

Chris Burbank
Chief of Police
Salt Lake City Police Department

Subcommittee on the Constitution, Civil Rights and Civil Liberties

Hearing on Racial Profiling and the
Use of Suspect Classifications in Law Enforcement Policy

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The essential duty of modern law enforcement is to protect the civil rights of individuals while providing for the safety of all members of the communities we serve, equally, without bias. Anti-immigration fervor – manifesting itself in the form of controversial laws in Arizona, Utah, and Oklahoma as well as in other states throughout the nation – jeopardizes this fundamental tenet and the principles upon which we base our profession. Requiring local police agencies to enforce federal immigration laws is contrary to our mission, marginalizes significant segments of the population, complicates and ultimately harms effective community policing. We function best when we are a part of, not apart from the community.

Police officers should enforce and uphold the law regardless of race, ethnicity, gender, religion, sexual orientation, or national origin. The ideal that all people are created equal with certain unalienable rights is the basis upon which the United States of America was founded. However, we have labored with this notion from its inception over 230 years ago. Unfortunately, law enforcement has been an effective tool of oppression throughout the history of our nation. Biased laws and practices have forced officers to engage in institutional racism. Prior to 1865, officers and deputies were tasked with protecting the property rights of slave owners by patrolling for runaway slaves and even detaining free Black Americans if they failed to carry the proper documentation. Local law enforcement played a similar role during World War II, when a number of police agencies were required to enforce curfew and detain suspected “enemy aliens,” tantamount to the harassment and persecution of Japanese Americans. It was barely a generation ago that law enforcement was charged with keeping water fountains separate and high schools racially segregated. In these and countless other cases, legislators buoyed by public sentiment directed law enforcement to protect the predominant race against the contrived threat of others. We are still struggling to repair the mistrust, resentment and rage that many communities continue to feel.

By increasing our role in civil immigration action, state and local law enforcement is placed in the untenable position of potentially engaging in unconstitutional racial profiling, while attempting to maintain trust within the communities we protect. Officers are forced to detain and question individuals for looking or speaking differently from the majority, not for their criminal behavior. In Salt Lake City, approximately one third of the population is Latino and subject to inappropriate police scrutiny. Often unrecognized in the immigration debate is the efficacy of enforcement and the adverse impact upon all individuals of color. How is a police officer to determine status without detaining and questioning anyone who speaks, looks or acts as if they might be from another nation? The process moves us frighteningly close to regulations restricting free movement inside the country and mandating identification or citizenship papers for all people. Can you imagine a procedure similar to that of boarding an airplane to cross the borders of states within the union?

The strongest proponents of statewide immigration enforcement in the Utah Legislature are on record as saying: Hispanics commit crime at a higher rate than other racial or ethnic groups. There is no statistical support for this racist rhetoric; however, it receives cheers from certain fellow politicians and their constituents. It is unconscionable that

persons are attempting to misuse their elected office and law enforcement to advance an obviously xenophobic agenda. In fact, cities throughout the nation have experienced dramatic reductions in crime across all categories, especially violent crime. Salt Lake City had a record low, four homicides in 2009. This is incongruent with proponent's claims that, "Illegal immigrants are flooding to Utah and they're flooding to Salt Lake City" and that they are responsible for committing the majority of violent crime. Over the last many years, Washington has failed to repair a broken immigration system, and local police officers are being irresponsibly designated to pick up the slack. It is important to note that the foundation of our republic is not based on the rule of the majority. Democracy and those elected to serve must guard against the tyranny of the majority or of mob rule and ensure the well-being of the downtrodden or underrepresented.

