INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

IMLA

Work Session: Current Immigration Issues Facing Local Government

Title: Hot Button Issues in the Immigration Debate: Point/Counterpoint

by

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by

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Nashville, Tennessee
October 30, 2007

I. **Politics of Immigration**. The political debate surrounding illegal immigration in the United States can be described, in a judicious depiction, as both highly contentious and controversial. The topic evokes a great deal of emotion among most Americans. The debate is continuous with daily news events causing the hot button to be pushed yet again. One of the recurring themes in the debate is the question over the relative strain that illegal immigrants place on public resources versus the contributions that they make to public revenues. A second issue is whether "English-only" laws or policies contribute to assimilation of immigrants or are discriminatory. A third issue is the capability of state and local law enforcement authorities to respond to human trafficking offences and victims. The intent of this written discussion is to primarily provide a background review of the three issues.

II. **Asset or Liability**? The question posed from a local and state government perspective is if immigration is a federal policy why should the state and local governments have to suffer a financial loss for an inadequate enforcement of a federal policy? But that question leads directly to the question of whether the revenues generated by illegal immigrants and received by the state and local governments pay for such costs?

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The cost/benefit issue arises across the country:

> "Arizona Gov. Janet Napolitano, a Democrat whose state is the No. 1 entry point for illegal immigration, implored Congress Tuesday to fix the nation's broken immigration system before the year's end. . . . Meanwhile, states have borne too much of the responsibility, Napolitano said. That includes crowded jails, hospitals and morgues and overworked judicial system workers. She estimates the federal government owes Arizona $350 million for the cost of holding illegal immigrants in jail."[1]

> "A comprehensive audit of the costs and benefits of illegal immigration remains a priority for a Salt Lake City lawmaker but isn't likely to be conducted anytime soon. 'It's seeming to become a perennial issue,' he [Sen. Scott McCoy, D-Salt Lake] said. 'I would think we'd want to spend the money, especially when we start launching permanent legislative responses….We're talking real people, real lives, real issues.'" [2]

> "Illegal immigrants cost Chesterfield government an estimated $2.09 million in fiscal 2006, according to a report issued this afternoon by the county. The report comes more than one year after county supervisors first asked for an analysis of how much government money is spent on illegal immigrants. An initial report released last August did not include estimated costs for services provided to the illegal immigrant community."[3]

According to the most recently available national data, in 2005 the foreign-born population totaled about 37 million, or just over 12 percent of the U.S. population.[4] "Unauthorized" or "illegal" immigrants are those who entered the country without proper authorization, or who entered the country lawfully with non-immigrant visas but subsequently over-stayed or violated the terms of their visas.[5] Visa over-stayers and violators may make up as much as 40 percent of the illegal immigrant population. Roughly 12 million immigrants, or nearly one third of all foreign-born persons in the country, are unauthorized.[6] Research suggests that most illegal immigrants are young adults and live in families. Among 25 to 64 year olds, almost half are not high school graduates and as a result their wages and incomes are low.[7] Perhaps three-fourths of the adults are in the workforce and work mostly in low-skill occupations.[8]

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[1] "Napolitano Says Congress Must Tackle Immigration This Year", AP, February 27, 2007.
[2] "Immigration Audit Is Unlikely Anytime Soon", Deseret Morning News, February 25, 2007.
[3] "Illegal immigrants cost Chesterfield $2 million", inRich.com, August 16, 2007.
[4] U. S. Census Bureau, Table SO602.
[5] Jeffrey Passel, Unauthorized Migrants: Numbers and Characteristics, Pew Hispanic Center, 6-14-05, p. 9.
[6] Pew Hispanic Center, Fact Sheet 04-26-06; Jeffrey Passel, The Size and Characteristics of the Unauthorized Migrant Population in the U.S., Pew Hispanic Center, 3-07-05.
[7] Hans Johnson, Illegal Immigration, Public Policy Institute of California, p. 5.
[8] *Id.*

Complexity in Ascertaining Financial Numbers. First, there is great difficulty in calculating the number of undocumented immigrants in a state. There are no national or state representative surveys that include questions about legal status. Even if there were the responses would be suspect. The major concern is in ascertaining the primary number, that is, what methodology is used to calculate the number of illegal immigrants in a state and similarly, the difficulty in calculating the number of illegal immigrants who access state paid services.[9] The second question posed is whether or not to include costs attributable to the U.S. born children of illegal immigrants. If included, it nearly triples the number of children to be included. One study places the number of unauthorized children at 1.8 million and the number of children who are U.S. citizens by birth living in families in which the head of the family or spouse was unauthorized at 3.1 million.[10]

Categories of Costs and Revenues.

