

The Bill Blackwood  
Law Enforcement Management Institute of Texas

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The Enemy Within: Illegal Immigration and the  
Role of the Houston Police Department in the  
War on Terrorism – A Policy Analysis

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By  
Terry R. Muise

Houston Police Department  
Houston, Texas  
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## **Abstract**

Currently, officers of the Houston Police Department (HPD) are prohibited by policy from making inquiries regarding the immigration status of individuals whom they have lawfully arrested or detained within the scope of their duties. Additionally, the current HPD policy governing immigration contradicts a more recent federal law that not only authorizes local police officers to enforce federal immigration laws but also prohibits local governments from restricting cooperative efforts between local police forces and federal law enforcement agencies. This paper will explore the feasibility and practical issues related to the enforcement of federal immigration laws by Houston police officers. That is, should Houston police officers, in the interests of national security and public safety, be permitted by the police department to make inquiries and arrests of individuals suspected of being in the United States illegally? Department policy, case law, and other published information as it relates to illegal immigration and the responsibilities of local law enforcement officers will be examined within the context of the War on Terror in an effort to illustrate what is currently being done and what steps could be taken by the Houston Police Department to better provide for the safety of the citizens of Houston and the security of the United States.

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## **Introduction**

Currently, officers of the Houston Police Department (HPD) are prohibited by policy from making inquiries regarding the immigration status of individuals whom they have lawfully arrested or detained within the scope of their duties. This policy was enacted out of a concern that illegal immigrants would not report crimes committed against them for fear of arrest and deportation. However, illegal immigrants may pose a serious threat to national security and the safety of all Houstonians, especially in light of recent national events and the nation's War on Terrorism.

Public safety is jeopardized when officers are not allowed to inquire about immigration and citizenship status, yet such simple inquiries may prevent another terrorist attack like the United States suffered on September 11, 2001. Additionally, the current HPD policy governing immigration contradicts a more recent federal law that not only authorizes local police officers to enforce federal immigration laws but also prohibits local governments from restricting cooperative efforts between local police forces and federal law enforcement agencies.

This paper will explore the feasibility and practical issues related to the enforcement of federal immigration laws by Houston police officers. In short, should local police officers, in the interest of national security and public safety, be permitted to make inquiries regarding citizenship and arrests of individuals suspected of being in the United States illegally?

Research for this project will rely primarily on literature review related to the issue. Books, newspaper, magazine, Internet, and journal articles will be reviewed as well as court cases and immigration statistics. The official policy of the Houston Police

Department, General Order 500-5, and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) will also be examined. At this time, original HPD data collection is precluded due to the current political climate and the official position of the Department on this issue, as this endeavor may be deemed controversial by the department's administration.

It is anticipated that, by taking a common-sense approach to the issue, a realistic assessment of the risks and threats posed by an undocumented criminal element can be made. It will be shown that the potential consequences of not allowing police officers to enforce violations of U.S. immigration laws coming to their attention necessitate a revision to the police department's policy for the maintenance of public safety and national security. Such a revision would provide law enforcement with an additional tool to disrupt the activities of those within our borders who seek to take our lives and deny us our liberties in their fanatical pursuit of the destruction of the United States of America.

## **Review of Literature**

Because this project is an analysis of the Houston Police Department's (HPD) policy on immigration as it relates to the war on terrorism, it is appropriate to begin with a discussion of the policy itself, General Order 500-5. This General Order, in its present form, has been in effect since June 1992 when it was last revised by then-Chief Sam Nuchia. General Order 500-5 establishes "the policy of the Houston Police Department regarding illegal aliens".

This policy is predicated on the misguided, albeit well-intentioned, belief that, "effective law enforcement depends upon good relationships between the Department

and the community it serves. As police officers, we must rely upon the cooperation of all persons, including citizens, documented aliens, and *undocumented aliens*, in our effort to maintain public order and *combat crime*" (emphasis added). Thus, according to this statement, police officers in Houston must enlist the cooperation of lawbreakers to prevent the law from being broken. Such a statement is, in the author's opinion, tantamount to claiming we must rely upon the cooperation of terrorists to combat terrorism. While it is true that police officers often rely upon the cooperation of unsavory characters with questionable backgrounds or those who are currently facing criminal charges, there is a substantial difference between individuals who are *actively* being used to catch more serious offenders and a vague, sweeping policy that hopes to somehow enlist the assistance of those who comprise a particular criminal element. For example, a confidential informant who uses drugs himself may trade valid information regarding drug smugglers in exchange for remuneration. Another example is the criminal defendant who provides evidence and testimony against his accomplices in exchange for a reduction in the number or severity of charges brought against him. It simply can not be assumed, however, that an illegal alien, no matter what his intentions in this country may be, will come forward to report illegal alien smuggling, a terrorist sleeper cell, or any other type of on-going criminal activity out of a sense of civic duty.

