

## THE ROLE OF STATES IN U.S. IMMIGRATION POLICY

MUZAFFAR A. CHISHTI\*

The two most frequently discussed examples of the emerging role of states in the immigration policy of our country are 1) the tendency toward greater cooperation between local law enforcement agencies and the Immigration and Naturalization Service (INS), and 2) the devolution of social welfare policies from the federal government to the states. From the experience of advocates, both of these developments have an important impact on the lives of recent immigrants and on the relationship between state authorities and immigrant communities. They also raise some fundamental policy issues regarding immigrant integration in the United States.

### I.

#### INS-LOCAL LAW ENFORCEMENT COOPERATION

In the aftermath of the terrorist attacks of September 11, heightened security concerns have given new life to collaborative arrangements between local law enforcement agencies and the INS for enforcement of immigration law. Florida, for example, is reportedly about to finalize an agreement with the Department of Justice (DOJ) allowing various state and local law enforcement officers to make arrests based on violations of immigration law.<sup>1</sup> At least one other state, South Carolina, is believed to be moving in the same direction.<sup>2</sup>

Even before the September 11 attacks, the stage had been set for this kind of collaboration in both the legislative and administrative spheres. Before September 11, the most recent examples of

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\* Director of the Migration Policy Institute (MPI) at New York University School of Law, where he focuses on the intersection of labor and immigration law, civil liberties, and immigrant integration. Prior to joining MPI, Mr. Chishti was founder and Director of the Immigration Project of the Union of Needletrades, Industrial & Textile Employees (UNITE), where he was responsible for formulating and executing the union's programs and policies on immigration issues through a combination of direct legal service, advocacy, coalition building, public relations, and workplace education.

1. Susan Sachs, *Long Resistant, Police Start Embracing Immigration Duties*, N.Y. TIMES, March 15, 2002, at A11 [hereinafter Sachs, *Long Resistant*].

2. *Id.*

legislative or administrative policy that called for cooperation between the INS and local law enforcement agencies were sections 133 and 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA),<sup>3</sup> and the Interior Enforcement Strategy announced by the INS in March 1999.<sup>4</sup>

Section 133 of IIRIRA allows the Attorney General to enter into agreements to delegate immigration powers to local police.<sup>5</sup> The DOJ is relying on this provision of law to delegate immigration enforcement powers to local police after September 11.<sup>6</sup> Section 642 of IIRIRA outlines the obligations of the INS to respond to inquiries by government agencies (including state and local agencies) to verify the citizenship or immigration status of an individual.<sup>7</sup> This section also renders invalid any existing state or local ordinances that prohibit a public employee from reporting to the INS any immigration-related information gathered during the course of his or her job.<sup>8</sup> This provision clearly targets ordinances that prohibit local law enforcement or local government employees from cooperating with the INS. Finally, the INS's Interior Enforcement Strategy of March 1999 calls for the building of partnerships between the INS and local community and law enforcement agencies to develop "operational plans" to deal with illegal immigration.<sup>9</sup>

Any such cooperative agreements between the INS and local law enforcement agencies do irreparable harm to both effective law enforcement and to public safety. Effective law enforcement depends upon the trust that complainants and witnesses place in local police. Earning the trust of communities, therefore, is critical to effective police function.

The attitude of many local police chiefs even in the highly security-conscious post-September 11 atmosphere indicates that po-

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3. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 §§ 133, 624, 8 U.S.C. §§ 1357, 1373 (2002).

4. *The Immigration and Naturalization Service's Interior Enforcement Strategy: Oversight Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 106th Cong. (1999), <http://www.house.gov/judiciary/bach0701.htm> (statement of Robert Bach, Executive Associate Commissioner for Policy and Planning, U.S. Immigration and Naturalization Service).

5. 8 U.S.C. § 1357 (2002).

6. See Sachs, *Long Resistant*, *supra* note 1.

7. 8 U.S.C. § 1373 (2002).

8. See *id.*

9. *The Immigration and Naturalization Service's Interior Enforcement Strategy: Oversight Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 106th Cong. (1999), <http://www.house.gov/judiciary/chis0701.htm> (statement of Muzaffar A. Chishti, Director, Immigration Project, UNITE, AFL-CIO) [hereinafter *Chishti Testimony*].