A. **Costs**. The public cost of state and local services are primarily studied in three categories, education, healthcare, and jail and prison incarceration. In education the principal question is whether you include the costs of legal children of undocumented parents? Healthcare costs are in a wide variety of programs and include emergency health care, children with special health care needs, substance abuse services, mental health services, immunizations, women's and children's health care services, public health, and emergency health services. Incarceration costs are significant. Among the total number of prisoners in prisons the number of prisoners who are illegal immigrants is estimated at 20%.[11] Under the Violent Crime Control and Law Enforcement Act, Crime Act of 1994, the federal government authorized $1.8 billion over six years to reimburse states and local jurisdictions for criminal justice costs associated with illegal immigrants. The federal State Criminal Alien Assistance Program (SCAAP) in 2006 provided $399 million in partial reimbursement to states and local jurisdictions for housing criminal aliens but is limited to costs incurred related to those convicted of felonies or multiple misdemeanors. Funding is an issue in the 2007 budget. A joint program between states and the federal Immigrations Customs and Enforcement (ICE) identifies incarcerated illegal immigrants to begin deportation proceedings while incarcerated and deport them after serving their prison sentences.[12]

B. **Revenues**. Taxes that are revenues include those at the individual level, income and payroll taxes, and at the household level, property taxes. Taxes can also be described as those that can not be avoided such as sales taxes, various fees and user taxes, i.e. a gasoline tax and motor vehicle inspections fees, and property taxes whether paid on property one owns or is passed through as rent. The primary tax that can be avoided is the income tax. The general estimate is that about half of the illegals work

[9] Special Report, Undocumented Immigrants in Texas: A Financial Analysis of the Impact to the State Budget and Economy, Office of the Texas Comptroller, December 2006, ("at best an educated guess") p. 2.
[10] Jeffrey Passel, Size and Characteristics of the Unauthorized Migrant Population in the U.S., Pew Hispanic Center, 3-07-06.
[11] Steven Camarota, The High Cost of Cheap Labor: Immigration and the Federal Budget, Center for Immigration Studies, August 2004.
[12] Criminal Alien Program, Immigration Customs and Enforcement, ICE Office of Detention and Removal.

off the books.[13] The U.S. Social Security Administration, however, uses an assumption that three quarters of undocumented immigrants pay payroll taxes and in turn contribute about $6-7 billion in Social Security funds.[14] There was $519 billion in the Social Security Administration's "Earnings Suspense File in 2005. These are Social Security contributions made under a mismatched or false Social Security number. It is thought that most of these recent contributions derived from unauthorized immigrant workers.[15]

Whether the measure of work that illegal immigrants contribute to the local economy should be considered a revenue source is an open question. The gross state product (GSP) is used as a measurement of the economic output of a state. It is the sum total of all value added by industries within the state and serves as a counterpart to the gross domestic product (GDP). In October 2006, the U.S. Bureau of Economic Analysis has changed the name to gross domestic product (GDP) by state.[16]

Remittances sent abroad are a cost to the local economy in that the earnings do not remain in the state and contribute to the local economy. Remittances to Latin American from the United States in 2006 were about $45 billion according to the Inter-American Development Bank.[17] It is estimated that about ninety percent of the income remains in the United States. The Federal Reserve has a service that allows customers without Social Security numbers to wire money through the Fed system to Mexico's central bank at a cost reduction of 25% of the average cost.

Studies in general.