The policy continues by stating, "undocumented alien status is not, in itself, a matter for local police action. Unlawful entry into the United States is not to be treated as an on-going offense occurring in the presence of a local police officer". Such a statement is patently false and will be discussed further on in greater detail. Contrary to such a myopic assumption, undocumented alien status is now, more than ever, a matter

for local police action. It is a matter for local police action because it is necessary for the security of the nation and the communities that comprise it.

As explained by Francis (2002), the U.S. Justice Department “simply doesn’t have enough people to track down, round up, and adequately investigate the millions of illegal aliens in this country who may or may not be connected to terrorist activities, so it would like the [local police] to help out a bit”. There also exists a legal basis for the cooperation of state and local law enforcement with the INS contained within the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Additionally, a violation of federal law remains a violation for the duration of its commission regardless of whose presence it is being committed in. The notion that unlawful entry is not an on-going offense is clearly debunked by federal law. According to the United States Code, Title 8, Chapter 12, Subchapter II, Part VIII, Sec. 1325:

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.

The HPD policy continues by stating:

“Officers shall **not** make inquiries as to the citizenship of any person, nor will officers detain or arrest persons solely on the belief that they are in this country illegally. Officers will contact the Immigration and Naturalization Service (INS) regarding a person only if that person is arrested on a separate criminal charge (other than a class C misdemeanor) and the officers *knows* (emphasis added) the prisoner is an illegal alien.”

In other words, a Houston police officer could stop a vehicle for a simple class “C” violation such as expired registration or speeding, discover several people

concealed inside whom the officer suspects are illegal aliens and he or she is prevented from contacting the INS or even asking them where they are from, how they got here, how long they have been here, why they are here, or where they are going. That much, according to the policy, is clear. What remains unclear is how the officer is supposed to *know* a prisoner is an illegal alien if he is not allowed to make such inquiries (assuming of course, that the suspected alien is first arrested for some other class “B” or higher offense). After all, while police officers may be equipped with drug-sniffing dogs to detect narcotics, or radar to detect speeders, no such similar device exists to detect illegal aliens or terrorists. Interestingly, when officers make arrests they are *required* to ask their prisoner his name, date of birth, social security number, medical condition, and place of birth for booking purposes but are *prohibited* from asking about their citizenship status.

Now that the relevant provisions of the HPD's immigration policy have been examined, we shall address the reasons the policy exists in its present form. The policy, implemented by former Chief of Police Sam Nuchia in 1992, contends that the city has “attracted residents from countries outside the United states” and that “HPD is committed to good relationships”. Indeed, Houston has become a haven for illegal aliens, attracting, according to a local sociologist, tens of thousands if not 100,000 or more illegal aliens (Marshall). Mike McMahon, who was at the time the INS assistant director of investigations, reported that, “Houston is the major corridor for smuggling people into the country” (FAIR, 2003). It is also entirely possible that, as a sanctuary for illegal aliens, Houston has attracted terrorists from countries outside the U.S. who wish to cause harm to the city and its legal inhabitants.



In a January 2003 article, reporter Edward Hegstrom writes of Chief Nuchia, “it pained him to deliberately ignore part of the federal law...”. In this article, Chief Nuchia was quoted as saying, “Because of the uncertain nature of the way our federal government was dealing with the immigration situation, and because it put immigrants at risk of being victimized, I decided we would not make arrests based on immigration status” (Houston Chronicle, p. 19A). Statements such as these made by members of the aliens-first crowd should not make Houstonians feel any safer. Nor would the “pain” reportedly experienced by Chief Nuchia come close to that felt by the families of Houstonians killed by a terrorist who was here illegally.