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lice continue to fear risking relationships with immigrant communities. As part of its investigation of the September 11 attacks, the DOJ sought the cooperation of local law enforcement agencies in questioning over 5000 recent immigrants of Middle Eastern origin. In response, police chiefs in many parts of the country resisted or refused to participate, citing concerns of harming relationships with immigrant communities.<sup>10</sup> Experience also suggests that if local police are known to have cooperative relationships with the INS, members of immigrant communities may be less likely to report crimes or otherwise offer assistance to officers investigating crimes. Furthermore, U.S. citizens in ethnic communities may also be likely to stop cooperating with the police if they believe that they are viewed with suspicion because of their ethnicity.<sup>11</sup> The fear generated by the cooperative relationships between the INS and the police also encourages criminals to prey on immigrants.<sup>12</sup>

Similarly, if there is fear of INS enforcement, abuses of immigrant workers by employers are likely to go unreported. When the slave-like conditions in the El Monte, California, apparel sweatshop<sup>13</sup> or the tragic condition of the 58 deaf and mute Mexican workers in New York City<sup>14</sup> were uncovered, advocates knew that these were only some of the more egregious examples of what can happen when fear of exposure to immigration authorities leaves victims or witnesses reluctant to report legitimate complaints.<sup>15</sup>

Local law enforcement's cooperation with the INS also results in violations of civil rights. Immigration law is complex; to determine who is or who is not in lawful status requires significant training. Even trained INS officers can apprehend the wrong people. Ethnically selective enforcement and the targeting of individuals

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10. See, e.g., Ned Glascock, *Questioning Starting in N.C.*, RALEIGH NEWS & OBSERVER, Nov. 29, 2001, at A1; Scott Learn, *Cities React, Portland Catches the Heat*, THE OREGONIAN, Dec. 17, 2001, at C1; Gretchen Schuldt, *Attorney General's Office Questions INS Plan*, MILWAUKEE J. SENTINEL, Dec. 7, 2001, at B1; *Portland Police Decline to Question Immigrants*, THE ADVOCATE (Baton Rouge, LA), Nov. 22, 2001, at 6A; *Third City in Oregon Balks at Assisting Federal Interviews*, N.Y. TIMES, Nov. 30, 2001, at B6; see also Frank Rich, *Wait Until Dark*, N.Y. TIMES, Nov. 24, 2001, at A27.

11. NATIONAL COUNCIL OF LA RAZA, *THE IMPACT OF IMMIGRATION ENFORCEMENT BY LOCAL POLICE ON THE CIVIL RIGHTS OF LATINOS* 7 (1998).

12. See, e.g., Richard Cowen, *Slain Woman Was Vulnerable, Deportation Fear Paralyzed Victim*, N.J. RECORD, Jun. 29, 1998, at A1.

13. See Stephanie Armour, *Many Immigrant Workers Flee Abuse Only to Fall Victim Again*, USA TODAY, Nov. 20, 2001, at B1.

14. See Deborah Sontag, *Poor and Deaf From Mexico Betrayed in Their Dreams*, N.Y. TIMES, July 25, 1997, at A1.

15. See *Chishti Testimony*, *supra* note 9.

solely on the basis of their ethnicity or ethnic characteristics are not uncommon INS practices.<sup>16</sup> Local law enforcement officers, untrained in the complexities of immigration regulations, are more likely to use race or ethnicity as a substitute for reasonable cause. This will intensify the likelihood of incidents that victimize U.S. citizens or lawful permanent residents. In a well-publicized case in Chandler, Arizona, local police targeted Latino residents and questioned their immigration status solely because of their ethnicity.<sup>17</sup> With the best of intentions, local law enforcement officers are likely to engage in profiling when confronting members of ethnic communities.<sup>18</sup> Cooperative arrangements for immigration enforcement will only exacerbate this phenomenon.

## II. WELFARE REFORM

Historically, the United States has had a very limited set of public benefit policies specifically directed at immigrants. Limited as these policies have been, they have generally treated lawful permanent residents on par with citizens.

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996<sup>19</sup> fundamentally changed that equation. This law a) restricted legal immigrants' eligibility to receive public benefits, thereby introducing sharp distinctions between immigrants and citizens; b) transferred federal entitlements to state-run block grant programs; and c) authorized states to discriminate against lawful permanent residents in the administration of these benefits.<sup>20</sup>

Thus, the welfare reform law shifted the locus of immigrant policies from the federal government to the states. In terms of both the actual impact that welfare reform has on immigrants and the broad policy issues that welfare reform raises, this shift has had profound repercussions.

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16. See Susan Sachs, *Files Suggest Profiling of Latinos Led to Immigration Raids*, N.Y. TIMES, May 1, 2001, at B1 [hereinafter Sachs, *Files Suggest*].

17. See Michael A. Fletcher, *Police in Arizona Accused of Civil Rights Violations*, WASH. POST, Aug. 20, 1997, at A14; Louis Sahagun, *Immigration Sweep Stirs Cloud of Controversy*, L.A. TIMES, Sept. 1, 1997, at A5.

18. See, e.g., Sachs, *Files Suggest*, *supra* note 16.

19. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 8 U.S.C. and 42 U.S.C.).

