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Panel Discussion: Local Government's Immigration Responsibilities

QUESTIONS FROM LOCAL GOVERNMENTS ABOUT IMMIGRATION

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Americans have always pointed with pride to a history of welcoming newcomers that has earned our country the title "Nation of Immigrants." At the same time, immigration issues have always been contentious in American history. Throughout the centuries, local governments have often played a role in welcoming as well as regulating immigrants. Today, however, we seem to be experiencing a period where immigration issues are much more "hot button" than they were in recent decades. Immigration issues are in the news every day, and the failure of the Federal Government to resolve immigration issues effectively at the national level has caused local governments to consider playing a larger role.

1. Why Are Immigration Issues So "Hot Button" at the Local Level?

Several social and political trends are driving immigration issues into the spotlight today. First, America's demographics are changing rapidly. As the Congressional Research Service (CRS) noted a few years ago, America is becoming "bigger, older, and more diverse."[1] Immigration has been a key part of that changing demographic, and immigration promises to continue to rise in the future.[2] Many predict that immigration is the only way to solve many long-term problems associated with America's aging population.

Second, the legal immigration system has become increasingly complicated and difficult for people to negotiate. Immigration laws are notoriously complicated.[3] Our ancestors found it relatively easy[4] to immigrate to the United States and obtain a permanent legal status here. Today's immigrants must negotiate a system that federal judges have called "King Minos's labyrinth in ancient Crete."[5] Many want to come to the United States to live and work, but cannot find a way to do this legally.

Finally, the Federal Government has been unable to fix what nearly everyone agrees is a broken and dysfunctional system. Congress has not been able to pass immigration reform legislation. In the absence of comprehensive reform, however, the

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[1] Laura B. Shrestha & Elayne J. Heisler, "The Changing Demographic Profile of the United States," Congressional Research Service, CRS Report to Congress, March 31, 2011.

[2] Id. at 10 ("The U.S. Census Bureau projects that net migration will continue to be an important component of population growth in the United States through 2050 with net immigration continuing at higher rates than currently observed.").

[3] Laura Murray-Tjan, "Immigration Law: Raise Your Hand If You Understand It," Huffington Post, Feb. 12, 2014, available at http://www.huffingtonpost.com/laura-murraytjan/immigration-law-raise-you_b_4766726.html ("Immigration law is almost impossible to master. It is a messy patchwork of compromises stitched together over decades; a shotgun wedding of often incompatible provisions.").

[4] That is not to say that all of our ancestors immigrated legally; many did not. Unauthorized entry to the United States has been a feature of America's immigration system since the Founding.

[5] According to the Second Circuit Court of Appeals, "Immigration laws bear a striking resemblance . . . [to] King Minos's labyrinth in ancient Crete. The Tax Laws and the Immigration and Nationality Acts are examples we have cited of Congress's ingenuity in passing statutes certain to accelerate the aging process of judges." Lok v. INS, 546 F.2d 37, 38 (2d Cir. 1977).

Executive Branch has ramped up enforcement of existing laws to levels such that immigration enforcement has become the top priority of Federal law enforcement in terms of money spent and law enforcement resources.[6] Immigration enforcement touches everyone in America.

Municipalities see the impact of these trends at the local level, and naturally, immigration becomes a topic for discussion for state and local government officials.

2. Should a City Have an Office of Immigrant Affairs?

The demographics mentioned above have caused some cities and municipalities to look for ways to integrate immigrants more effectively and provide a central office that can coordinate policies and programs that affect immigrants. New York City most famously started the trend with its "Mayor's Office of Immigrant Affairs,"[7] and the changing immigration landscape has caused other local governments to follow suit in dealing with immigration issues in comprehensive and targeted ways by creating an office to deal with them.

A local immigrant affairs office can foster immigrant integration by providing information to immigrants on their rights and benefits, and providing a "one stop shop" for finding local laws and ordinances that affect immigrants. New York City's office, for example, has an initiative to combat immigration fraud, a problem that increasingly affects immigrant communities.

