

# Illegal Immigration

## *I. INTRODUCTION/OVERVIEW OF ISSUE*

Immigration is not a new issue. It has been an essential part of the American society since the nation's inception. The distinction of "legal" and "illegal" immigration has existed since 1882, when Congress passed the Chinese Exclusion Act which is one of the nation's first immigration laws established to keep immigrant populations out of the United States. Local government response to the immigrant community is not new either. For decades, local governments have sought to understand the cultures and perspectives of the growing ethnic communities within their jurisdictions.

The scope and complexity of today's immigrant communities present local governments with a host of challenges. The Foreign-Born Population 2005 Report of the U.S. Census Bureau makes these challenges clear:

- The nation's foreign-born population numbered 34.5 million in 2004, accounting for 12% of the total U.S. population. The number of foreign-born is 2.3% higher than it was in 2003.
- Within the foreign-born population, 53% were born in Latin America, 25% in Asia, 14% in Europe and the remaining 8% in other regions of the world.

To add to the complexity, these statistics translate in local communities to high growth in immigration populations with multiple cultures, languages and often unique perspectives on, or fears of the police and other government agencies. Accordingly, while local governments desire to build strong collaborative relationships with their communities, the complexity of 21<sup>st</sup> century immigration and immigration population in PWC present obstacles that must be addressed.

One subcomponent of immigrant communities is illegal (or undocumented) immigrants, who present an even more daunting problem. The Census Bureau does not ask about legal status of respondents in any of its survey and census programs. Accordingly, illegal immigrants are not counted in actual census data, so the actual number of illegal immigrants is unknown. From a local government perspective, illegal immigrants, as well as citizens and legal immigrants, can create significant demands on government services including but not limited to: child protective services, detention services, education, emergency medical services, employment, foster care, health care, housing, mental health and retardation services, police services and social services. There are mechanisms in place to obtain reliable estimates of citizen and legal immigrant demand for services. However, because there is no official government entity at any level tracking numbers of illegal immigrants, it is very difficult for local governments to estimate the impact on fiscal resources or quantify service demand from illegal immigrants.

Authority and responsibility over immigration and the enforcement of immigration laws rests with the federal government. Congress has enacted laws, such as the Immigration and Naturalization Act of 1952 ("INA"), which regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration. Congress mandated Immigration and Customs Enforcement (ICE) the

specific responsibility to investigate a person's immigration status and deport individuals who have no legal status or authority to be in the United States.

Additionally, the 9/11 Commission report called on state and local authorities to help federal agencies crack down on illegal immigration as one aspect of the war on terrorism. The report states, "There is a growing role for state and local law enforcement agencies [for the enforcement of immigration law]. They need more training and work with federal agencies so that they can cooperate more effectively with those federal authorities in identifying terrorist suspects."<sup>1</sup>

Under current immigration laws, there exist various immigration status classifications. The immigration status of any particular person can vary greatly. The most common status classifications and immigration terms include the following:

- **Legal Immigrant**  
A citizen of another country who has been granted a visa and an entry permit which allow them to live and work permanently in the United States and to become a naturalized U.S. citizen.
- **Alien**  
A person who is not a citizen of the United States.
- **Alien Absconder**  
A fugitive remaining in the United States after an immigration judge has ordered them deported.
- **Criminal Alien**  
Aliens present in the country who have committed crimes that make them eligible to be removed from the United States.
- **Foreign National**  
Not a permanent United States resident.
- **Illegal Alien**  
An alien who has entered the country illegally and is deportable or is residing in the United States illegally after entering legally (for example, using a tourist visa and remaining after the visa expires).
- **Undocumented Immigrant**  
Any person of another country who has entered or remained in the United States without permission and without legal status.
- **ICE**  
U.S. Department of Homeland Security's Bureau of Immigration and Customs Enforcement.
- **Legal Presence**  
A person who is legally present and is either a U.S. citizen or is legally authorized to be in the United States on either a temporary or permanent basis. Legal presence can be proved using a U.S. birth certificate or U.S. Passport. It can also be proved using a variety of other government issued documents

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<sup>1</sup> The 9/11 Commission Report, p. 390

such as a Certificate of Citizenship or Naturalization, Resident Alien Card or a valid foreign passport with a visa.

- **Non-immigrant Alien**

A citizen of another country who has been granted a visa and an entry permit which allow them to be in the United States on a temporary basis (such as a student or tourist).

Federal immigration laws are extremely complicated in that they involve both civil and criminal aspects. Listed below is a summary of key points in regards to immigration laws:

- Local police departments have no authority to arrest for federal misdemeanors (eg. students overstaying their visas, illegal border crossing).
- Historically, local government has had very little responsibility or authority in the area of illegal immigration.
- Most immigration violations are civil (expiration of a visa and being in the U.S. illegally) and not criminal (illegally entering the U.S. and committing crimes). Even though illegally entering the U.S. is a federal crime, it is a misdemeanor and seldom prosecuted criminally by the federal authorities.
- Racial profiling, the practice of stopping, detaining, searching or denying a service to a person solely on factors such as their race, color, ethnicity or national origin, is prohibited by law. Race, color, ethnicity, national origin, or other non-criminal traits are not, in and of themselves, sufficient to justify stopping, detaining, or searching.
- Virginia Law - There is only one significant Virginia law regarding immigration enforcement. That law, Section 19.2-81.6, is narrowly focused. Section 19.2-81.6 authorizes state or local officers to arrest in the following circumstances: If the suspect has been previously deported from the United States after having been convicted of a felony and has returned to the U.S. and there is reasonable suspicion to believe he/she has committed another crime.
- PWC Immigration Enforcement Policy - Beginning in 2007, PWC Board of Supervisors passed a series of resolutions establishing one of the Country's most aggressive policies for the involvement of local law enforcement in supporting federal efforts to enforce immigration laws. The policy contains two distinct components relating to law enforcement:

1. **Broad New Policy**

The new policy, mandated by Resolution 07-894, applies to all police personnel. In summary, the policy requires police officers to inquire into the citizenship or legal status of every person placed under physical custodial arrest, and to have appropriate communications and cooperation with ICE when the police learn that the individual lacks or may lack legal status in the U.S.