A. **Urban Institute**. For twenty-five years, the Urban Institute has studied U.S. immigrants - their impacts, settlement patterns, incorporation into the labor market, and the integration of immigrant families and children.[18] Its 1994 study is often cited as the baseline for newer studies.[19] The program distinguishes citizens from non-citizens, legal from undocumented immigrants, and refugees from other immigrants concluding that "clarifying these distinctions allows for more meaningful analysis of the impacts of public policy on immigrant families." The Institute has found that while immigrants compose one in nine U.S. residents and one in seven workers they represent 20 percent of low-wage workers. Historically, seventy-five percent of the immigrants settled mainly in California, New York, Texas, Florida, New Jersey, and Illinois. That percentage has recently dropped to sixty-eight percent.

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[13] Steven Camarota, The High Cost of Cheap Labor: Immigration and the Federal Budget, Center for Immigration Studies, p. 2.
[14] "Illegal Immigrants Are Bolstering Social Security with Billions", New York Times, April 5, 2005.
[15] Migration Policy Institute, National Center on Immigrant Integration Policy – Fiscal Impacts.
[16] "Gross Domestic Product (GDP) by State 2005", News Release, U.S. Bureau of Economic Analysis, October 2005.
[17] "Migrant Remittances from the United States to Latin America to Reach $45 Billion in 2006, Says IDB", Press Release 10-18-06.
[18] Urban Institute, Immigration Studies, A Program of the Urban Institute, www.urban.org/toolkit/issues /immigration.cfm.
[19] Michael Fix and Jeffrey Passel, Immigration and Immigrants: Setting the Record Straight, Urban Institute, May 1994.

The Institute has also found that undocumented men come to the U.S. almost exclusively to work, are younger, are less likely to be in school, and less likely to be retired than other men.[20] That between sixty and seventy-five percent of the undocumented immigrants entered illegally and the other twenty-five to forty percent entered legally and subsequently overstayed visas. The Institute also found that over forty percent of the undocumented are women.

The Institute has recently summarized its findings regarding the children of immigrants.[21] The following trends, among many in the findings, are noted here:

- "Immigrants comprise over 12 percent of the U.S. population [35 million], and their children 20 percent [15 million]. If current trends continue, children of immigrants will represent at least a quarter of all U.S. children by 2010.

- Four-fifths of children of immigrants were born in the United States and are, therefore, citizens. Most children of immigrants - 61 percent in 2003 - live in families where one or more children are citizens but one or more parents are noncitizens.

- Children of immigrants may also be at a disadvantage in school because their parents are less well educated on average than native-born parents. In 2000, 32 percent of children of immigrants in the elementary grades had parents without high school degrees, compared with 9 percent of children of natives. Fifteen percent of children of immigrants in the elementary grades had parents with less than 9th grade educations, compared with only 1 percent of children of natives. The gaps in parental education were similar among children in the higher grades."

Recently, an Urban Institute study looked at the total immigrant population in the metropolitan area of Washington, D.C., citizens, legal immigrants, and unauthorized migrants, and concluded that while immigrant households on average have lower incomes than native-born households, they pay nearly the same share of their incomes in taxes.[22]

B. **National Research Council.** In 1990 the U.S. Congress appointed a bipartisan Commission on Immigration Reform to review the nation's policies and laws and to recommend changes. The Commission, in turn, asked the National Research Council to convene a panel of experts to assess the demographic, economic, and fiscal

[20] Randolph Capps, Undocumented Immigrants, Myths and Reality, November 2005.
[21] Children of Immigrants: Facts and Figures, Urban Institute, May 2006.
[22] Randolph Capps, Civic Contributions: Taxes Paid by Immigrants in the Washington, DC, Metropolitan Area, Urban Institute, June 2006.

consequences of immigration. The Council's Report summarizes the panel's work.[23] In responding to the question of whether immigrants impose a net fiscal burden the report notes that five decisions must be made: (1) What is the appropriate demographic unit of analysis, as a general rule the household; (2) What is the legal status of the new immigrants, this determines what services they can legally receive; (3) What will be the effects of additional immigrants on the cost of providing those services; (4) What will be the contribution of new immigrants to public revenues; and (5) What are the future paths of income and population growth for new immigrants and for current residents, and what are the future paths of government spending and tax rates.[24]

