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**Immigration Laws:
Examining the Unseen Consequences**

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ABSTRACT

The United States as it is known today was created by immigrants who slowly took the land from Native Americans. These immigrants came from England, Asia, France, and Germany. In 1875 the first immigration laws were enacted, targeting Asian workers and prostitutes. In 1921 a cap was placed on the number of immigrants allowed into the United States and in 1924 that number was cut in half. In 1996, a new law was created that allowed immigration officials to deport immigrants that violated certain laws.

Immigration has always been a heavily debated topic, however, never as debated as today. In January of 2017, President Trump signed an executive order which made it legal for immigration officials to initiate deportation procedures on almost any undocumented immigrant. In September of 2017, the Texas Legislature passed Texas Senate Bill 4. This bill made it legal for local law enforcement to enforce federal immigration laws. The results of these documents have become the root of heated immigration debates.

Local law enforcement is entrusted and expected to protect and serve the community for which it represents. The community policing model is designed to bring law enforcement and the community together, building trust and relationships to fight crime and resolve social issues. However, when the community served is made up of an immigrant population, that trust is failed.

When immigrant victims and witnesses of crime feel they have no voice, for fear of deportation, law enforcement has lost the battle with crime and the ability to protect those in need. This is only the beginning of why immigration laws concerning victims and witnesses of crime should be modified.

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INTRODUCTION

From the President of the United States to local enforcement, immigration laws are discussed, debated and many times are the source of heated arguments. To discuss this topic more thoroughly, the history of immigration law must be detailed. The United States as it is known today was created by immigrants. The land was taken from Native Americans by early immigrants arriving from Asia, England, France and Germany. The first immigration laws went into effect in 1875 and targeted criminals, prostitutes and Chinese contract laborers (Ewing, 2012). The first law that listed a quota was imposed in 1921 and capped overall immigration into the United States to 350,000 per year. The National Origins Act of 1924 reduced this number to 165,000. A separate act in 1924 by the United States Border Patrol established a special class of admission for non-immigrants or temporary visitors. In 1996, the Illegal Immigration Reform and the Immigration Responsibility Act gave enforcement officials the ability to deport immigrants who committed certain crimes. In 2010, the United States was made up of 11.2 million unauthorized immigrants. This equals 28 percent of the 40.2 million foreign-born individuals living within the country (Ewing, 2012).

On January 25, 2017, President Trump signed Executive Order 13768, enhancing public safety in the interior of the United States. This new order gave immigration officers the ability to initiate deportation procedures on almost any undocumented immigrant (Executive Order No. 13768, 2017). This order had an undoubted impact. In 2017, Immigration and Customs Enforcement (ICE) agents made 143,470 arrests of illegal immigrants. In comparison, 2015 had 119,772 arrests and 2016 had 110,104 arrests ("Fiscal Year," 2017). This increased enforcement effects

households across the nation. Families are torn apart as illegal immigrants are arrested and their US born children remain. It is estimated that of the 5.1 million children who have at least one undocumented parent, 4.1 million are native born ("The End of Immigration Enforcement," 2018).

On September 1, 2017, the 85th Texas Legislature enacted Senate Bill 4, making it illegal for local law enforcement officials to restrict officers from asking community members of their immigration status (Texas Senate Bill 4, 2017). This meant local law enforcement could ask about and act upon the status of an immigrant. As a result, immigrants that were fearful of ICE Agents were now fearful of local law enforcement as well. This fear creates an unseen consequence that local law enforcement must face. When immigrants are fearful of law enforcement they are less likely to report criminal activity, regardless of being a victim or a witness (Chapin, 2011). This means that law enforcement may never know of crimes that are committed and may never be able to solve some crimes that are reported.

In addition, law enforcement has for years strived to improve relationships with the community. This is commonly referred to as community policing. Interestingly, the United States Department of Justice defines community policing as "a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime" (U.S. Department of Justice, n.d, p. 3). By the very definition, law enforcement must build trust and relationships with the community it serves, no matter what the social or economic background of that community looks like. Without trust and without

relationships, community policing will never succeed. Law enforcement will struggle to build trust and to build relationships when the immigrant community is too fearful to even come forward when they have been victimized. It is for these reasons that immigration laws concerning immigrant victims and witnesses of crime should be modified.