Outside of the actions mandated by the Board, local law enforcement officers have discretion to inquire into immigration status prior to placing someone under physical custodial arrest.

## 2. Acquire Federal Immigration Enforcement Authority

Cross designation as ICE agents has been acquired for a limited number of detectives who serve in a new Criminal Alien Unit. This unit will focus on serious crimes involving criminal aliens. The unit will conduct independent investigations of criminal aliens as well as provide support to other police functions such as the Gang Unit. The federal authority, which can only be exercised under the supervision of a federal ICE agent, will allow the arrest and detention and potential deportation of some dangerous individuals when state or local violations may not be effective.

Section 287(g) of the Immigration and Nationality Act authorizes the Secretary of the Department of Homeland Security to enter into agreements with state and local law enforcement agencies to permit specially trained officers to enforce immigration law enforcement functions. Under this provision, localities must sign a Memorandum of Agreement (MOA) and police officers must receive specialized training and function under the supervision of ICE. The Prince William-Manassas Regional Adult Detention Center (ADC) was the first agency in the County to enter into an agreement with ICE and receive 287(g) training. In July 2007, six jail officers were cross-trained and provided federal authority to screen existing and incoming inmates and place immigration violation detainees against eligible inmates.

In February 2008, six police officers, as part of the Criminal Alien Unit, were trained under the 287(g) provision as well. These officers will work with the Police Department's Gang Unit, Violent Crime Unit and other Criminal Investigation Units to focus on criminal aliens who pose a high risk to the community. Also, they will focus on ID mills where people are selling illegal forged documents to bypass the system to obtain driver licenses and other legal documents.

The Police Department's overriding philosophy in regards to illegal immigration enforcement, is to implement the policy in a fair, lawful and reasonable manner. To accomplish this task, the Department instituted a three-phased approach in carrying out the directives of the Board. The three phases are:

- **Phase I: Policy and Immigration Authority.**

This included the developed of a new department policy and acquiring federal immigration authority, as referenced above, as well as training all sworn police officers and relevant personnel.

- **Phase II: Public Information Campaign.**

A comprehensive initiative was started to help educate the community regarding the new policy and set and manage community expectations. Continuing efforts in this area include extensive media coverage; meetings with residents, stakeholders, religious and educational groups; development of informational documents including brochures, frequently asked questions, and videos; County employee training

sessions, and the creation of a centralized location on the web site for immigration topics.

- **Phase III: Evaluation.**

A 2 year evaluation program is underway consisting of sociologists, criminologists, and law enforcement personnel from the University of Virginia, James Madison University, and the Police Executive Research Forum (PERF). The team will evaluate and report on the progress and impact of the policy pertaining to perceptions of police performance and community satisfaction and safety. The initial phase of the evaluation has been completed which consisted of outlining the scope, and identifying issues and concerns by interviewing stakeholders and residents. The next stage will consist of surveys, interviews, and data analysis to provide a blueprint for further studies. A report on the status of the evaluation program and policy will be given to the Board of County Supervisors in Fall 2008.

## *II. POPULATION/CUSTOMERS*

The dynamics of immigration in America are constantly changing and becoming a challenge not only for federal officials but more frequently for local government due to language and culture barriers. The influx of foreign born individuals has always been an issue for states such as California, New York and New Jersey. When looking at year 2000 U.S. Census<sup>2</sup> data, 26% of California's total population, 20% of New York's total population, and 18% of New Jersey's and Hawaii's total population is comprised of foreign born persons followed by Florida 17%, Nevada 16%, Texas 14%, the District of Columbia and Arizona 13%, and Illinois and Massachusetts 12% each. Beyond these states, other regions of the United States now have significant foreign born populations as well. U.S. Census Bureau statistics reveal that substantial numbers of foreign-born individuals now reside in all regions of the country: 38% in the west; 28% in the south; 23% in the northeast and 11% in the midwest. The Commonwealth of Virginia has 8% foreign born individuals.

Information from the Weldon Cooper Center<sup>3</sup> states persons of Hispanic origin are the fastest growing segment in PWC. The majority of Hispanics present in Virginia are U.S. citizens. Forty percent are immigrants, including both authorized and unauthorized. According to the Virginia Employment Commission's projections, Virginia's Hispanic population will double between 2006 and 2030. Almost one in ten Virginians is foreign-born. Among them, 40% were born in Asia, and 36% in Latin America. While foreign-born may be classified as immigrants since they located here from another country, the term "immigrant" does not adequately describe their status in the U.S. Foreign-born residents may be naturalized U.S. citizens, permanent residents ("green card" holders), visitor visas or lack legal status. They may have lived here for six months or six years. Knowing that a person is from another country, or suspecting so because of ethnic

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<sup>2</sup> U.S. Census Bureau, The Foreign-Born Population, Census 2000 Brief.

<sup>3</sup> Hispanic Immigrants and Citizens in Virginia, Weldon Cooper Center, Univ. of Virginia, Feb. 2008

heritage, race, individual's name, is insufficient for determining a person's citizenship or immigration status.

