this approach, the proposal to nationalize such policies is outright disturbing.
- **Criminalize otherwise innocent behavior**. If this legislation became law, it would increase the possibility, for example, that a U.S citizen teenager driving to the movies with his sister who is undocumented could be subject to prosecution. Or that a church that took in undocumented children after their mother got picked up for deportation—as happened after the Postville raid in Iowa—would be subject to harboring charges.

Overall, HR 2278 seems to turn our cherished constitutional principle of innocent until proven guilty on its head. It seeks to exhaust every ounce of discretion that can be used to presume guilt, while restricting discretion to determine innocence.

To some, the violations of rights and values of “show me your papers” policies may seem acceptable collateral damage. To the nation’s Hispanics, seventy-five percent of whom are United States citizens and represent 1 in every six people in America, the damage is not collateral at all. According to the Pew Research Center, one-in-ten Latinos, including citizens and legal immigrants alike, report being stopped each year based on suspicion of immigration status. Multiply that over a few years and MOST Hispanics face a virtual statistical certainty that they will be stopped by police because, based on their ethnicity alone, they are presumed to be unauthorized immigrants. If that were happening to all Americans we suspect we wouldn’t even be having this debate—a policy so widespread, invasive, and subject to abuse would not even be on the table for serious consideration.

CURRENT ENFORCEMENT LEVELS

Failure to enact federal immigration reform has not meant inaction on immigration enforcement over the past two decades. In fact, by nearly every standard, more is being done than ever before to enforce immigration laws. Measured in terms of dollars, not only are we spending more on immigration enforcement than at any time in history, but the federal government today spends more on enforcing immigration laws than on all other categories of law enforcement combined.

Measured in qualitative terms, never before has our country used a broader array of enforcement strategies than we do today. Through congressional appropriations and the passage of legislation like the Secure Fence Act and the Southwest Border Security Bill, the federal government has already enacted an enforcement-first policy. We have seen more personnel, more technology, more fencing and more money put into border security, along with new and expanded initiatives like Operation Streamline, which criminally prosecutes all undocumented border crossers and has overwhelmed our court system and wasted precious judicial resources. Throughout the interior, enforcement has increased through programs like Secure Communities, and 287(g)

agreements continue. At the worksite, E-Verify has been expanded, and the incidence of I-9 audits is at unprecedented levels.

Measured by results, detention and prosecutions of immigration law violators, as well as deportations, are at all-time highs. Beginning with the last two years of the Bush Administration and continuing through the Obama Administration's first term, deportations have risen and remain at record levels, measured in both absolute and relative terms.

At the same time, perhaps for the first time since we acquired much of the American Southwest in the late 1840s, net migration from Mexico is now zero—or less—according to the best available research.

Reasonable people can disagree about how much enforcement is enough. Even though the Government Accountability Office (GAO) has testified before Congress that prevention of every single unauthorized border crossing would be unreasonable, for some no amount of enforcement will ever be enough. This is not the standard we apply to any other area of law enforcement.

According to the Migration Policy Center's report *Immigration Enforcement in the United States: the Rise of a Formidable Machinery*, with FY 2012 expenditures at \$18 billion, the U.S. government already spends more on its immigration enforcement agencies than on all its other principal criminal law enforcement agencies combined. Taking a close look at the growth of funding, technology, and personnel, as well as case volume and enforcement actions, the report finds that "[t]oday, the facts on the ground no longer support assertions of mounting illegal immigration and demands for building an ever-larger law enforcement bulwark to combat it," and offers this concluding finding:

Even with record-setting expenditures and the full use of a wide array of statutory and administrative tools, enforcement alone is not sufficient to answer the broad challenges that immigration—legal and illegal—pose for society and for America's future. Meeting those needs cannot be accomplished through more enforcement, regardless of how well it is carried out. Other changes are needed: enforceable laws that both address continuing weaknesses in the enforcement system, such as employer enforcement, and that better align immigration policy with the nation's economic and labor market needs and future growth and well-being.²