There exists a widely held belief among those who defend the interests of illegal immigrants that if these lawbreakers, euphemistically referred to as “undocumented immigrants”, are themselves the victims of crime, they will not report their victimization to the police out of fear of deportation. In a March 3, 2003 Houston Chronicle article HPD spokesman Robert Hurst was quoted as saying, “We are in the business of investigating crimes – not enforcement of immigration laws” (O’Hare, p. 24A). Apparently Mr. Hurst subscribes to the belief that violations of certain federal laws are either crimes not worth investigating, or perhaps not even crimes at all. Craig Ferrell, Deputy Director and Administrative General Counsel for the HPD Legal Services unit, claims that enforcement of immigration laws by Houston officers would have a “chilling effect” on illegal immigrants (Ferrell, 2002). This belief is echoed by Omaha (Nebraska) Police Officer Jerry Martinez (2003), who assumes “crimes could go unreported, leaving criminals unpunished. Knowing this criminals may start targeting those they feel will not report it to police”. Officer Martinez continues by asking, “Would a person who

witnessed a crime come forward if their immigration status came into question?" (p. 21). Opinions like these sound reasonable at face value. However, they assume too much. For starters, they assume that an illegal alien, whose citizenship status will not be questioned, *will* report crimes and provide witness statements. The author submits that this simply is not the case. Illegal aliens know they are breaking the law whether or not it is actively enforced against them and many immigrants, legal or illegal, are distrustful of law enforcement in general, whether the enforcers are encountered in this country or their native homeland. For this reason, immigrants of either type tend not to come forward to report crimes committed against them or others thereby making them easy targets for opportunistic, predatory criminals. If, however, they were actively arrested and deported it would be impossible for them to be either victims or perpetrators of crimes in this country. More importantly, a terrorist cell member who remained in this country after overstaying his visa would be even less likely to report a crime in order to maintain his anonymity in the nation's fourth largest city.

Furthermore, such sentiments voiced by alien sympathizers are lopsided in that they seem to assume immigrants can only be *victims* of crime. They fail to acknowledge the fact that illegal aliens commit a host of other crimes in the U.S. including murders, rapes, robberies, and narcotic-related offenses. In fact, eight percent of those incarcerated in Texas prisons are illegal aliens (O'Reilly, 2003). Curiously, the only time their citizenship status is ever mentioned by the mass media is when one of them is about to be executed for the murder of one or more of our citizens. Citing an article in the Austin-American Statesman, the Federation for American Immigration Reform (FAIR) reports that in only a six-month period between late 1996

and early 1997, the INS picked up 852 convicted immigrants in Huntsville, Texas for deportation (FAIR 2003).

So the current policy of the Houston Police Department governing immigration is broken, but why should it be fixed? For starters, on September 11, 2001 nineteen Islamic extremists crashed four commercial aircraft in the United States, three of them striking their intended targets with horrific success. The combined death toll from these attacks on the American homeland was over three thousand, with countless others injured. That much is common knowledge. Less known are some facts about the hijackers themselves and their fanatical predecessors who were involved in other acts of domestic terrorism including the first World Trade Center attack in 1993, the Millennium Plot to blow up Los Angeles International Airport, and a scheme to blow up the New York subway system. Malkin (2002) cites a study conducted by the Center for Immigration Studies in which it was found that of the forty-eight Islamic extremists implicated in terrorist activities here in the U.S. since 1992, fully one-third were in the country illegally (p. 30).

Two of the 9/11 hijackers were even on terrorist watch lists at the time of the attacks, according to a 2002 article appearing on the FAIR website. Malkin (2002) also noted that four of the terrorists obtained state-issued identification cards with the assistance of an illegal alien from El Salvador, Luis Martinez-Flores, who had been in the United States illegally for seven years. Malkin also noted that the terrorists were well aware that many Hispanic illegal aliens knew how to obtain, and were all too willing to assist, with the acquisition of fraudulently obtained official forms of identification –

identification used to board the planes that sent several thousand innocent people to their graves (p. 32-33).

Along the U.S.-Mexico border, the flow of illegal aliens has continued unabated for decades. Hudson (2003) cites in a recent Washington Times article that, according to a January 2003 report issued by the Immigration and Naturalization Service (INS), there are currently more than 7 million illegal aliens in the United States. In the same story, Steven A. Camarota, director of research from the Center for Immigration Studies, explains, "The bottom line is America has lost control of its borders. It does not inspire confidence at a time when [terrorists] are trying to get into the country and blow you up". Additionally, according to INS estimates there are over 300,000 visa absconders in the U.S., six thousand of them from Middle-Eastern countries (Malkin p. xii).

In another on-line news article, it was reported that a Border Patrol supervisor admitted that there has been a "tremendous" influx of illegal aliens from Middle-Eastern countries, estimating that approximately ten percent of his agents' apprehensions are from Middle-East nations (Walley 2002). The same story references another from the San Diego Union-Tribune in which it was reported that 41 illegal Iraqis were apprehended on the Mexican side of the border while waiting to enter the United States. Walley (2002) also mentions thirteen Yemenis who, according to an Associated Press story, were staying in a Mexican hotel in Agua Prieta. A Mexican national claimed that these aspiring infiltrators were offering between \$30,000 and \$50,000 for safe passage into the United States. According to the Washington Times, al Qaeda terrorists are believed to be in Mexico seeking covert passage to the U.S. with assistance from Mexican organized crime outfits (Gertz, 2003).