In recent decades, the population of PWC has become increasingly racially and ethnically diverse as with other parts of the country. Between 1990 and 2000, the population of African Americans in the County more than doubled and the population of persons of Hispanic origin nearly tripled. The percentage of the County's population that was born outside of the U.S. rose significantly in the 2000's. The 2006 American Community Survey indicated that 22% of the County's population was foreign born in 2006, compared to 6% of the population in 1990. The largest proportion of foreign-born residents is from Latin America 54% followed by Asia with 31%. The 2006 American Community Survey revealed that 29% of the County's population speaks a language other than English at home.<sup>4</sup>

Immigration patterns have also changed over time. In the 1800s and early 1900s, immigrants in the United States were primarily of European descent and had similar cultural backgrounds to the individuals who founded the nation. Today, the immigration migration has changed with many individuals coming from different cultures, with different backgrounds, beliefs, and perspectives of the world. However, the reasons for their arrival remain the same: they seek protection from persecution (political and/or religious), they seek to join family members who already reside in the United States, and they seek opportunities to enhance their economic situation and support families remaining in their home countries.

The educational and economic status of the foreign-born populations varies widely. Some immigrants have achieved high educational and/or professional stature and others have not and struggle to find low paying entry level employment. Of particular concern are the less fortunate immigrants who are often not as stabilized in the community and often are victims of exploitation.

In regards to those without legal status, the exact number of illegal immigrants in the United States is unknown, but estimates from a U.S. Census Bureau report range from 8 to 12 million with another estimated 800,000 illegal immigrants entering the country every year.<sup>5</sup> The Pew Hispanic Center in Washington, a non-government entity, estimates the number of illegal immigrants to be as high as 20 million. Of these illegal immigrants, 250,000 to 300,000 live in Virginia.

In response to Board of County Supervisors Resolution 07-609 regarding restricting County services to illegal immigrants, an in-depth analysis of County services was conducted regarding the authority and legal conditions under which the county provides public benefits and services.

Issues addressed included:

- Local benefits that must be provided regardless of legal status
- Local benefits that must not be provided to illegal immigrants
- Local benefits for which there is discretion and the relative merits of exercising that discretion in a manner fully consistent with federal law

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<sup>4</sup> PWC Demographic Fact Sheet, 4<sup>th</sup> Qtr. 2007.

<sup>5</sup> Major City Chiefs Immigration Committee Report, June 2006.

The Resolution specified that its terms “shall not to be construed so as to prohibit the rendering of emergency medical care or any other public benefits mandated by federal or state law” or “reporting of a crime or criminal activity to any law enforcement agency”

Various legal issues associated with restricting services to illegal immigrants were also reviewed.

Legal issues included:

- Complexity of verifying citizenship, legal status and illegal status: for example, there are approximately 100 different types of immigration classifications and visa categories
- Due Process Clause - 14<sup>th</sup> Amendment to the Constitution
- Equal Protection Clause - 14<sup>th</sup> Amendment to the Constitution
- Supreme Court decision in *Plyler vs. Doe*, 457 U.S. 202 (1982)
- Constitutional Supremacy Clause
- Dillon Rule
- Freedom of Information Act (FOIA)
- Property Ownership laws

After reviewing County agency analyses and consulting with the County Attorney’s Office, County services were grouped into seven categories that included:

### **Services Already Restricted**

These are County services that are already restricted from illegal immigrants and where eligibility/legal status is already being determined and services are funded by both state and local dollars.

County services include:

- Concealed Weapons Permits
- Licenses issued by the Police Department (ex. Peddlers and Taxicab)
- Police volunteers
- Food stamps
- Temporary Assistance for Needy Families
- Medicaid funding for all human services including; vocational services, mental health/retardation services, aging programs, youth/family/adult services
- General relief/burial assistance
- Employment services/Virginia Initiative for Employment Welfare (VIEW)
- Employment services - Food Stamp Employment and Training (FSET)
- VIEW child care program
- State and local hospitalization program

- Mental health vocational services
- Programs of the Office of Housing and Community Development - Section 8 housing, homeownership assistance loans, housing rehabilitation, Dawson Beach transitional housing.
- Voter registration
- Vendor payments

### **Services That Cannot Be Restricted**

These are county services that cannot be restricted for legal reasons where services are funded by both state and local dollars and code citation or legal reference is provided.

County services include:

- Emergency Medical Services
- Sheriff services (ex. warrants, evictions)
- ADC inmate services (ex. medical)
- Juvenile Court Services Unit - state agency
- Public safety communications/E911
- Aging services funded for all or in part with Older American's Act money: Information and Referral, Meals
- Department of Health services
- Cooperative Extension - state agency
- Juvenile detention facility and detention programs - group homes, shelter
- Child protective services
- Foster care
- At-risk youth services
- Development process activities - permits, inspections, re-zonings, Comp. Plan amendments
- Facility use
- CDBG grants
- FOIA requests
- Channel 23 access
- Taxes/decals
- County publications
- Human Rights investigations

### **Services That Should Be Restricted**

These are county services that staff has recommended restricting from illegal immigrants.

County services include:

- Sheriff adult identification services
- Homeless intervention services - rental and mortgage assistance
- Drug Offender Rehabilitation Module (DORM), substance abuse program in ADC
- Adult day care
- Aging in-home care
- Senior Centers
- Bluebird bus tours
- Public Works warehouse sales
- Business Licenses - businesses grossing more than \$100,000 in sales
- Community Leadership Institute
- Elderly/Disabled Tax Relief program
- Tax exemption for renovation/rehabilitation of residential property

### **Services Could Be Restricted But Impact/Cost Is High**

These are services that could be restricted but impact and cost needs to be better defined. Costs include new expenditures in order to restrict services/determine eligibility, changes to facilities or processes in order to restrict, lost revenue due to restricting services and major inconveniences to legal residents.

County services include:

- Fire and rescue prevention services
- Police crime prevention services
- Funeral escorts - traffic issues
- MOMS - substance abuse programs for pregnant women
- Park Authority services to adults - indoor recreation centers, pools, water parks, golf courses, batting cages, BMX, boating, sports leagues.
- Historic facilities
- E-government services
- Library facilities, services and programs for adults

### **Services That Should Not Be Restricted**

These are services staff would recommend not restricting including where analysis to date shows that the impact/costs are too high, or that restricting services to illegal immigrants would have a detrimental impact on the safety and health of the community.