Yet, HR 2278 does little to address those other areas. It is widely recognized that jobs are the most potent pull factor attracting immigrants to this country. Similarly, much concern has been expressed about the unfair advantage some employers derive from hiring undocumented workers who are less likely to speak up in the face of wage and work safety violations. But while HR 2278 doubles down on the types of enforcement where much has already been done, it continues to omit particular enforcement policies that have been sorely neglected. We note with some concern the relative lack of attention being placed on the importance of improved enforcement of labor laws. Even highly effective workplace enforcement regimes can be subverted by unscrupulous employers, who use middlemen to avoid enforcement liability, exploit

² Meissner, Doris, Donald M. Kerwin, Muzaffar Chishti and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of A Formidable Machinery*. Migration Policy Center. Washington, DC: 2013. <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>

unauthorized workers through substandard wages and working conditions, and thereby under-cut their law-abiding competitors and worsen labor standards for all workers.

LATINO COMMUNITY CONCERNS

As the recent election clearly demonstrated, the issue of immigration is a galvanizing force for the nation's Hispanic community. Toxic rhetoric in public discourse on this issue has affected us deeply, regardless of immigration status, and we see getting this debate on the right course as a matter of fundamental respect for the role of Latinos in the U.S. Latino voters generated the game-changing moment for immigration last November, creating an opening to finally achieve the solution our country needs. And the Latino community's role is growing. An average of 878,000 Latino citizens will turn 18 each year between 2011 and 2028. Our community is engaged and watching this debate closely.

From the perspective of the Latino community, current levels of immigration enforcement are already intolerable, because virtually all of us are affected. The way in which these policies are being carried out have unfortunate, discriminatory, and much too often economically and personally devastating consequences in our community and to the social fabric of our country. Too many U.S. citizens and lawful residents are stopped, detained, and even deported as a result of over-zealous application of the law. Too many U.S. citizens and lawful residents are faced with the choice of separation from their family members or leaving the country of their birth to live abroad when a family member is deported. And too many resources are diverted from more worthy purposes to track down, arrest, detain, and deport people whose only offense is to seek a better life for their families, the vast majority of whom are otherwise law-abiding and who pose no threat to public safety. This significantly undermines the rule of law in our country and diverts resources away from pursuing those who present a threat to national security or public safety.

Numerous reports have documented the negative effects that deputizing local law enforcement to apply immigration laws have on public safety and community policing. According to a 2013 report by the University of Illinois at Chicago, surveying Latinos in Cook, Harris, Los Angeles, and Maricopa counties, this interaction between law enforcement and immigration has made over 40 percent of Latinos less likely to contact police to report a crime or if they are victims of a crime, because they are afraid the police will ask them or people they know about their immigration status. And that reluctance is not limited to undocumented immigrants. The report also found that "[w]hen asked how often police officers stop Latinos without good reason or cause, 62 percent said very or somewhat often, including 58 percent of US-born respondents, 64 percent of foreign-born respondents, and 78 percent of undocumented immigrant respondents."³

An earlier NCLR report on the impact of 287(g) agreements, the expansion of which is proposed in this bill, found similar concerns and abuses. The report contains a survey done in collaboration with the Tennessee Immigrant and Refugee Rights Coalition one year after the

³ See Theodore, Nick, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Dept. of Urban Planning, University of Illinois at Chicago. May 2013. Randomized survey of Latinos in four major counties. http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf

287(g) agreement was in place in Davidson County, TN. The study compared the willingness and likelihood of economically equally situated Latinos and Blacks to approach the police in Davidson County. Results showed that while both communities have negative perceptions of the police, the Latino community expressed greater fear and unwillingness to contact the police in the case of an emergency. Furthermore, the survey indicated that much of the apprehension reported by Latino survey participants was related to immigration enforcement and fear of possible deportation.⁴

For those who may believe these concerns are far-fetched, consider this:

- Eduardo Caraballo, a U.S. citizen born in Puerto Rico, was arrested by Chicago police in May 2010. Although his mother posted bond, he was held for more than three days in the custody of federal agents on suspicion of being undocumented. They refused to release him even after being provided his birth certificate, apparently assuming that his paper were fake because of his “Mexican appearance.” He said he was threatened with deportation. He was released only after the intervention of Illinois Congressman Luis Gutierrez.⁵
- In early 2008, Pedro Guzman, a mentally disabled U.S. citizen from Lancaster CA, was arrested for trespassing in a local airport. He was sentenced to jail in Los Angeles County on April 19. While in jail, he was erroneously reported to ICE as a non-citizen, although Sheriff’s Department records indicated he was a citizen who stated at booking that he was born in California. He was transferred to ICE, which deported him to Tijuana, Mexico, leaving him alone with \$3. He spent nearly three months destitute in Mexico while his family searched frantically for him and filed a lawsuit to force the U.S. government to help find him. He tried to cross the border into California several times, but was turned away. He was found in August 2008 near the Calexico border crossing. It appears that he signed a voluntary release document without receiving any assistance in reading or understanding it, although he reads at a second-grade level and has trouble remembering information like his telephone number.
- In December 2008, ICE deported Mark Lyttle, a U.S. citizen diagnosed with bipolar disorder and developmental disabilities, first to Mexico and from there to Honduras and then Guatemala. Four months later, he was returned to the U.S. ICE officials say that he signed a statement that he was a Mexican national.”⁶

In Arizona, these cases came to light in the recent lawsuit against Sheriff Joe Arpaio and the Maricopa County Sheriff’s Office (MCSO), part of the documented pattern of racial profiling and illegal detentions targeting Latinos⁷:

- Manuel Ortega Melendres is a legal visitor to the United States who possessed a valid visa. On September 26, 2007, he was a passenger in a vehicle that was stopped by officers from the Maricopa County Sheriff’s Office in Cave Creek, Arizona. MCSO was conducting an

⁴ See NCLR’s Issue Brief *The Impact of Section 287(g) of the Immigration and Nationality Act on The Latino Community*, 2010. http://www.nclr.org/images/uploads/publications/287gReportFinal_1.pdf

⁵ “Deportation Nightmare: Eduardo Caraballo, US Citizen Born in Puerto Rico, Detained as Illegal Immigrant,” *Huffington Post*, May 25, 2010. See <http://www.womenscommission.org/programs/detention/women-in-detention>.

⁶ “Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System.” New York: Human Rights Watch and the ACLU, July 2010. See http://www.hrw.org/sites/default/files/reports/usdeportation0710webwcover_1_0.pdf.

⁷ From ACLU’s plaintiff profiles in *Ortega Melendres, et al. v. Arpaio, et al.* <http://www.aclu.org/immigrants-rights-racial-justice/ortega-melendres-et-al-v-arpaio-et-al>

operation targeted at day laborers. Although the officer who stopped him claimed that the reason he pulled the vehicle over was because the driver was speeding, the driver, who was a Caucasian male, was not given a citation or taken into custody. The officer instead asked Mr. Ortega and the other Latino passengers to produce identification. Though Mr. Ortega provided identification, he was nonetheless arrested. Mr. Ortega spent four hours in a cell in the county jail. Eventually he was taken to an Immigration and Customs Enforcement (ICE) official, who confirmed that he had proper documentation to be in the United States. After an hours-long ordeal, Mr. Ortega was released.

- In March 2008, siblings Manuel Nieto and Velia Meraz were stopped during a sweep in North Phoenix after they had witnessed the MCSO detaining two Latino men at a gas station. After pulling into the gas station, the MCSO deputy ordered Ms. Meraz and Mr. Nieto to leave. They left the gas station, but were subsequently pulled over by MCSO deputies in front of their family business at gunpoint. While Mr. Nieto called 911, MCSO deputies pulled him out of his car and threw him against it. Family members who were present at the time informed the officers that both Mr. Nieto and Ms. Meraz are U.S. citizens. MCSO ran Mr. Nieto's identification and then released both of them without a citation or any apology.
- David and Jessika Rodriguez, along with their two young children, were off-roading near Lake Bartlett in December 2007. As they were leaving the preserve, they were stopped and ticketed by MCSO for driving on a closed road. But several other drivers who were not Latino and driving on the same stretch of the road were allowed to leave with only a warning. During the stop, the MCSO deputy demanded to see Mr. Rodriguez's Social Security card even though he had produced his Arizona driver's license, registration and proof of insurance. Mr. Rodriguez eventually relented and provided the deputy with his Social Security number so that he and his family could leave in peace. As the Rodriguezes drove to the exit of the preserve, they were able to stop and speak with other drivers and confirm that not one of them had been given a citation. The Rodriguezes were treated unfairly because they are Latino. The Rodriguezes are U.S. citizens.