## **Methodology**

This paper will explore the feasibility of local police officers enforcing federal immigration laws and the ramifications associated with such. That is, should city, county, and/or state peace officers, in the interests of national security and public safety, be permitted by the police department to make inquiries and arrests of individuals suspected of being in the United States illegally?

It is hypothesized that by allowing officers to enforce existing federal laws against suspected violators, public safety and national security will be enhanced and a reduction in the overall crime rate will be realized if illegal aliens can be detected, identified, and arrested before committing an act of terrorism. This will be accomplished through a comparison of the risks and benefits associated with these endeavors and a discussion/dissection of counterpoints to such propositions.

As of this writing, the political climate within the Houston Police Department and its administration's position on the issue precludes the collection of original data. Due to the controversial nature of this project, it is not possible to conduct surveys or disseminate questionnaires to HPD officers asking their views and willingness to enforce immigration laws. It is also not possible to conduct interviews with department administrators regarding this policy for the same reason.

Additionally, because immigration status information is not currently collected on arrested suspects, it is impossible to show how many crimes (unrelated to acts of terrorism) cleared by arrest can be attributed to illegal aliens. Likewise, we can not accurately assess how many illegal aliens report crime – the primary reason offered for having such a policy.

## Findings

What the reader must keep in mind is that only those illegal aliens who are actually captured can be counted. It is anybody's guess how many others have infiltrated our nation's borders undetected. With smugglers of human cargo commanding \$30,000 - \$50,000 per head, it is unlikely the infiltrators are paying their own passage. This then begs the question "who *is*?" The author submits the possibility that financiers with deep pockets such as the Al Qaeda, whose resources are perhaps surpassed only by its fanatical ambitions, may very well be paying the fares.

Another reason that a change in the HPD policy is necessary is that, as of the time of this research, we are now a nation at war. In the November 8, 2001 address to the nation, President George W. Bush, announced that, "This is a different war from any our nation has ever faced, a war on many fronts, against terrorists who operate in more than 60 different countries. And this is a war that must be fought not only overseas, but also here at home". President Bush also noted, "The government has a responsibility to protect our citizens". The City of Houston could very easily become a battlefield in this war, and its police officers, as the most visible agents of government, share responsibility with the national government for protecting the citizenry. With this, Houston Mayor Lee P. Brown seems to agree. In a *Houston Chronicle* story about federal funding for U.S. cities to combat terrorism, Mayor Brown, while gleefully accepting 8.7 million tax dollars earmarked for the endeavor, explained, "Cities are the first line of defense" (Masterson and Mack, p. 1A). Unfortunately, Mayor Brown's enthusiasm for actually fighting terrorism lags somewhat behind his willingness to accept a handout as evidenced by another article in which the mayor was described as

supporting the issuance of driver's to illegal aliens and giving assurances "that the campaign to protect homeland security would not lead the city to turn against them" (Hegstrom, 2003).

Furthermore, U.S. Attorney General John Ashcroft has asked for the assistance of state and local police forces to help identify and locate approximately 5,000 individuals with possible connections to terrorism (Gertz, 2002)). Unfortunately, this request has been met with fierce resistance by the American Civil Liberties Union (ACLU) and police administrators around the country who care less about protecting their communities than they do about offending somebody. For these reasons, however, the author believes that the police department's role should be expanded to include enforcement of federal immigration laws. It should be noted however, that Houston's sanctuary policy, as policies of this type are known as, is certainly not unique. Other large cities have similar policies including "Los Angeles, San Francisco, San Diego, San Jose, Seattle, Houston, Chicago, Denver, Portland (Maine), Portland (Oregon)" (O'Reilly, 2003).

Another problem with Houston Police Department's immigration policy is that it contradicts a more recent federal law. One conflict exists between the 1992 police department policy and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). Whereas the current HPD General Order 500-5 clearly stipulates that officers are prohibited from contacting the INS unless certain, narrowly defined circumstances exist, the federal law says otherwise. Section 642 of the IIRAIRA states:

(a) In General. —Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in

any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

In other words, in the absence of a state law or city ordinance prohibiting such cooperation, the police department can not restrict police officers from assisting the INS with the apprehension of potential terrorists who are in this country in violation of our immigration laws. Officials within the HPD have even admitted that no such ordinance exists (O'Hare 2003).