County services include:

- Fire response
- Animal control
- School crossings
- New Horizons program - substance abuse services to minors at schools
- Office on Youth
- Early Intervention - CSB
- SACC - self supporting program
- Homeless Shelter
- Services to seriously mentally ill
- Services to the Mentally Retarded
- Passive use of space - county parks, neighborhood facilities
- Landfill/Solid Waste - impact on health/safety of community
- Property Code Enforcement - regulatory functions, health/safety of community
- Library facilities, services and programs for children

### **Services Provided To Community as a Whole**

These are services that do not benefit any one individual or group of individuals.

County services include:

- Comprehensive Plan Update
- Street signs
- Street lights
- Transportation Road Improvement Program (TRIP)
- Road bond design/construction
- Mosquito and Gypsy Moth control
- Stormwater drainage
- Executive Management
- Legislative affairs
- Budget development and implementation

- CIP development and implementation
- BOCS/Clerk activities

### **Services That Benefit Employees**

These are services that support County employees, all of whom are legal.

County services include:

- Recruiting, hiring and training
- Fleet management
- OIT systems support
- Human resources services
- Training and organizational development
- Building and grounds
- County facilities

### *III. DESIRED RESULTS*

Achieving a successful local government response to illegal immigration issues will be an ongoing challenge. Outcomes in regards to this issue vary among citizens, community advocacy groups, business and faith based communities and local, state and federal governments.

Potential objectives and corresponding outcomes include:

- Deterring illegal immigrants from entering the County and removing those that are residing in the County;
- Continuing enforcement of the county's illegal immigration enforcement initiative including the identification of illegal aliens and the notification of ICE;
- Ensuring crime victims and witnesses feel safe and secure in reporting crimes without fear of threats, intimidation or reprisals regardless of immigration status;
- Maintaining the Adult Detention Center's program of screening and processing inmates through the 287(g) provision and turning over those inmates to ICE;
- Achieving high citizen satisfaction with the Police Department's performance in carrying out its new responsibilities under the BOCS illegal immigration initiatives;
- Achieving high citizen satisfaction with how the Police Department treats everyone fairly regardless of race, gender or national origin;

- Achieving high county employee satisfaction with how fellow employees treat each other regardless of race, gender or national origin;
- Measuring victimization within immigrant communities (eg. street robberies) to assess vulnerability to crime;
- Protecting children separated from their parents as a result of illegal immigration enforcement initiatives;
- Providing effective media outreach in an effort to manage citizen expectations concerning what the county can do in regards to illegal immigration;
- Promoting the belief that legal immigration has been, and will continue to be, a benefit to the county;
- Conducting comprehensive public education campaign to clarify the policy and role of the Police Department;
- Maintaining trust with immigrant communities and the community at large in working with county agencies in resolving community problems and issues and providing effective delivery of services;
- Ensuring ICE provides timely and adequate resources in regards to processing and removal of detained inmates from the ADC with minimal processing/wait times for jail officers and police officers;
- Monitoring and assessing ICE feedback and collaboration in regards to status of detainees referred for deportations and other appropriate dispositions;
- Assessing changes in various crime trends, patterns and frequency in regards to violent crimes, property crimes, traffic offenses, criminal arrests, public order offenses, drug and gang offenses;
- Monitoring and evaluating number and composition of ADC detainees in violation of immigration laws and impact on jail overcrowding;
- Examining impact of minority recruitment within county agencies to assess racial and ethnic diversity;
- Monitoring county employees and citizen complaints over time to determine if number has changed over time;
- Reviewing number of lawsuits in regards to allegations of discrimination and racial profiling;
- Determining whether illegal and legal immigrants are leaving the county or withdrawing from community activities and services such as health related services, school services, human services, parks and recreational activities, faith based services;
- Monitoring changes in business/hiring practices with respect to illegal and legal immigrants (eg. declines in sales, shortages of workers in restaurants, construction, home service industries), and
- Monitoring problems associated with day laborer hiring sites.

#### IV. OUTCOMES/BASELINE TRENDS

Figure 1 below illustrates the number of detainers for criminal aliens issued by 287(g) trained jail officers starting in July 2007 through January 2008. A detainer is a legal document that authorizes the ADC staff to continue to hold a person in custody.

**Figure 1: ADC Detainers Issued**

	<u>287(g)</u>	<u>ICE</u>
July 2007	6	14
August 2007	19	19
September 2007	67	8
October 2007	96	7
November 2007	93	5
December 2007	62	4
January 2008	<u>50</u>	<u>3</u>
Total	393	60

Figure 2 below represents the increase in ICE detainers after September when the Adult Detention Center's (ADC) ICE computers and identification system were installed. The majority of the detainers are obtained by ADC 287(g) staff. A small number are obtained by ICE officials. The February 2008 number was 59.

**Figure 2: Average Daily Inmate Population with Immigration Detainers Only**

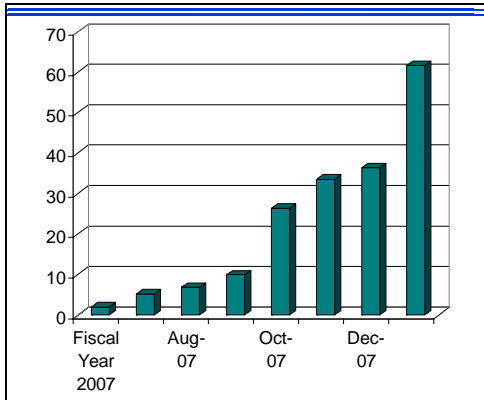


Figure 3 below illustrates the number of inmates transferred with ICE detainers from July 2007 through January 2008. The inmates were transferred to other Virginia jails that had adequate bed space to accommodate them.