In Alabama, after that state passed an even more draconian version of the Arizona law, the Southern Poverty Law Center documented a set of problematic developments, including a judge telling a female victim of domestic violence seeking a protective order that she would be deported if she pursued the order; and a clerk telling a Latino customer that he could not make a purchase with a bank card because he did not have an Alabama ID, although the Latino customer was legally present but from Ohio.

These cases are only a small illustration of the experiences many Latinos are subjected to because of how they look or sound.

Concerns about the adverse effects of delegating immigration enforcement to local law authorities are not Latinos' alone. Any community with members that are deemed to be foreign or have experienced racial profiling has expressed concerns. Opposition to SB 1070 included the Asian American Justice Council, the Leadership Conference on Civil and Human Rights, the NAACP, the Urban League,

Furthermore, numerous voices in the law enforcement community have also expressed concerns about pursuing this approach. At the height of debate over Arizona's SB 1070, the Major Cities

Chiefs of Police Association, the Police Executive Research Forum, the National Latino Peace Officers Association, and 19 current and former chiefs of police and sheriffs from multiple states, filed an amicus brief against the Arizona law.⁸

For those who may not be swayed by the disparate application and effect of these laws on America's diverse citizens and legal residents, the record also demonstrates that these laws are expensive and counterproductive. In addition to extensive legal battles, Arizona suffered financial and job losses, tarnished its image, and saw the historic recall of the legislation's author. The handful of states that ignored the lessons from Arizona faced lawsuits and mounting legal fees, experienced millions of dollars in economic losses, and made law enforcement more difficult.

CONCLUSION

A patchwork of immigration laws is a bad prescription for the nation and a recipe for disaster for the Latino community. We have been down this road before with SB 1070, and the results are in—these policies generate racial profiling and discrimination. That is why every facet of mainstream America was represented among those opposed to this law, and over 300 organizations joined 19 amici briefs supporting the legal challenge against SB 1070. Among those joining were 68 Members of Congress; 44 former state attorneys general; dozens of cities and towns; law enforcement associations, sheriffs and police chiefs; labor, business, and civil rights leaders; law enforcement experts; former Secretary of State Madeleine Albright; former commissioners of the U.S. Immigration and Naturalization Service; prominent religious institutions; and numerous faith, labor, and immigrants' rights

Our country deserves better. We have always aspired to be a nation that judges people by the strength of their character, yet HR 2278 would encourage discrimination based on how people look or sound, regardless of whether they are American citizens, legal or undocumented immigrants. Latinos and people of color would bear the brunt of this misguided approach and be subject to increased racial profiling. In Arizona, Latinos have already been experiencing the consequences of that environment—it is an ugly reality, and sadly, they are not alone.

Congress has a responsibility to fix our immigration system. It must not abdicate that responsibility, and it must not create a situation where there are 50 different ways to apply immigration laws in our country, particularly when the consequences are not only chaotic but deeply damaging.

At a time when momentum is building for the comprehensive immigration reform that our system requires and our country deserves, it is disheartening to be taking a look back instead of forward. We urge the authors, and this committee, to exercise their leadership to deliver a modernized and effective immigration system for the 21st century, and do so in a way that respects the contributions of all Americans, regardless of their accent or appearance.

⁸ Brief of State and Local Law Enforcement Officials as Amici Curiae in Support of Respondent, http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondentamcustate-localawenforcementofficials.authcheckdam.pdf