C. **Center for Immigration Studies**. The Center recently issued a study that was one of the first to estimate the total impact of illegal immigration on the federal budget.[25] The study concludes that "when all taxes paid (direct and indirect) and all costs are considered, illegal households created a net fiscal deficit at the federal level of more than $10 billion in 2002." Among the findings:

> "Households headed by illegal aliens imposed more than $26.3 billion in costs on the federal government in 2002 and paid only $16 billion in taxes, creating a net fiscal deficit of almost $10.4 billion, or $2,700 per illegal household.
>
> Among the largest costs are Medicaid ($2.5 billion); treatment for the uninsured ($2.2 billion); food assistance programs such as food stamps, WIC, and free school lunches ($1.9 billion); the federal prison and court systems ($1.6 billion); and federal aid to schools ($1.4 billion).
>
> With nearly two-thirds of illegal aliens lacking a high school degree, the primary reason they create a fiscal deficit is their low education levels and resulting low incomes and tax payments, not their legal status or heavy use of most social services.
>
> On average, the costs that illegal households impose on federal coffers are less than half that of other households, but their tax payments are only one-fourth that of other households."

These contributions create a combined net benefit for the Social Security and Medicare programs in excess of $7 billion a year, accounting for about 4 percent of the total annual surplus in these two programs.

The impact of immigration on native-born workers has also been a controversial topic. One view is that it has a harmful effect, in that immigrants and natives tend to have

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[23] The New Americans: Economic, Demographic, and Fiscal Effects of Immigration, The National Academy Press, 1997.
[24] *Id*. at pp. 255-256.
[25] Steven Camarota, The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget, Center for Immigration Studies (CIS), August 2004.

similar skills and compete for the same jobs, thus driving down the native wages. The other view is that the services are not interchangeable, but rather complement each other. In his recent study, George J. Borjas, finds:

> "By increasing the supply of labor between 1980 and 2000, immigration reduced the average annual earnings of native-born men by an estimated $1,700 or roughly 4 percent.
>
> Among natives without a high school education, who roughly correspond to the poorest tenth of the workforce, the estimated impact was even larger, reducing their wages by 7.4 percent.
>
> The 10 million native-born workers without a high school degree face the most competition from immigrants, as do the eight million younger natives with only a high school education and 12 million younger college graduates.
>
> The negative effect on native-born black and Hispanic workers is significantly larger than on whites because a much larger share of minorities are in direct competition with immigrants.
>
> The reduction in earnings occurs regardless of whether the immigrants are legal or illegal, permanent or temporary. It is the presence of additional workers that reduces wages, not their legal status."[26]

D. **Pew Hispanic Center.** The Pew Hispanic Center is a project of the Pew Research Center, which describes itself as a nonpartisan "fact tank" providing information on the issues, attitudes, and trends shaping America and the world. The Pew Hispanic Center was established in 2001 and conducts surveys and publishes studies.

One area not previously studied in depth has been the method and amount of monies that immigrants send back to their home countries. A Pew Hispanic Center study[27] conducted an assessment of remittance transfer services between the United States and Latin America and reached the following conclusions: "Although the cost of sending remittances to Mexico is now much lower than in the late 1990s [7.32 percent of the amount sent compared to 15 percent], the rate of decline has slowed markedly in the past three years. . . . Meanwhile, the amount of money sent to Mexico has increased dramatically from $9.2 billion in 2001 to $13.2 billion in 2003, a growth of 43 percent."

E. **Federation for American Immigration Reform (FAIR)**. In the past few years FAIR has issued fiscal cost studies for six states, Florida[28], Arizona[29],

[26] George J. Borjas, Backgrounder. Increasing the Supply of Labor Through Immigration. Measuring the Impact on Native-born Workers, Center for Immigration Studies, May 2004.
[27] Dr. Manuel Orozco, The Remittance Marketplace: Prices, Policy and Financial Institutions, June 2004.
[28] Costs of Illegal Immigration to Floridians: Executive Summary (Revised 10/05).
[29] The Costs of Illegal Immigration to Arizonans, Federation for American Immigration Reform.

New Jersey[30], Texas[31], California[32], and New York[33]. In each study a yearly deficit was found ranging from $800 million in Florida to $8.9 billion in California.