**Figure 3: Inmates Transferred with ICE Detainers**

July 2007	24
August 2007	29
September 2007	29
October 2007	83
November 2007	63
December 2007	56
January 2008	<u>54</u>
Total	338

**Figure 4: ADC Estimated Costs for 287(g)**

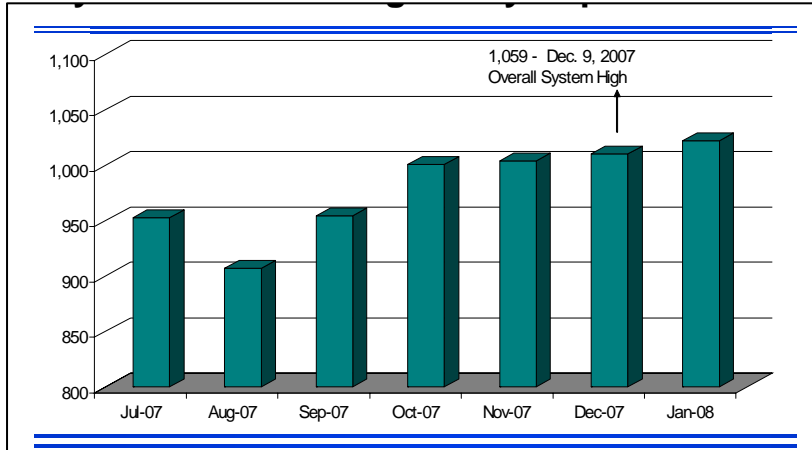
<b>Fiscal Year 2008</b>	
Staffing	\$600,000
Overtime	\$ 75,000
Farm-outs	\$547,500
Direct Costs	<u>\$140,000</u>
Total	\$1,362,500
<ul style="list-style-type: none"> <li><input type="checkbox"/> Direct Costs include food, clothing, medical, etc. at \$15/day</li> <li><input type="checkbox"/> Farm-out Costs are an average of 30 inmates at \$50/day</li> </ul>	

Figure 4 describes the FY08 cost to the Adult Detention Center for operating the 287(g) program. The staffing includes the five jail officers and one Lieutenant who operate the 287(g) program. Overtime is an estimated cost for the 287(g) staff based on the first six months of FY08. When an inmate becomes ICE eligible, the ADC staff must farm-out other inmates to other Virginia jails as they wait for ICE pick-up.

The average cost per farm-out is \$50.00 per day. Direct costs for food, clothing, medical care, etc. averages \$15 per day. At this time, ICE is not adhering to the Memorandum Of Agreement (MOA) in regards to inmate pick-up (within 72 hours after inmate becomes ICE ready).

The impact of housing inmates on immigration related charges is having a detrimental effect on an already overcrowded jail facility resulting in more inmate farm-out to other Virginia jails. In February 2008, the ADC broke an all time record of 1,075 inmates system wide. On March 7, 2008 the ADC housed 80 ICE inmates which cost \$4000.00 daily. There is also a cost to drive inmates all over the State to other jail facilities. Additionally, there is a risk factor when ADC staff takes inmates out of a secure building and transport him or her.

**Figure 5: System-Wide Average Daily Population**



On July 10, 2007, The ADC began implementation of the 287(g) program authorizing trained jail staff to investigate inmate’s legal status, and begin deportation proceedings if necessary. Since July 10, the jail staff has issued immigration detainers for those inmates who were currently incarcerated and those inmates committed to the ADC. Attached is the breakdown as of March 4, 2008, of the countries (31 in all) of origin and the number of individuals from each country that have been issued a detainer and transferred to ICE officials since July 10, 2007. There are a total of 313. Table 1 below provides a breakdown of the countries of origin for those 313 inmates.

**Table 1: ADC's Immigration Detainers and Country of Origin**

Country of Origin	Number of Inmates	Country of Origin	Number of Inmates
Albania	1	Mexico	82
Antigua/Barbuda	1	Mozambique	1
Argentina	1	Nepal	1
Barbados	1	Nicaragua	4
Bolivia	1	Nigeria	3
Cameroon	1	Pakistan	2
Colombia	1	Panama	1
Costa Rica	1	Peru	3
Cuba	1	Russia	1
Dominican Republic	1	Saudi Arabia	1
El Salvador	110	Sierra Leone	4
Ghana	1	Trinidad and Tobago	2
Guatemala	30	Zaire	2
Honduras	51	<b>Total:</b>	<b>313</b>
India	1		
Iran	1		
Korea	2		
Laos	1		

On June 3, 2008, the Police Department presented a status report to the Board of County Supervisors on the Illegal Immigration Enforcement Program which began March 3, 2008. Below are a set of highlights:

Illegal Alien Contacts: The Police Department has had contact with 265 people for whom there was probable cause to believe the person did not have legal presence. Of those:

- 138 were physical custodial arrests.
- 59 individuals were released on a traffic or criminal summons. 1 individual was removed with an ICE Outstanding Admin Warrant,
- 66 individuals were identified as not having legal presence and were released with no charges.
- 2 individuals were later determined to have legal presence.