Furthermore, case law has established important precedents supporting the ability of local police officers to enforce federal immigration law. In *U.S. v. Ontoniel Vasquez-Alvarez*, the defendant, Mr. Vasquez-Alvarez, was an illegal alien and convicted felon who had been deported previously. Following his arrest by an Edmond, Oklahoma police officer, the defendant was indicted by a federal grand jury for violating a deportation order. The officer's arrest was based solely on the officer's knowledge that Mr. Vasquez-Alvarez was an illegal alien. In 1999 the United States Supreme Court refused to hear on appeal a decision by the 10<sup>th</sup> Circuit Court of Appeals rendered in the case, affirming the lower federal district court's decision that state and local police officers have a general authority to investigate and arrest individuals for violations of federal immigration laws.

The same court handed down a similar ruling fifteen years earlier in *U.S. v. Salinas-Calderon*. In that case, the court ruled in 1984 that law enforcement officers have "general investigatory authority to inquire into possible immigration violations" after a Kansas State Trooper made a warrantless arrest of a suspected illegal alien after stopping the vehicle in which he was riding for a traffic violation. Therefore, under



federal law, Houston police officers *can* make inquiries regarding citizenship status and take action against violators of federal immigration laws and the police department is prohibited from restricting such efforts.

Still another reason that Houston police officers should be free to apprehend illegal aliens who may wish to harm Americans has to do with the attractiveness of Houston for terrorism. In other words, where would a terrorist be more likely to strike? In a small town in rural Kansas where they could blow up a barn or some other insignificant target, or in a large metropolitan area with millions of people among which they could assimilate while plotting an attack on an oil refinery? The events of September 11, 2001 and a 2003 report from the Homeland Security Department appear to have answered that question. In that report Houston was among the seven most likely targets for terrorism (Masterson & Mack, 2003, p. 1A). It is common knowledge that terrorists seek high profile targets in which they can achieve mass casualties, property destruction, and even damage to the economy. According to the Greater Houston Partnership Research Department (GHPRD), the city of Houston covers a sprawling 619.96 square miles and home to almost two million people. It is also home to over fifty Fortune 500 companies and forty-nine “of the world’s 100 largest non-U.S. based corporations” (2003, p. 1-2,6).

The GHPRD (2003) reports that Houston is also the nation’s largest producer of oil and natural gas including “exploration, production, transmission, marketing, service, supply, offshore drilling, and technology”. In 2000 there were 414 chemical manufacturing plants and “the Houston-Gulf Coast region has nearly 49% of the nation’s base petro-chemicals manufacturing capacity - more than quadruple that of its

nearest U.S. competitor". The Houston region is also characterized by what is known as the "Spaghetti Bowl", a pipeline network thousands of miles long that interconnects approximately "200 chemical plants, refineries, salt domes, and fractionation plants". Over half of the largest petroleum and crude oil pipeline operators in the United States are headquartered in Houston (p. 7). These sites are virtual tinderboxes for a terrorist armed with a bomb, missile, or some other ignition device. Additionally, the railways in Houston are used to transport various chemicals that could easily be sabotaged with explosives.

In terms of cargo volume, The Port of Houston is the second largest in the nation and sixth in the world in terms of total tonnage imported and exported. As of 2001, there were 83 shipping companies operating vessels between Houston and over 1000 ports in 201 other countries (p. 14). Saudi Arabia, Iraq, and Algeria are all among the top five trade partners in terms of imports and exports to and from Houston. Considering these facts, it should not be difficult to imagine terrorist stowaways concealing themselves on shipping vessels bound for Houston from these countries that are known breeding grounds for Muslim extremists determined to kill Americans. It has, in fact, happened before. Abdelghani Meskini and Abdel Hakim Tizegha, implicated in the plot to blow up Los Angeles International Airport, entered this country illegally by ship from Algeria (Malkin, 2002, p. 6).

Houston has two international airports through which almost 35 million travelers passed in 2001. These travelers were passengers on almost 800,000 flights into and out of Houston. It only took four such flights for terrorists to kill over three thousand Americans that same year. Despite increased security measures, terrorists still could

turn one or more of these aircraft or even a private plane into a guided missile and send it into a refinery, chemical plant, or crowded professional sports arena.