F. **Public Policy Institute of California**. This report notes that California has more illegal immigrants than any other state – an estimated 2.4 million although it is not the destination state it once was. [34] In California, where the concentration of illegal immigrants is almost twice as high as in the rest of the nation, about eight percent of workers are illegal immigrants.[35] The report states:

> "There are no reliable studies of illegal immigrants' fiscal effects in California. In 2004, the Government Accountability Office concluded that information was insufficient to estimate state costs even of educating illegal immigrant children. Further, most studies of the fiscal effects of immigrants do not separate illegal from legal immigrants.
>
> Some parties to the debate claim that illegal immigrants are a drain on public coffers. Others claim that they pay more in taxes than they receive in services. Sorting out the fiscal effects is a serious challenge, and the outcomes depend on the accounting methods used.[36]

G. **Migration Policy Institute.** The Institute concludes that "research suggests that immigrants provide a net fiscal surplus to the federal government, as immigrants have high labor force participation rates, and thus contribute strongly to federal income taxes."[37] However, state and local governments have a net fiscal strain due to costs of education, public benefits, and healthcare, and lower local property and state income tax payments. It is suggested that the different federal and state/local fiscal impacts "raise the question of whether some federal reimbursement should be made to states and localities, particularly if new legislation allows paths for increased numbers of permanent or temporary immigrants to enter the country."

The Institute has looked at the impact of and issues relating to the managing of workers remittances worldwide.[38] It is noted that remittances in 2003 were recorded as exceeding $93 billion. The actual amount of remittances is much larger. Remittances are now more than double the size of net official flows (under $30 billion), and are second only to

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[30] Jack Martin. The Costs of Illegal Immigration to New Jerseyites. Federation for American Immigration Reform (FAIR), January 2007, www.fairus.org.
[31] Costs of Illegal Immigration to Texans: Executive Summary, Federation for American Reform, April 2005.
[32] The Costs of Illegal Immigration to Californians: Executive Summary, Federation for American Immigration Reform, November 2004.
[33] Costs of Illegal Immigration to New Yorkers: Executive Summary, Federation for American Immigration Reform, 2006.
[34] Hans Johnson, At Issue, Illegal Immigration, Public Policy Institute of California, April 2006.
[35] *Id*., Johnson, at p. 9
[36] *Id.*, Johnson, at p. 9
[37] National Center on Immigrant Integration Policy – Fiscal Impacts.
[38] Dilip Ratha, Understanding the Importance of Remittances, Migration Information Source, Migration Policy Institute, October 1, 2004.

foreign direct investment (around $133 billion) as a source of external finance for developing countries.

H. **The Bell Policy Center** In a study of the costs of federally mandated services for undocumented immigrants in Colorado[39] the Center, recognizing that calculating "these costs is difficult" because of the lack of precise data, concludes that the total estimated cost of providing federally mandated government services to undocumented immigrants was $224.9 million per year. In a simultaneous report the Center looked at the amount of state and local taxes undocumented immigrants paid yearly.[40] The study accounts for remittances by assuming 70% of the households remit an average of $2,000 per year for each worker thus reducing the amount of sales tax paid. It also assumes that half of undocumented immigrants are working "on the books" and paying income tax. Using an estimated 225,000 to 275,000 undocumented workers in the state in the year 2005 the estimated state and local sales taxes, income tax and property tax paid is between $159 million and $194 million.

Looking at both reports the state and local tax payments of undocumented immigrants amount to 70 to 86 percent of the estimated costs of providing federally mandated services.

Conclusion. In utilizing any financial analysis in making a public policy decision the key is to first ascertain what categories of expenses and costs are included in the analysis and what categories are excluded. The public debate will mostly bring out these factors where analyses differ in their conclusions. That is especially true in the topic of the financial impact of illegal immigrants on state and local governments.