POSITION

In December of 2009, a man in Charlotte, North Carolina reported to the local police that his girlfriend was fondled by an officer during a traffic stop. After the officer was reported, more women came forward with the same allegation. This officer was eventually terminated and charged with a crime. Unfortunately, the man who reported this officer was an illegal immigrant and the same law enforcement agency that took his complaint, investigated his immigration status. The man was arrested and faced deportation procedures (Chapin, 2011). One can see how an illegal immigrant that is a victim or a witness of a crime must make a tremendous decision, stay quiet and say nothing or report the criminal activity and face the reality of possible deportation.

American citizens are taught from a young age to call law enforcement when they need help. It is hard to understand the quandary created by current immigration laws. For the immigrant population, law enforcement are not a welcome or even an innocuous presence, they are a threat. Immigrant women seem to be more vulnerable than men. Women who are victims of intimate partner violence can feel as if they are controlled by their partner. Abusers can use the threat of deportation to fuel women's fear of losing access to their children or other family members (Murshi & Bowen, 2018).

One can see how even the possibility of deportation can outweigh the thought of reporting the crime.

Another concern is the fear of law enforcement that is created by immigration laws. This fear makes it impossible for law enforcement to properly get involved within communities. A common term that helps explain this is “bridging the gap” between law enforcement and the community. However, the community must be open to the presence of law enforcement and participate in the dialogue to “bridge the gap”. Without trust, law enforcement is unable to effectively utilize any strategies of community policing (U.S. Department of Justice, n.d.).

Al-Khatib (2014) states that when local law enforcement enforces ICE detainers, trust within immigrant communities diminishes. This lack of trust is a consequence that threatens public safety. In 2004, a random telephone survey was conducted of 2004 Latinos living in Chicago, Houston, Los Angeles and Phoenix. Forty-four percent agreed with the statement: “I am less likely to contact police officers if I have been a victim of crime for fear that they will ask me or people I know about our immigration status” (Theodore, 2013, p. 8). The survey also found that 62 percent feel that police officers stop Latino and Hispanic drivers without good reason or cause. The survey clearly demonstrates the community’s fear of the police (Theodore, 2013). There must be a distinct line between local law enforcement and federal immigration enforcement so that local agencies can begin rebuilding the trust of the immigrant communities.

Solving crime is a primary role of a law enforcement agency. When victims and witnesses are fearful to come forward, law enforcement may struggle. Research has shown when relationships between the community and law enforcement break down,

the law enforcement agencies ability to enforce and solve crime diminishes (Booth, 2006). Matteucci (2007) reported that Savannah-Chatham Metropolitan Police Chief Michael Berkow struggles with the realization that immigrants are not reporting crime. As a result, Chief Berkow created a Latino Officer Outreach Program. The program is composed of seven officers that work to bridge relations between police and the immigrant community. If the immigrant community is afraid to call law enforcement, law enforcement cannot provide services. The Travis County Sheriff's Office in Texas is investigating two homicides that occurred in 2017. In each case, the victim is Hispanic and the crimes occurred in communities that are primarily made up of Hispanic populations. There have been no witnesses come forward to discuss the investigations, despite door to door attempts by law enforcement and reward money being offered for information. All of these examples demonstrate the negative effects of how current immigration laws are hindering criminal investigations (email communication with Travis County Sheriff Sally Hernandez).

Finally, immigrant victims and witnesses of crime face the reality that deportation can mean family separation. This takes place on many levels, such as mothers and fathers being separated from their children or spouses being separated from each other. In all examples, there is what some have termed, secondary immigration enforcement. This refers to what happens to these families once deportation has caused separation. Deportation statistics fail to capture the impacts of the unseen consequences caused by secondary enforcement (Rabin, 2018). Families with immigrant relatives are victimized when deportation results in separation. The children of these families become the

unseen victims of the war on immigration (Chen, 2010). When families are separated, many times the children enter the child welfare system; this is regardless of their status.