20. *Id.*

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Although Congress has restored some benefits since 1996—especially to children, the elderly, and the disabled—and some states have adopted their own policies to provide state benefits, the consequences of welfare reform remain serious. First, most immigrants who entered the United States after the enactment of the law have no access to our nation’s social safety net.<sup>21</sup> Second, usage of public benefits among “mixed” households (households that have both citizen and non-citizen members) has decreased due to confusion about eligibility. Children have a particularly high risk of losing access to nutritional programs due to eligibility confusion.<sup>22</sup> Third, the welfare reform law’s requirement of moving from welfare to work puts immigrants at a disadvantage because many jobs remain closed to them due to their limited English proficiency.<sup>23</sup> Fourth, the impact of the law on immigrants has been uneven across states and localities. States with the strongest safety nets for the general population tend to be most generous toward immigrants.<sup>24</sup> Finally, although distinctions among states in the levels of public benefits provided to immigrants and non-immigrants have always existed, these variations are exaggerated for immigrants because, if they have lost eligibility for federal assistance, states can bar them from state and local benefits. Thus, the incentive for inter-state migration is higher for immigrants.<sup>25</sup>

In addition to these effects of welfare reform, there are two particularly important consequences for public policy. First, many states have decided to follow the federal government’s lead in their treatment of immigrants.<sup>26</sup> This is particularly true with respect to “post-enactment” immigrants (those who entered the United States after the enactment of the law). Thus, “immigrant exceptionalism” has now become an accepted part of state policy.<sup>27</sup> Indeed,

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21. CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, IMMIGRANTS, THEIR FAMILIES & THEIR COMMUNITIES IN THE AFTERMATH OF WELFARE REFORM (Audrey Singer ed., 2001) [hereinafter *Carnegie Endowment*].

22. ANN MORSE, NATIONAL CONFERENCE OF STATE LEGISLATURES, SCHIP AND ACCESS FOR CHILDREN IN IMMIGRANT FAMILIES (2000).

23. *Carnegie Endowment*, *supra* note 21, at 8.

24. *Id.*

25. WENDY ZIMMERMANN & KAREN C. TUMLIN, PATCHWORK POLICIES: STATE ASSISTANCE FOR IMMIGRANTS UNDER WELFARE REFORM (Urban Inst., Occasional Paper No. 24, 1999), <http://newfederalism.urban.org/pdf/occ24.pdf>; *see also* Barry Newman, *Lost in America: Quirk in Law Creates Health-Care Minefield for Legal Immigrants*, WALL ST. J., Aug. 29, 2001, at A1.

26. ZIMMERMANN & TUMLIN, *supra* note 25.

27. KAREN C. TUMLIN ET AL., THE URBAN INSTITUTE, STATE SNAPSHOTS OF PUBLIC BENEFITS FOR IMMIGRANTS: A SUPPLEMENTAL REPORT TO “PATCHWORK POLICIES” (1999).

some states have added their own additional eligibility requirements that apply only to immigrants.<sup>28</sup> The most common among these are immigrant-only residency requirements and time limits for benefits that are stricter for immigrants than for citizens.<sup>29</sup> Second, the devolution of welfare policies from the federal government to the states further deepens the divide between our country's "immigration policy" (how many and which immigrants we admit) and "immigrant policy" (what benefits we provide them once they settle in our communities). Prior to 1996, the federal government had authority for establishing policies for immigrants, but the states paid for the cost of services to immigrants. Now, states have a far larger role in setting and funding immigrant policy, and, as a result, a clear mismatch between our immigration and immigrant policies has developed. While our immigration policy remains liberal and inclusive, our immigrant policy is exclusive and fragmented.<sup>30</sup>

There are, however, two silver linings in the aftermath of the welfare reform law. One is that the law has served as an impetus for many qualified lawful permanent residents to apply for citizenship. Citizenship applications rose in unprecedented numbers after the enactment of welfare reform; in 1997, applications peaked at 1.4 million.<sup>31</sup> The second is that many states, in an effort to reduce costs, have affirmatively encouraged lawful permanent residents to apply for citizenship.<sup>32</sup> This is especially true with respect to the elderly.<sup>33</sup> Many states such as Illinois, Maryland, Florida, Massachusetts, Texas, and New York have developed significant new citizenship initiatives.<sup>34</sup> Whatever reasons may lie behind the increase in citizenship applications, it is clearly a positive development that lawful permanent residents are becoming full members of the society. These new citizens are becoming a politically active force to be reckoned with. As a result, the welfare reform law may have inadvertently helped change the country's political landscape in a significant way.

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28. ZIMMERMANN & TUMLIN, *supra* note 25.

29. *Id.*

30. MICHAEL FIX & KAREN C. TUMLIN, THE URBAN INSTITUTE, WELFARE REFORM AND THE DEVOLUTION OF IMMIGRANT POLICY 2 (1997).

31. *See Carnegie Endowment, supra* note 21, at 4.

32. *Id.*

33. *Id.*

34. *Id.*