For an example of a recent ordinance establishing such an office, see the Seattle ordinance reproduced at the end of this paper.

3. Should a City Take Immigration Issues Into Account in Criminal Prosecutions and Sentencing?

As stated earlier, immigration law is excessively complicated and has become quite harsh. Local government officials are often surprised to find out that immigrants can often face mandatory detention and deportation for relatively minor crimes. Few people are aware, for example, that a legal immigrant will face deportation for any firearms offense, no matter how minor (for example, driving onto a school parking lot with a firearm in a vehicle in violation of a municipal ordinance).[8] The harsh

[6] See, e.g., "America's Deportation Machine: The Great Expulsion," The Economist, Feb. 8, 2014 ("Barack Obama has presided over one of the largest peacetime outflows of people in America's history").

[7] See the website for the New York City Mayor's Office of Immigrant Affairs, at http://www.nyc.gov/html/imm/bii/html/home/home.shtml.

[8] Immigration & Nationality Act §237(a)(2)(C) states that "Any aliens who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device . . . in violation of any law is deportable."

consequences of immigration laws have led to calls from communities for state and local governments to exercise prosecutorial discretion when charging immigrants with crimes, or to pass legislation that reduces sentences to prevent the worst immigration consequences.

Immigrant communities sometimes fear the police. Many police departments have found that they can carry out their mission most effectively if they do outreach into the immigrant community, emphasizing community policing and gaining the trust of unauthorized immigrants in order to solve crimes. Local government officials should also be aware that Congress has created special visa categories for immigrants who are the victims of certain crimes, or who help law enforcement with criminal investigations. Because federal law allows local law enforcement officials to assist immigrant crime victims in obtaining special crime victim visas, local governments are increasingly asked to assist immigrants in obtaining these visas.

4. What Is a Federal Immigration Detainer and How Do Detainers Affect Municipal Budgets?

A Federal immigration detainer, or Form I-247, is a notice that the U.S. Department of Homeland Security, through its sub-agency U.S. Immigration & Customs Enforcement (ICE), issues to federal, state and local law enforcement agencies (LEAs) to inform them that ICE wants to take custody of a person who is currently being held by the law enforcement agency. For example, a person who has been charged with a local crime and is being held in a local jail may be subject to such a detainer, which means that the person will not typically be released by the jail upon paying bail, but will be held until ICE agents appear to take custody of him or her. As ICE states on its website:

> An immigration detainer serves three key functions: 1) to notify an LEA that ICE intends to assume custody of an alien in the LEA's custody once the alien is no longer subject to the LEA's detention; 2) to request information from an LEA about an alien's impending release so ICE may assume custody before the alien is released from the LEA's custody; and 3) to request that the LEA maintain custody of an alien who would otherwise be released for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) to provide ICE time to assume custody.

An immigration detainer is not a warrant of arrest and it does not necessarily mean that the person is deportable. Moreover, it should not be confused with a criminal detainer.[9]

[9] See "Understanding Immigration Detainers: An Overview for State Defense Counsel," National Immigration Project, March 2011, available at http://nationalimmigrationproject.org/legalresources/practice_advisories/pa_Understanding_Immigration_Detainers_05-2011.pdf.

The use of these detainers has been controversial, with activists and community members charging that such detainers have led to unconstitutional detentions and in some cases, to situations where individuals have been held for days and weeks past the 48-hour period that ICE requests. A number of lawsuits have been filed against localities that have honored ICE immigration detainer requests.[10]

In response to such controversies, some localities have passed ordinances calling for local officials to decline all ICE detainer requests. Yet such actions have triggered lawsuits by aggrieved parties who believe that honoring ICE detainers will improve public safety. For example, in 2013, Cook County in Illinois was sued by a Chicago man whose brother was killed in a car crash with an unauthorized immigrant; the family alleged that the victim would not have been killed if Cook County had honored the immigration detainer placed on the immigrant by ICE officials.[11]