III. **"English-Only" Laws and Work Rules**.

> "You have to turn off the Spanish television set. I know this sounds odd, it's not the politically correct thing to say, and I am getting myself into trouble. But I know that when I came to this country, I did not or very rarely spoke German anymore."[41] Gov. Arnold Schwarzenegger

Debate over establishing a national language dates back to the country's beginnings. John Adams proposed to the Continental Congress in 1780 that an official academy be created to "purify, develop, and dictate usage of," English. His proposal was rejected. Restrictive language laws have been enacted periodically since the late 19th century and have seen a strong resurgence starting in the mid-1980's. "English Only" laws vary. While some state statutes simply declare English as the "official" language of the state, other state and local laws limit or bar public provision of non-English language assistance

[39] Rich Jones and Robin Baker, Costs of Federally Mandated Services to Undocumented Immigrants in Colorado, Issue Brief No. 4, The Bell Policy Center, June 30, 2006.
[40] Robin Baker and Rich Jones, State and Local Taxes Paid in Colorado by Undocumented Immigrants, Issue Brief No. 3, the Bell Policy Center, June 30, 2006.
[41] Gov. Arnold Schwarzenegger, National Association for Hispanic Journalists Convention, San Jose, Calif., June 13, 2007. NATJ Digital.

and services. Twenty-six states have "English Only" laws and four have English plus resolutions. In Hawaii, English and Hawaiian are the official languages.

In 1980, Florida's Dade County voters approved an ordinance barring public funding of activities that involved the use of languages other than English and prohibited the Metro Commission from conducting business in any other language. In 1992 a federal judge ruled that Dad County's practice of electing all 9 commissioners by the entire county was a violation of black and Hispanic voting rights. The Court ordered the county split up into 13 districts, each voting on one representative. A newly elected commission repealed the "English Only" provisions.[42]

In Nashville, the Metropolitan Government, passed an Ordinance establishing English as the "official language of the metropolitan government."[43] It ordinance further provided that:

> "Except when required by federal law or when necessary to protect or promote public health, safety or welfare, all communications, publications, and telephone answering systems of metropolitan government boards, commissions, departments and agencies shall be in English."

The ordinance was vetoed by the Mayor and a motion to override the veto failed.

In Pahrump, Nevada, located 60 miles west of Las Vegas with a population of 33,241, the town trustees adopted an ordinance declaring English the official language, restricting the display of foreign flags and denying town benefits to illegal immigrants.[44] The ordinance was repealed on February 14, 2007.

In June, the Carpentersville, Illinois, the Village Board enacted a resolution making English the official language.[45] An ordinance to fine landlords who rent to illegal immigrants and to deny licenses to businesses that employ them is pending.[46]

In Merrimack, New Hampshire, the town council voted to require English-only signs describing park board rules prohibiting alcohol and disorderly conduct. The police had expressed their frustration in enforcing park rules against non-English speaking Latinos and sought Spanish-language signs.[47]

In 1996 the U.S. House of Representatives passed H.R. 123 which declared English as the official language of the United States. The bill failed in the U.S. Senate. The U.S. Senate, in 2006, voted on two separate amendments to make English the national language and to make it the common unifying language of the country.[48] The 2007

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[42] "The Dade County English-Only Ordinance", Matt Meltzer, Miamibeach411.com, 7-16-2007.
[43] Substitute Ordinance No. BL2006-1185.
[44] "English Ordinance Passed", KOLO8newsnow.
[45] "Carpentersville OKs English-only resolution", Chicago Tribune, June 20, 2007.
[46] "English-only push further drives wedge in community", Sophia Tareen, Associated Press, 8-16-07.
[47] "English-only signs in Merrimack", New Hampshire Union Leader, August 10, 2007.
[48] "Senators wrangle over English's status in bill", MSNBC News Service, May 19, 2006.

Immigration Reform Bill provided that English is the national language of the Government of the United States, calls on the government to preserve and enhance the role of English as the national language of the United States, and provides that no person has a right to obtain U.S. government services in any language other than English unless otherwise required by federal law.[49]

Employers, both public and private, have had to address work-place language issues under a wide variety of circumstances. The U.S. Equal Employment Opportunity Commission has applied Title VII to employers "English-only rules" with guidance as follows[50]:

> "Title VII permits employers to adopt English-only rules under certain circumstances. As with any other workplace policy, an English-only rule must be adopted for nondiscriminatory reasons. An English-only rule would be unlawful if it were adopted with the intent to discriminate on the basis of national origin. Likewise, a policy that prohibits some but not all of the foreign languages spoken in a workplace, such as a no-Navajo rule, would be unlawful.
>
> Even where an English-only rule has been adopted for nondiscriminatory Reasons, the employer's use of the rule should relate to specific Circumstances in its workplace. An English-only rule is justified by 'business necessity' if it is needed for an employer to operate safely or efficiently. The following are some situations in which business necessity would justify an English-only rule:
>
> - For communications with customers, coworkers, or supervisors who only speak English
> - In emergencies or other situations in which workers must speak a common language to promote safety
> - For cooperative work assignments in which the English-only rule is needed to promote efficiency
> - To enable a supervisor who only speaks English to monitor the Performance of an employee whose job duties require communication with coworkers or customers.

Conclusion. The "English-only" debates will most often have dual, if not mixed, motivations, that is; the proposal may be seeking a necessary and appropriate response to a specific factual situation while others see the proposal as an opportunity to promote a political theme with a longstanding history.

IV. **Human Trafficking - A Local Crime Issue**.

[49] S.1639, A Bill to provide for comprehensive immigration reform and for other purposes, Chapter 6, secs. 161-163.

[50] U.S. Equal Employment Opportunity Commission Compliance Manual, Section 13: National Origin Discrimination, 12-2-02.

A. **Introduction**. First some definitions of terms. People smuggling and people trafficking are similar in some respects, in particular they both imply movement, but there are several important differences. Those who are smuggled have consented to be smuggled. The term includes bringing illegal aliens into the country in a deliberate evasion of immigration laws as well as the unlawful transportation and harboring of aliens already in the country illegally.[51] Trafficking victims "have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers."[52] While the term "human trafficking" implies movement, trafficking in persons is not the same as smuggling of people. Again, the term describes force, fraud or coercion used to maintain a victim in slavery like conditions. Another major difference is that smuggling ends with the arrival of the migrants at their destination. Trafficking involves an ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers.[53] It is described as a form of modern-day slavery and "frequently involves the trafficking of women and children for sexual exploitation….Trafficking also often involves exploitation of agricultural and sweat shop workers, as well as individuals working as domestic servants."[54]

B. **Trafficking Victims Protection Act of 2000 (TVPA)**.[55] The TVPA was enacted into law in October 2000 and can be described as the keystone of the U.S. government's response to modern day slavery.[56] The TVPA declares trafficking to be a crime and calls on the U.S. government to prosecute and punish traffickers, protect and rehabilitate the victims, and prevent these criminal activities. Victims of trafficking may apply for a T Visa if they are physically present in the U.S. on account of trafficking, have complied with any reasonable request for assistance in the investigation or prosecution of the acts of trafficking, and would suffer extreme hardship involving unusual and severe harm upon removal from the U.S. Victims are entitled to privacy, physical protection, and other forms of assistance while their cases are prosecuted. A large number of federal agency sections, nongovernmental organizations and state agencies come into play under the TVPA, including the Human Smuggling and trafficking Center, the U.S. Department of Justice, the Department of State, the Department of Labor, the Department of Health and Human Services, and the Department of Homeland Security. The U.S. Department of Health and Human Services is responsible for certifying victims of human trafficking once they are found. The threshold for all TVPA benefits is evidence that the applicant is or has been a victim of a severe form; of trafficking in persons.[57] Proof of severe forms of trafficking in persons generally requires evidence of three factors: (1) the procurement of a victim, evidence of the "recruitment, harboring, transportation, provision, or obtaining of a person"[58] by

[51] "Human Trafficking and Human Smuggling", U.S. Immigration and Customs Enforcement, www.ice.gov.
[52] United Nations Office on Drugs and Crime (UNODC), 15 August 2007.
[53] "Smuggling? Trafficking? What's the Difference?, USINFO.STATE.GOV.
[54] Fight Trafficking in Persons, U.S. Department of Justice, USDOJ.GOV.
[55] TVPA, Publ L. NO. 106-386, Div. A, 114 Stat. 1463, 1466, codified at 22 USC Sec.7101 *et seq*.
[56] Fighting Human Trafficking Inside the United States, USINFO.STATE.GOV, 12 May 2004 NEW???
[57] 22 USC sec. 7105(b)(1)(A).
[58] 22 USC sec. 7102(8)(B).