## V. *THE STORY BEHIND THE TRENDS*

### **Inconsistent local government response**

News articles and reports from across the country on how local governments are dealing with immigration related issues reinforce the challenges and complexities presented to local governments which ultimately create inconsistent responses which include:

- Selected local jurisdictions have declared themselves to be “Sanctuary Cities” making it clear that they do not seek to collaborate with ICE agents in any way, while other jurisdictions welcome ICE agents and seek their assistance. A report produced by the Congressional Research Service dated August 14, 2006 listed 31 cities and counties that have ‘don’t ask, don’t tell’ sanctuary policies such as Austin, Texas; Baltimore, Maryland; Durham, North Carolina; Madison, Wisconsin; Minneapolis, Minnesota; and Seattle, Washington. According to the ICE Website, more than 60 municipal, county and state agencies nationwide have requested 287(g) Memoranda of Understanding with ICE and more than 400 local and state officers have been trained under the program.
- Many jurisdictions recognize their lack of understanding of the ethnic communities they provide services to as well as their inability to effectively communicate with persons who demonstrate both language and cultural differences.
- The City of Chandler, Arizona has a “don’t ask, don’t tell” sanctuary policy while the local sheriff’s office, Maricopa County, states on its website that the sheriff screens each inmate for immigration status and has turned over 11,377 illegal immigrants to ICE for deportation.
- Many police agencies have sought advice on balancing their local police mission with federal immigration laws and question their own competency to enforce federal immigration laws without additional training and policy development.

## Conflicting Community Expectations

Immigration presents a confusing picture for local government with various elements of the community taking different and adversarial positions.

Examples include:

- Widespread misperceptions of local police authority.
- Community groups are seeking to support immigrants while other groups are focusing on illegal immigrants and enforcement actions.
- Some local, state and federal elected officials are seeking to protect illegal immigrants while other leaders are seeking to deport them.
- Adjacent jurisdictions are taking different positions on various immigration issues.
- Some law enforcement agencies are developing close working relationships with ICE, while neighboring jurisdictions are expressing little or no interest in engaging ICE in local immigration issues.
- Some state and local law enforcement agencies are realizing the inability of ICE to consistently respond to their needs.
- Some local community leaders are opening up and operating day laborer hiring sites while other community residents are protesting against the sites.

Faced with these kinds of conflicting positions, local governments across the United States are attempting to strike a balanced position and make carefully thought out policy decisions on all aspects of immigration and ethnic communities. In addition, local government agencies struggle with state and federal laws and requirements as they determine appropriate services to provide to illegal immigrants.

## Opportunities and Challenges for Local Government

It is important that County agencies become familiar with and competent in responding to the growing immigrant population. However, that familiarity requires additional educational and training efforts that translate into significant commitments of time and resources, especially during a time of diminishing resources and declining County revenues.

Immigrant communities present a challenge to local government agencies, because while the **largest** proportion of the immigrant population has legal status, a smaller portion is illegal/undocumented aliens who entered into the country. County agencies and staff are faced with a primary dilemma-how much focus to place on the **smaller**, illegal component of the immigrant community versus the **larger**, legal one as well as with all of the other County service priorities in the community (eg. transportation, education and public safety).

Looking at immigration, particularly illegal immigrants, from a perspective of victimization and crime causes another set of challenges for County agencies-when a crime occurs, the legal status of the perpetrator or the victim may become a critical concern. Research has shown that immigrants are more likely to be victimized than other

members of the general population. In addition, illegal immigrants are often afraid to report crime to the police, making them easy targets for those with criminal intentions.

Questions County staff may face include:

- Should police officers even inquire as to immigration status when dealing with a victim of violent crime?
- If the victim is an illegal immigrant, should ICE be contacted?
- Is the offender a legal or illegal immigrant?
- When and how should ICE be involved?
- What happens to children that have been separated from their parents as a result of illegal immigration enforcement initiatives?

One example of how difficult these issues becomes is in the area of human trafficking. When police determine that a trafficking situation exists, the victims of these crimes are likely to be illegal. Police must be extremely well trained in such complicated crimes in order to avoid responses that will re-victimize the victims and decrease their willingness to serve as witnesses to build strong cases against the traffickers.

In addition to both legal and illegal immigrant communities being victims of crime, there is a perception by the general population that crime is higher in these communities. A 2001 Center for Immigration Studies report by Carl F. Horowitz titled "An Examination of U.S. Immigration Policy and Serious Crime", references a series of research conducted in the 1980s and 1990s that lent support to the conclusion that immigrants commit proportionately no more than and possibly even fewer crimes than native-born citizens. The General Accounting Office, analyzing FBI records, found that foreign-born individuals accounted for about 19 percent of the total arrests in 1985 in six selected major cities. The foreign-born represented 19.6 percent of the aggregate population. While "foreign-born" can refer to citizens as well as aliens, the study makes an implicit case that immigrant crime is in line with the rest of the country.

### **Trust vs. Fear**

Immigrants in the United States come from different parts of the world, many of which are developing countries, where the image of law enforcement is drastically different than that within the United States. Often government agencies, especially police departments in some of these countries, are perceived as violent, corrupt and ineffective. These perceptions are often transferred to the immigrants' perception of American government agencies as well, creating a reluctance to seek government assistance. These views also influence crime underreporting within immigrant communities, particularly domestic violence, child abuse, sexual assault and gang activity.

Ethnic minorities are often afraid of the perceived potential for racial profiling and prejudice towards them by government agencies and the communities they reside in. This view results in fear and distrust in the immigrant community, as well as a general lack of cooperation with law enforcement and the government at large.

Many immigrants keep their money and valuables on their person, at home or at their businesses making them vulnerable to crime. A lack of trust towards government and public institutions, particularly banks, is shared by many immigrant groups. Because of

the sometimes corrupt and unstable situations in their native countries, immigrants oftentimes do not trust banks to safeguard and protect their money.

Through regular contact and outreach programs, local government agencies have been working to change the negative image of local government and build trust and confidence in immigrant neighborhoods.

One of the central benchmarks of a well run local government is establishing good relationships with local communities, including those composed of immigrants. Working with these communities is critical in preventing and investigating crimes, ensuring the safety and welfare of children and maintaining safe housing and attractive neighborhoods. Communication has been identified as a major concern. Local governments can significantly enhance their capability by hiring bilingual staff, professional interpreters or volunteers from the community. Holding meetings with immigrant community members supported by training materials provides mutual understanding of cultural differences and can be a great opportunity to acquaint newcomers with government staff, local laws and ordinances.