Unfortunately, when the parents have been moved into the deportation process they are no longer available to participate in welfare proceedings, such as family court. This creates a high probability of permanent separation from parents. Immigrant children can suffer psychological damage based on the constant stress caused by the fear of losing their family. This has a negative impact on education, development and how they achieve things. It affects their entire neurobiology (Edwards, 2018).

Unfortunately, this stress is felt by children of all ages. Immigrant families know exactly how long it should take any family member to run specific errands. A family member that only runs a few minutes late can cause extreme anxiety among other family members. Edwards (2018) also points out that research indicating the stress can have an effect on unborn children, causing low birth weight.

COUNTER ARGUMENTS

An opposing argument that is commonly brought forward is the utilization of a U visa. In 2000, Congress passed the Victims of Trafficking and Violence Protection Act, which also included the Battered Immigrant Women's Protection Act (U.S. Department of State, H.R. 3244, 2000). Within these acts, legislation created the U visa, nonimmigrant status. This status was intended to strengthen law enforcement's ability to solve crime and protect victims in cases of domestic violence, sexual assault, trafficking of aliens and other crimes.

At this same time, the T visa was also created. The T visa is very similar to the U visa except it is specific to victims of trafficking. This includes sex trafficking and labor

trafficking. These crimes are considered to be more severe in nature and therefore, have their own visa. The basis behind both visas is the same; create a safe environment for the victims so that law enforcement can provide better services, as well as have a better opportunity to solve crime and arrest suspects.

In both cases, the recipient of a U or T visa can be granted up to four years in the United States in a nonimmigrant status. During this time, the victim can work towards applying for a green card, which grants the applicant permanent residence. Both visas require very specific circumstances to be processed. The person submitting the application (Form I-918) must have been the victim of a qualifying crime, must have suffered substantial physical or mental abuse as a result of the criminal activity, must cooperate with law enforcement to the best of their ability and the crime must have occurred within the United States. Both visas also allow for parents of victimized children and spouses to be included in the application process. Another benefit to both visas is witnesses of qualifying crimes can be eligible to apply as long as they cooperate with law enforcement and have information that has a significant impact on the investigation. There are no fees for submitting an application for either visa ("Victims of Criminal Activity," n.d.).

While both visa options are set up to protect victims and witnesses of crime there are some concerns. First and foremost, the process is very lengthy. Once an immigrant is a victim or witness to a crime, they must first report that information to law enforcement. This in and of itself creates the first problem. As detailed earlier in this document, most immigrants are already fearful of law enforcement. They have a belief that law enforcement will take the information and then immediately initiate

investigations into the victim's status. If they are brave enough to report the criminal activity, they must then obtain and submit the Form I-918. For some, this is difficult because the forms are found online and application requires very specific information that must be obtained from the criminal justice system.

Most immigrant victims that file the application have been fortunate enough to find an immigration attorney that is willing to help. The application must be filled out in completion and submitted to a local law enforcement agency to be certified. This means that local law enforcement reviews the application and signs to approve it, indicating that the minimum qualifications have been met. In most instances the application is certified by the same law enforcement agency that is investigating the alleged criminal activity. Once the application is certified, it is sent to the US Citizenship and Immigration Services (USCIS) Bureau in Vermont. It is evident that the process heavily involves local law enforcement on the front end. Once again challenging the fear and distrust that exists between the immigrant population and law enforcement (Orloff, Isom & Saballos, n.d.).

Secondly, and most importantly, is the recent update to policies within the US Citizenship and Immigration Services Bureau. On September 27, 2018 policies were amended that have a profound impact on the visa application process. USCIS Updated Notice to Appear (NTA) Policy Guidance (2018) states that any application that is denied for any reason will automatically trigger a NTA. This means that if an immigrant victim or witness of a crime submits an application for a U or T visa and is denied at the federal level, the deportation process is automatically set in motion. This policy change creates more fear, more distrust and more anxiety when it comes to working with law

enforcement. The process can become so difficult that the immigrant applicant simply gives up due to the challenges presented (Anderson, 2018).