Terrorists could also harm Houstonians and the national economy financially. The Gross Area Product for Houston is estimated to have been over 218 billion dollars in 2001 according to the Perryman Group. The World Bank reports that the Houston region's economy would be the nineteenth largest in the world if the Houston metropolitan area were an independent nation (GHPRD, 2003, p.24). Body count aside, the crippling effects a large-scale terrorist attack would have on the local and national economies if an attack was carried out in Houston on the scale of 9/11 would be unimaginable. Now imagine how a simple line of questioning posed to a traffic violator by a Houston police officer could possibly prevent such a disaster if that traffic violator was an illegal alien on his way to detonate a dirty bomb or some other weapon of mass destruction. Instead, it seems, local law enforcement is more concerned with not hurting a potential terrorist's feelings than it is with preventing such a tragedy. Considering all the aforementioned high-value terrorist targets and the laissez faire approach of the police and city officials regarding illegal immigration, terrorists may very well be plotting such an attack or even prepared already to carry one out.

Common sense dictates that the HPD should take at least reactive, if not proactive, steps to identify those in its midst who are in this country in violation of the United States' sovereignty and clearly established immigration laws. Thankfully, some members of the police department are willing to push for changes in the current policy despite the Department's official stance. One of them is Officer John Nickell who shares the writer's concerns that the consequences of officers not being allowed under

the current policy to enforce immigration laws can be devastating. On February 27, 2003 he testified before a U.S. House subcommittee hearing about the shortcomings of the current policy in place by the HPD. Officer Nickell has also sought a legal opinion from the HPD Legal Services unit on the validity of such a policy in which he cites many of the deficiencies previously mentioned by the author. In the request for the opinion Officer Nickell also highlights the prospect of civil liability on the parts of the city and the police department. Officer Nickell suggests that if a violent crime is committed by an illegal alien who had been previously handled and released by HPD officers, those who are responsible for the policy may be found negligent if it could be shown that that person's crime would have been prevented had it not been for such a shortsighted policy (Nickell, 2003, p.2). This, too, has also happened recently in Houston. Walter Alexander Sorto, an illegal alien charged with the capital murders of two women and one thirteen-year-old girl, had been stopped several times by Houston police and issued traffic citations. Lawsuits have already been filed against New York City over its illegal immigrant sanctuary policy following the brutal rape and beating of a Queens resident perpetrated by five illegal aliens, several of whom had been previously handled and released by the NYPD (O'Hare, 2003, p. 37A).

### **Discussion/Conclusions**

As has been shown, there is a serious deficiency in the current version of the HPD policy governing immigration. By not allowing Houston police officers to investigate suspected illegal aliens who may or may not have ties to terrorists, the police department may be jeopardizing public safety and national security. This study was undertaken to highlight the glaring deficiencies of the current policy in order to

promote awareness of the illegal immigration problem as it relates to the threat of terrorism post-9/11 in general, and with regard to the Houston metropolitan area in particular.

It was hypothesized that improvements in public safety and security (locally and nationally) could be achieved if the current HPD General Order governing enforcement of immigration laws was modified or rewritten in light of recent national events, whereby Houston police officers would no longer be prohibited from making inquiries regarding citizenship and moving against violators of federal immigration laws. This hypothesis was supported by the majority of the literature, legislation, and other documentation presented herein.

First, there are the consequences of not taking the actions necessary to prevent another terrorist attack. If a refinery is blown up, buildings demolished, a weapon of mass destruction unleashed, or people killed there is no “do over”. Once an attack has been committed and before the death toll is even known, it can be expected that the hand wringing will commence without delay and the talking heads will be shaking in wonder at what could have been done to prevent it. By taking the handcuffs off the police and allowing them to perform their sworn duties, an affirmative step in the right direction can be taken.

Then there is also the real potential for civil liability, as pointed out by Officer Nickell in correspondence sent to the HPD Legal Services unit. Officer Nickell contends that by not arresting illegal aliens, “we are allowing a violation of the law to occur and we are responsible for any illegal actions that person commits from that point forward”. Officer Nickell (2003) continues by suggesting that if the police encounter a fugitive

alien whom they could have arrested, but do not due to the current policy, then “the involved government entities [are] open for civil liability, due to negligence” (p.2) Of course, if such a change is made in the HPD policy whereby officers are at least permitted, if not encouraged, to identify and apprehend illegal aliens in their communities, it can be expected that the so-called “immigrant rights” activists and other vocal critics will be out in force in attempts to thwart such progress. Let us now examine some of the arguments we can expect from them and their ilk against a change in General Order 500-5.

*Crime victims and witnesses won't come forward.* This is probably the most common argument against local police enforcing immigration laws. Well, as has been previously stated – they already don't. For this reason they are easy prey for our own home-grown criminals. Additionally, if they are actively identified, arrested, and deported from our country it will be impossible for them to be either victims or perpetrators of crimes. This has the potential to greatly reduce the overall crime rate in Houston.