In April 2009, I requested the Consortium for Police Leadership in Equity (CPL) to assist the Salt Lake City Police Department in evaluating the consequences of state legislation encouraging the practice of cross deputizing officers for the purpose of immigration enforcement. The CPL is a research consortium that pairs empirical social scientists with law enforcement agencies to conduct original research on equity related issues, at no cost to the law enforcement organization. The findings of this research reveal that providing municipal police the powers of federal immigration agents is likely to discourage cooperation with law enforcement and encourage contempt and suspicion. The report indicates that when local law enforcement officers act as immigration agents, civilians become less convinced of their legitimacy. As a result, undocumented and documented Latinos, Latino citizens and White residents are less willing to report crimes when they occur. In fact, One in three law-abiding citizens surveyed said they would not report certain serious crimes if police officers were empowered to determine citizenship status. Data from the report suggest that support of Utah's law is related more to fear and dislike of Latinos than principled objections to illegal immigration, concerns about public safety, or even a mistrust of undocumented immigrants.

Many law enforcement officials oppose immigration enforcement because doing so would discourage witness participation in criminal investigations. Currently, Salt Lake City, like many police departments in the country, has a policy against inquiring into the immigration status of a witness or victim of crime. Still, many undocumented residents are afraid to go to the police after witnessing a crime. A client of Casa Del Hispano in Lewisville, TX, for example, witnessed a murder but did not bring the information to local police for several months out of fear of deportation. Recent legislation has greatly exacerbated this fear. Police officers cannot effectively gather vital information from witnesses if individuals are afraid of the police.

Even more troubling, officers acting as immigration officials would make victims of crime reluctant to seek help from law enforcement. This opens the door to further victimization and exploitation of immigrants, increasing crime in our communities. We have already observed a chilling effect upon victims and witnesses of crime as well as a polarization within neighborhoods regarding recent immigration legislation. In a recent debate, a Utah state representative publicly stated that a lack of proficiency with the English language amounted to reasonable suspicion to stop and detain an

individual. This clearly constitutes racial profiling. Limited language skills are not indicative of criminal behavior. We are proud of the large number of immigrants living in the City of Salt Lake, many of which are of Hispanic origin, and speak Spanish as their primary language. We also have immigrant residents from Bosnia, Somalia, Nigeria and numerous other nations of the world. All are vital members of our community. We strive to provide those with limited English proficiency the same professional, quality police service as those who speak perfect English.

Requiring law enforcement agencies to engage in civil immigration activities diverts critical resources away from our central responsibilities during a time of budget cuts and staffing shortages. Currently, the Salt Lake County Adult Detention Facility releases, on average, 900 criminal violators monthly due to overcrowding. Funding issues make the facility incapable of accommodating demand. Detainees held for reasons of civil immigration status alone will necessitate the release of an even larger number of criminals into our neighborhoods.

I firmly believe that we, as administrators and stewards of public trust, must have our voices heard. Dr. Martin Luther King Jr. taught of social responsibility, "History will have to record that the greatest tragedy of this period of social transition was not the vitriolic words and the violent actions of the bad people but the appalling silence and indifference of the good. Our generation will have to repent not only for the words and actions of the children of darkness but also for the fears and apathy of the children of light."

I am by no means a lone voice on this issue and I applaud my peers from across the nation for safeguarding policing throughout the country. I had the honor of participating in The Police Foundation national conference last year with more than 100 law enforcement administrators and executives to discuss issues relevant to immigration enforcement. The conclusions of that meeting as well as those of a yearlong study conducted by the Foundation, a research organization in Washington DC, are concise. Police officers should not engage in civil immigration enforcement. However, local law enforcement should continue to arrest serious criminal offenders and, as appropriate, refer dangerous criminals to federal authorities. Immigration enforcement is a federal responsibility, and it is paramount to the well-being of our neighborhoods that the federal government maintains accountability.

In conclusion, I recently attended the funeral services for Sergeant Franco Aguilar of the Sevier County, UT Sheriff's Office, the son of an immigrant family, who lost his life in the performance of his duty. He was an individual, representative of so many that we employ, willing to sacrifice his personal safety and the well-being of his family to serve each of us. I shudder to think that the children of this hero of the state of Utah might one day be inappropriately detained and questioned because of their ethnicity or the color of their skin. While all of us are entitled to freedom from persecution, I believe they have earned it.