Defending lawsuits is of course costly, but honoring immigration detainers has been expensive in other ways as well. As one study of the use of immigration detainers in King County, Washington, found:

> On average, people subject to ICE detainers stay in jail 29.2 days longer than others. The results of a statistical regression analysis indicate that ICE detainer requests increase people's jail stay by 161% after case characteristics are taken into account. For example, a person who would otherwise be expected to stay in jail for 30 days would, as a result of an ICE detainer request, stay in jail for a total of 78.3 days instead.
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> The county and municipalities within it are responsible for the fiscal costs associated with the extended jail stays that result from ICE detainers. We estimate that the extra jail days associated with ICE detainers cost nearly $3 million per year in jail costs alone. The results also suggest that not honoring detainer requests would save King County and local municipalities approximately $1.8 million each year in jail costs.[12]

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[10] For a list of such lawsuits, see Understanding Immigration Detainers, id. at footnote 9, at 23.

[11] Marcus Riley, "Lawsuit Filed Over County's Immigration Detainee Policy," NBC Chicago, Apr. 22, 2013, available at http://www.nbcchicago.com/blogs/ward-room/Lawsuit-Filed-Over-Countys-Immigration-Detainee-Policy-204113911.html.

[12] Katherine Beckett, Ph.D., & Heather Evans, M.A., Ph.D. Candidate, "Immigration Detainer Requests in King County, Washington: Costs and Consequences," Mar. 26, 2013, available at http://faculty.washington.edu/kbeckett/wordpress/wp-content/uploads/2013/03/Immigration-Detainer-Requests-in-King-County-Washington_Final-Report.pdf.

ICE's top official, Acting Director Daniel H. Ragsdale, confirmed in a February 25, 2014 letter to Congress that DHS immigration detainers "are not mandatory as a matter of law." A copy of this letter is reproduced at the end of this article.

5. What Is Involved in Hiring Foreign Workers at the Local Government Level?

Local governments can and do hire foreign workers to fill key municipal jobs. Typical local government jobs held by such workers include public school teacher, health care worker, urban planner, information technology worker, or even parking authority executive. Commonly, for example, local governments hire H-1B temporarily professional workers, and sponsor them eventually for "green cards," or lawful permanent residence in the United States.

Yet hiring such foreign workers can be difficult and complicated, and may require the local government to retain outside counsel to handle the case. Some municipalities have found themselves in "hot water" with the Federal Government for failure to follow the complex rules relating to such workers. For example, the Garland Independent School District in Texas recently made national news when more than twenty H-1B professional workers, employed by GISD as public school teachers, were potentially facing deportation because the correct procedures had not been followed in applying for visas for them.[13] Some four years previously, the national news media had covered the story of a lawsuit filed by Filipino public school teachers who alleged that they were "thrust into massive debt, unsavory living conditions and, in effect, indentured servitude" through the hiring process carried out by two employment agencies that placed them in the Louisiana public schools.[14]

Before hiring such foreign workers, local governments should ensure that they are fully briefed on the process and cost for doing so, and they understand the potential financial liabilities and risks. Foreign workers can be an important human resource asset for hard-to-fill jobs, but the process for hiring them is often extremely technical. It is typically best to hire specialized attorneys to handle these cases.

[13] "Foreign Teachers In Texas Face Deportation Due to School District's Visa Handling Blunder," Fox News Latino, Mar. 27, 2014 ("Federal authorities are investigating the school district over the blunder and an administrator, teacher and associate superintendent have been placed on leave.").

[14] Mike Hasten, "Suit Alleges Exploitation of Filipino Teachers in Louisiana," USA Today, Aug. 5, 2010, available at http://usatoday30.usatoday.com/news/education/2010-08-05-teachers05_ST_N.htm.