*It's not a crime to be here illegally.* This oxymoronic utterance was actually made by Fred Alexander, former INS deputy district director, on September 12, 2001 (Malkin, 2002, p. 31). Similar statements have been made by at least one HPD administrator since the terrorist attacks as well as other activist groups. Such an argument simply has no merit, as it has already been established that unlawful entry into the United States is indeed a criminal misdemeanor, and it is a felony for an alien to return after being deported previously. Similarly, an alien who overstays or otherwise violates the conditions of his visa is also breaking the law and eligible for deportation (Malkin, 2002,

p. 243-244). This category of criminals applies to the approximately 6,000 visa absconders from the Middle East, and it is anybody's guess as to how many of them are terrorist "sleeper" cell members waiting to strike. It has also been shown that many illegal aliens commit other crimes once they are here, as evidenced by the number of aliens in Texas prisons. This erroneous claim usually dovetails into the next.

*It's not our job.* To such short-sighted, insular views like this, Jim Pasco, executive director of the Fraternal Order of Police (FOP) had this to say: "If these people are here in violation of the law, then state, local, and federal police have an obligation to move against violators of immigration law" (Francis, 2002). It becomes the responsibility of all law enforcement officials to uphold the laws of the United States when they take their oath. They are sworn to prevent the commission of crime, whether it be the illegal entry into this country by a terrorist or a much more sinister act committed by that person once they are here.

*It's racial profiling.* The author is not suggesting that police officers be given carte blanche to stop people and initiate a line of questioning regarding citizenship based solely on the belief that they are here illegally; a belief which may or not be based solely on the person's racial or ethnic characteristics. What is being suggested is that once officers have established probable cause that some other offense has been committed, or if they can articulate a reasonable suspicion that individuals are indeed illegal aliens, that they be allowed to investigate their citizenship status too. An example of such reasonable suspicion would be if an officer stopped a truck for a traffic violation and discovered several people concealed inside the cargo area who had not,

to the officer's knowledge, committed any other crime for which probable cause to arrest was present.

*It will harm police relations with minority communities.* First, police relations with minorities should not be predicated on selective enforcement (read "non-enforcement") of laws. Simply because a law is disproportionately violated by members of certain racial or ethnic groups does not nullify or in anyway reduce it's validity. It is hoped that minority community members or immigrants who came to this country by way of the appropriate, legally sanctioned methods will recognize the importance of others entering this country in compliance with the laws of the United States. To allow public opinion to dictate to law enforcement which laws will be enforced and which ones will be ignored only encourages criminal behavior and diminishes the inviolability of police officers' sworn duties, especially when the safety and security of everyone is at stake.

Enforcement strategies have worked in other communities without damaging police-community relations. Local police officers and INS agents established a cooperative effort to combat crime committed by illegal aliens in Dalton, Georgia in a 1995 joint operation dubbed The Dalton Project. This project was launched in conjunction with a "concerted effort to dispel any notion that the task force would unfairly target any large ethnic group" (Chadwick & Szafnicki, 1999, p. 46 - 47). INS agents provided training to local police pursuant to Section 133 of the previously mentioned 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). One of the many notable successes this project enjoyed included the breakup of a "fraudulent document-vending organization...responsible for the production of thousands of counterfeit immigration documents sold to illegal aliens" (p.49, 51).



*We don't have the resources.* This is perhaps the most legitimate of all the arguments against police enforcement of immigration laws. While it is true that most police departments are faced with shrinking budgets and frequently asked to do more with less, there are mechanisms that can be used to offset the costs associated with the additional demands placed on them.

Section 328 of the IIRAIRA explains in the “Provisions to State Criminal Alien Assistance Program” that funds can be earmarked for use by any municipality for the incarceration of criminal aliens in a jail facility. D. L. Hawley similarly states in his research that if the INS (now part of the Homeland Security Department) is called, the agency is obligated to verify the immigration/citizenship status of any individual brought to its attention 24 hours a day. The suspected alien may be interviewed over the phone and once a teletype detainer is issued against the person, the INS is responsible for the costs associated with jailing the alien (1999). Federal money is also being funneled directly to cities where terrorists are likely to strike, including Houston, which received \$8.7 million in April, 2003 (Masterson & Mack, p. 1A). This funding could also help defray some of the costs associated with identifying potential terrorists who have also entered the country illegally.