### **Difference Between Legal and Illegal Immigrants**

There are several legal issues, when taken as a whole that are complicated and create immense challenges for local government agencies as they seek to fully understand and respond appropriately to federal, state and local laws.

- Determining the difference between legal and illegal status is complex and carries with it significant responsibilities.
- Effective training will likely be lengthy, requiring an extraordinary commitment of agency resources.
- Failure to train effectively carries significant ramifications, risks and liability.

The Fourteenth Amendment to the U.S. Constitution provides: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The U.S. Supreme Court has held that illegal aliens are “persons” protected by the due process clause (*Shaugnessy v. Mezei* and *Wong Wing v. U.S.*). Further, the U.S. Supreme court has interpreted the phrase “person within its jurisdiction” to include illegal aliens, so they are entitled to equal protection just as they are entitled to due process (*Plyler v. Doe*). The Supreme Court struck down a Texas statute denying free public education to illegal immigrant children (*Plyler v. Doe*). The Supremacy Clause of the U.S. Constitution provides that federal or state laws prohibiting localities from providing services to illegal immigrants, or requiring localities to provide services to illegal immigrants must be obeyed.

“Non-enemy aliens” are allowed to own real estate in Virginia and use and dispose of it in the same way that citizens can (Section 55-1, VA Code Ann.).

Virginia is a Dillon Rule state. This means that local governments can only exercise those powers that are: 1) expressly granted to them by the legislature, or 2) those fairly

or necessarily implied in express grants of power, or 3) those that are indispensable and essential.

The Code of Virginia does not give express or implied authorization to limit child protective services, for example, to only those children legally present.

### **Day Laborer Hiring Sites**

One of the most highly charged immigration issues that has sparked community uproar and complaints are day laborer hiring sites. The growth in need for workers in such areas as the construction and landscaping industries just to name a few, has dramatically increased the number of pick-up sites for unskilled, low-wage, daily laborers. The majority of people who respond to these sites are immigrants who want to work, with studies showing that the majority are illegal immigrants<sup>6</sup>.

The problems identified with the day laborer sites include: congregating of the laborers in the streets causing traffic disturbances, complaints from businesses of public urination in parking lots and alleys due to a lack of toilet facilities, complaints about public drunkenness and harassment of pedestrians and store customers. Conversely, many businesses have admitted that these same persons have made purchases in their establishments.

Advocates of immigrant rights have worked to get local governments to establish formal hiring sites that would allow employers to hire workers from a centralized location. Also, these advocates would like to see the establishment of an orderly hiring process by establishing legitimate employer lists and matching workers with those employers. Conversely, many anti-immigration groups and citizen groups have demanded that their tax dollars not be spent on establishing sites for immigrants and/or employers who are breaking the law.

Hiring illegal immigrants is illegal under the 1986 Immigration Reduction and Control Act (IRCA). Employers who hire illegal workers often avoid legal standards by paying less than the minimum wage, failing to withhold taxes and avoiding paying into the unemployment fund. Federal authorities do not enforce immigration laws at day labor sites.

Most law enforcement agencies enforce local and state ordinances, such as loitering and no trespassing, if they receive complaints about conduct in places where day laborers congregate to wait for employment.

### **Overcrowding in Housing**

When immigrants come to the United States, whether legally or illegally, they may not be in a position to pay the high cost of housing. They may seek other immigrants of the same nationality who have gained housing and will rent space with them (i.e., living room, dining room, shared bedrooms). At the same time as the immigration population has grown, and housing costs have risen, we have also seen an increase in the incidence of overcrowding in housing.

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<sup>6</sup> Abel Valenzuela., "Day Laborers as Entrepreneurs? Mexican Immigrants in Los Angeles Area." *Journal of Ethnic and Migration Studies*, April 1, 2001.

Housing complaints are generally called in by neighbors and neighborhood watch groups who notice an influx of persons and/or cars. Some other common police calls for service include loud party and domestic disturbance incidents. Child neglect cases are also observed when parents have left underage minors in the home unattended while they go out to work.

The number one issue of overcrowding in housing is safety. Many of the homes do not have working fire/smoke detectors. Also, the makeshift kitchens that have been added have not been properly inspected and generally have faulty wiring and venting. Additionally, in cold weather insufficient heat in the homes causes the inappropriate use of space heaters.

### **Impact of Immigration on Children**

Overall, in 2005 there were 9.3 million unauthorized working-age adults (ages 18-64) and 4.9 million children (ages 0-17) living with these unauthorized adults. About half (48%) of these working-age adults had children. They had 1.1 children on average, but more than 80% lived in two-parent families, so there were 2.0 children on average per undocumented family. The ratio of children to undocumented working-age adults was 53% suggesting that on average there was one child for every two adults. Based on this national data, one would expect that the number of children affected by enforcement activities would be equal to about half the number of adults arrested. Additionally, these figures do not include other children affected because they lived in extended households with the arrested immigrants<sup>7</sup>.

While illegal immigration enforcement activities are aimed primarily at deterring immigrants from entering the country illegally, they inevitably and negatively affect numerous children. Many aspects of the public and private systems that are supposed to protect children are thrown into chaos during and immediately following illegal immigrant arrests, creating inevitable disruptions for children. The most important factor for children's safety and well being is how the arrest of the parent(s) is conducted. The roles of extended family and larger social networks, local leaders, community based organizations, and public institutions such as schools, social service agencies and health departments are also important in the immediate aftermath of illegal immigration arrests of parents.