another person, (2) the use of a specific means to recruit and/or maintain a victim, generally "force, fraud, or coercion"[59] and (3) procurement for a specific purpose; that is some type of exploitative labor, services, or commercial sex.[60]

In introducing the U.S. State Department's seventh annual *Trafficking in Persons Report 2007*, this spring, Secretary of State Condoleezza Rice said human trafficking until recently was "akin to a global family secret. It was known but not often discussed publicly."[61] The Report provides a comprehensive review of the forms and impacts of trafficking in persons throughout the world.[62]

The U.S. State Department estimates that between 18,000 to 20,000 persons are trafficked each year for sex and other purposes.[63] While Congress has authorized 5,000 T Visas per year, however since the implementation of the regulations, few T applications have been filed, and only a hundred plus are granted each year. Thus there is an incongruity between the estimate of victims and the number of victims who have been assisted by federal, state and local law enforcement personnel since 2001.[64] Reasons for this may be that the number of victims may be over-stated, identifying victims is very difficult, and some victims may be helped by state and local law enforcement without realizing that they were trafficked.[65] The difficulty in evaluating anti-trafficking projects has been recently noted.[66]

It can be said that victims of trafficking in persons often have characteristics that make them vulnerable to being trafficked and unlikely to self-identify or escape.[67] They may not perceive themselves as victims and despite working conditions and hours may still believe that their situation is legal, desirable, deserved, or inescapable. They may have made a choice to cross the border illegally, or engage in criminal activities, including prostitution. Diverse factors "make identification of 'victims' of human trafficking problematic."[68] The TVPA recognizes that one of the greatest issues facing survivors of human trafficking is psychological trauma.[69] The experience may leave the victim with "post-traumatic stress disorders (PTSD) leaving some with an inability to talk with law enforcement agencies about their ordeal.

C. **Local and State Law Enforcement of Trafficking**. With passage of a statute in New York last May twenty-five states have now enacted anti-human

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[59] 22 USC secs. 7102(8)(A), (B).
[60] *See* USC sec. 7102(8).
[61] "Public Awareness of Human Trafficking Increasing, Rice Says", USINFO.STATE.GOV, 12 June 2007.
[62] Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report 2007, U.S. Dept. of State, 12 June 2007.
[63] U.S. Department of Justice, Report on Activities to Combat Human Trafficking, Fiscal Years 2001-2005.
[64] *Ibid.*, p. 9.
[65] *Ibid.*, p. 11.
[66] U.S. Government Accounting Office, Human Trafficking Monitoring and Evaluation of International Projects Are Limited, but Experts Suggest Improvement. July 2007.
[67] Natalia Walter, *Human Trafficking in the United States: Immigrant Victims Falling Through the Cracks*, Immigration & Nationality Law Handbook, 2007-08.
[68] *Ibid.* pp. 545-546.
[69] *See* 22 USC sec 7101(b)(5).

trafficking legislation.[70] Such state legislative efforts will soon have an impact on human trafficking. In particular labor trafficking and a lack of compliance with state labor standards will in some respect give greater focus on labor. Trafficking in persons for labor may not attract as much publicity as trafficking in persons for sex, but the global value of trafficked labor is estimated at $9.5 billion.[71]

In Fort Worth, Texas, code enforcement workers just finished training to recognize the signs of human trafficking.[72] The training focused not just on prostitution but for forced labor also. Code officers have been instructed to report all information back to law enforcement officers who will investigate further.

Conclusion. With the enactment of state human trafficking criminal statutes local law enforcement will have authority to investigate and prosecute such activities. How such investigation and enforcement conflicts with local sanctuary ordinances remains an interesting question.

[70] "Agreement Reached on Anti-Human Trafficking Legislation", www:ny/gpv. 5-16-07.
[71] Human Smuggling and Trafficking, "Forced Labor a Growing Problem Worldwide, U.S. Officials Say", USINFO.STATE.GOV. 23 July 2007.
[72] "On alert for human trafficking", WFAA.com, August 18, 2007.