So far we have examined the policy of the Houston Police Department, problems with the policy in its present form, reasons for changing the policy, and likely arguments against a change in the policy. Now let's look at specifically what the Houston Police Department can and should do to implement the proposed changes in its policy regarding immigration enforcement.

First, it is proposed that the Houston Police Department Inspection Division and Legal Services reexamine the current, ten-year old policy and make immediate recommendations for change to the Chief of Police. These should include eliminating the prohibition against officers asking a criminal suspect about their citizenship status and instead encourage, if not require, officers to ascertain such information from individuals who have no government-issued documentation and can not provide some other proof that they are in this country legally.

Second, the police employee groups/unions should publicly support such changes in policy by reminding the police and city administrators that law enforcement and the maintenance of public safety are primary functions of police officers, and that neither elected/appointed officials nor police officers are permitted to decide which laws should be enforced are which ones should not. Political correctness must not be permitted to dictate police policy, especially when it creates a conflict between policy and law.

Third, mandatory in-service training, hosted by agents from the DOHS, could be adopted to train officers in how to recognize forged INS and social security cards. Officers could also be trained in relevant sections of federal immigration laws, such as the IIRAIRA, and legal protections afforded to officers who arrest illegal aliens.

Next, the police department should engage in a public relations campaign to explain the intent behind such changes before they are implemented. This effort could provide assurances to the minority communities that individuals would not be stopped and questioned based solely on their physical appearance, and to counter some of the aforementioned criticisms of the proposed changes. It is anticipated that most of the

public would be supportive of the police department's efforts to maintain their safety once they are informed of the reasons why the changes were being made.

Finally, as proposed by HPD Officer John Nickell in internal correspondence, the HPD Automated Fingerprint Identification System (AFIS) should be linked to the same database used by federal authorities, the IDENT system. This would enable HPD personnel to obtain a biometric "hit" on a wanted alien in a matter of minutes when he is booked in jail on some other charge. This simply involves having the person's fingerprints compared electronically to those stored in the IDENT database. The police department already has the equipment, so there would be no capital outlay required to maximize its potential as a law enforcement tool.

HPD Mobile Data Terminals (MDTs) in patrol cars are already linked to the FBI's National Crime Information Center (NCIC), which include information on previously deported criminal aliens. The INS (now part of the Homeland Security Department) has a Law Enforcement Support Center via which confirmations of a suspect's status can be obtained anytime via a toll-free phone number. HPD officers need only now to be permitted to call it. An additional inquiry return screen should be added so that police officers have access to those on terrorist watch lists. The Violent Gang and Terrorist Organization File (VGTOF) is an NCIC file that serves this purpose.

By making these simple changes to the policy of the Houston Police Department, several stakeholders stand to benefit. The police department will benefit from a higher level of credibility when it shows that it no longer makes distinctions between "good laws" and "bad laws" in an effort to cater to the special interests of certain segments of the local community. Officers will benefit by being allowed to thoroughly perform their

duties without fear of reprisal and discipline meted out for violating a long-standing, albeit illegal, policy. This will certainly improve officer morale. The public will benefit by having those have sneaked into the country, deliberately overstayed a visa, or defied a deportation order removed, possibly preventing another attack on U.S. soil by merciless terrorists who have entered or remained in this country illegally.

A glimmer of hope that things might change arrived in the summer of 2003 with the introduction of the Clear Law Enforcement for Criminal Alien Removal Act of 2003, also known as the CLEAR Act. This legislative proposal was announced by U.S. Representative Charles Norwood as H.R. 2671.

The CLEAR Act is intended to clarify the fact that state and local police officers have the authority to enforce immigration laws. It also contains provisions for compensating local agencies and municipalities for the costs associated with processing and housing arrestees. Known aliens will be listed in the NCIC database officers currently used by officers to identify fugitives. Additionally, training in immigration law and immunity from civil liability will also be provided to state and local police forces. In less than three months after its introduction, the bill had gathered 100 congressional cosponsors.

President George W. Bush has implored all Americans do their part in the War on Terrorism. The changes in the Houston Police Department policy suggested in this paper will enable the dedicated men and women who make up the front lines of Houston's defense to do their part. Perhaps Steven Emerson said it best in his book *American Jihad* when he wrote,

“Since September 11, 2001, everything has changed – and yet nothing has changed. The only difference...is that there are 3,500-odd more people dead. We are still vulnerable. We have only a short time to prevent the next chapter from unfolding. This is the most important battle of our time. Today we still have a window of opportunity to prevent further devastation. But the window won’t be open for long” (2002, p. 25).”

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