Another argument that comes forward is the fact that the Violence Against Women's Act (VAWA) was created to protect women who are victims of crime, regardless of their immigration status. Congress passed VAWA in 1994 and the act was improved in 2000, at the same time as the introduction of the U and T visa ("History of Violence Against Women Act", n.d.). In 2005, the VAWA was once again improved to expand its ability to care for women who have been victimized. VAWA has been incredibly successful in protecting women who have been victimized. This is made possible due to the confidentiality that VAWA gives victims ("History of Violence Against Women Act," n.d.).

Unfortunately, most immigrant victims have no idea what VAWA is and what it can do to assist. Research shows that domestic abuse leads to homicide when perpetrators believe women are attempting to leave them or report them to immigration authorities to have them removed from the United States (Tjaden & Thoennes, 2000). Intimate partner violence is much more common among immigrant women. This is due to the immigrant community having fewer resources for addressing the violence, as well as a broad range of personal and cultural barriers (Murshi & Bowen, 2018).

The last argument discussed is most likely the most used. Immigration laws should remain the same or become more restrictive because immigrants commit more crime within the United States. In a recent press conference, Vice President Mike Pence ("US VP Pence blasts," 2018) stated that the caravan of immigrants approaching the United States Border was full of criminals and we could not allow them to enter the

United States. It is very true that thousands of immigrants were approaching the Mexico and United States Border. Some of these people were planning to request asylum, some may plan to enter the United States illegally and some may in fact be hardened criminals. This is a true concern that all Americans should consider. This appears to be a matter of opinion because when actual research is conducted, the facts point out that illegal immigrants are less likely to commit crime than native born citizens (Ingraham, 2018).

This was determined by using information collected from the Texas Department of Public Safety. In 2015, the criminal conviction rate for illegal immigrants was 85 percent lower than the native born rate. The study did find that illegal immigrants were more likely than native born people to commit crimes such as gambling, kidnapping, smuggling and vagrancy. However these crimes represented 0.18 percent of all convictions in Texas that year. Therefore, immigrants had a very small impact on crime statistics. Another study indicated that states with larger undocumented immigrants have less crime than those with smaller immigrant populations (Ingraham, 2018). These studies show over and over the native born population committing more crimes than illegal immigrants.

RECOMMENDATION

As immigration laws remain to be an incredible debate, one must always remember that everyone living within the United States has an immigrant ancestor. Immigration Laws started in 1875 and the controversy has never ended, in fact it has only grown (Ewing, 2012). President Trump has increased the authority of federal and local law enforcement causing more confusion (Executive Order 13768, 2017). These

laws and increased authority are creating many unseen consequences for victims and witnesses of crime. Fear among the immigrant community has caused a separation from law enforcement (Chapin, 2011). This fear creates an environment in which immigrants do not report crime and do not trust law enforcement. The lack of trust defeats everything that law enforcement attempts to accomplish with community policing models (U.S. Department of Justice, n.d.). Some feel that the U visa process protects immigrant victims and witnesses of crime ("Victims of Criminal Activity," n.d.). Unfortunately, recent changes to federal laws causes a deportation notice to appear anytime an immigrant is denied any application ("Updated Notice," 2018). In addition, some Americans feel that immigrants commit more crime. However, research shows that immigrants commit 85% less crime than native born Americans (Ingraham, 2018).

The debate over immigration laws will continue as more immigrants seek refuge within the United States. The unfortunate reality is the unseen consequences that law enforcement must deal with on a daily basis. One must consider the unseen damage being done when immigrant victims and witnesses are unable to call for help due to their fears of deportation. One must imagine the possibility of family separation just for calling law enforcement. Finally, one must remember the strength of communities when law enforcement and citizens work together and trust each other. It is for these reasons that immigration laws concerning immigrant victims and witnesses of crime should be modified. The change must come from the top down, meaning they must start with the President of the United States taking a stance that does not cause the immigrant community to fear local law enforcement.

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