Once an arrest of a parent is made, concerns grow in regard to secure care and protection for the children in the short term, including who picks up children after school and after work hours, and provides food, medicine and clothes. Many families and relatives scramble to locate children and arrange care for them on the day of the arrest due to limited access by the parents. As a result, the responsibility for children's care depends mainly on where they were located at school, at home, at a babysitter's house, or at a day care center. In some cases, some arrested parents will not disclose correct information about children due to mistrust of ICE and other government agencies.

### **Anti-Immigrant Groups**

Anti-immigration or "nativism" infers a distinction between Americans born in the United States and individuals who have immigrated or are "first generation." Nativism is based on fears that immigrants do not share American values. This concept is not new to

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<sup>7</sup> The Impact of Immigration Raids on America's Children, The Urban Institute, 2007

American history and politics. Many groups have linked security concerns with illegal immigration, since the attacks of September 11. Frequently, the main sources of communication for members of these organizations are the Internet homepages, chat room, blogs and email. Anti-immigrant sentiments tend to originate of fear that immigrants: consume jobs that should be held by Americans, commit a disproportionate number of crimes, diminish a sense of community and nationality, drain precious community resources and welfare systems and lead to overpopulation and eventually replace existing cultures with their own.

### **Traffic Safety**

Immigrants, both legal and illegal, are believed to contribute to a wide variety of traffic safety concerns. Individuals who are unable to understand spoken or written directions in the English language can be a danger not only to themselves, but to the motoring public and police officers. The need to understand traffic signs, warnings and safety directions can be critical in the operation of a motor vehicle and in coping with emergency conditions, such as crashes, inclement weather and public safety emergencies.

In regards to driver's licenses, the operation of a motor vehicle is virtually essential if one wishes to work, conduct routine business or the activities of daily life. In addition, the driver's license has, by default, become the standard means of identification for virtually every business transaction from cashing a check to boarding a plane. In recent years, especially since the September 11 attacks, states have tightened the requirements for obtaining operator and commercial vehicle licenses, in some cases requiring proof of "legal presence" before issuing licenses. Virginia's legal presence law, which is one of the strictest in the country, took effect on January 1, 2004.

Persons in the United States illegally who need to operate motor vehicles, yet have no legitimate means of obtaining a driver's license or other identifying documentation are also unable to obtain liability insurance on the vehicles they operate, which is a requirement in Virginia. When these individuals become involved in crashes they are unable to make financial restitution in cases where they are at fault, thus shifting financial liability to other insured motorists.

### **Language Barriers**

One area identified as one of the strongest obstacles in building cohesive relationships with the immigrant community has been a lack of understanding because of different language barriers. The 2006 American Community Survey revealed that 29.2% of PWC's population speaks a language other than English at home. This figure has risen significantly from 9% in 1990 to over 16% in 2000. Furthermore, in 2006, 14.5% of the population indicated that they speak English less than "very well". This figure has increased significantly from 3.1% in 1990 to 6.7% in 2000<sup>8</sup>. The majority of County agencies lack sufficient resources to meet these language needs.

When an immigrant population does not understand the predominant culture, speak the language and distrusts the government, they will not access t County services to report crimes, ensure the proper building permit has been filed or verify their children are properly registered for public school, to cite a few examples. Some agencies have hired

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<sup>8</sup> Police Chiefs Guide to Immigration Issues, International Association of Chiefs of Police, July 2007

bilingual staff for community outreach and have attempted to recruit bilingual employees to address this growing language gap.

### **Recruitment and Retention**

For the last several decades, local governments have sought to diversify their agencies, seeking gender and ethnic balance so that their organizations more closely reflect the communities they serve. PWC has made great strides in gender and ethnic diversity over the past several years where African American, Latino and Asian employees have joined their white counterparts. Unfortunately, due to the rapid rise of an increasingly racially and ethnically diverse community, recruiting and hiring qualified numbers of racially and ethnically diverse employees continues to be an ongoing challenge in the highly competitive marketplace, especially within the greater Washington Metropolitan Area. Language barriers underscore the need to continue to broaden racial diversity within the County government or seek the necessary skills to communicate with non-English speaking residents.

Recruitment within newly emerging immigrant communities presents significant challenges for local government. Historically, County agencies have relied upon traditional means of marketing their agencies such as newspaper recruiting brochures, etc. In many cases, traditional outreach will not reach communities who may read papers in their native languages. County agencies seeking diversification of their workforce must use nontraditional means (advertising in local immigrant newspapers, website recruiting information available in other languages) to reach immigrant populations within their communities.

### **Immigration and Crime**

People within immigrant populations are extremely vulnerable to crime. Many immigrant crimes are not reported, and these crimes occur more often by immigrant perpetrators against their own than U.S. born perpetrators. Criminals tend to operate in language environments they know and understand, which complicates criminal detection by law enforcement and increases the potential for retaliation by a perpetrator should a victim come forward and report a crime.

Immigrant women may be less likely to report abuse than nonimmigrant women due to language barriers, cultural barriers, varying perceptions of law enforcement, fear of deportation and concern for their children. Perpetrators of domestic abuse will often use their partner's immigration status, fear of law enforcement and misinformation about the U.S. legal system as tools to coerce the partner into staying in the situation.

Human trafficking, commonly referred to as "modern day slavery" is a global problem that involves obtaining or maintaining the labor and services of another through the use of force, fraud or coercion is a violation of an individual's human rights. Human trafficking is one of the world's fastest growing criminal activities operating on the same scale as the illegal trade of guns and drugs. Traffickers prey upon the vulnerabilities of victims. Traffickers will often:

- Confiscate papers and legal documents.
- Misrepresent U.S. laws and consequences for entering the country illegally.
- Threaten victims with arrest or deportation.

- Threaten to harm or kill family in the victim's homeland
- Use debt and other fines to create an insurmountable situation in which the victim must work off a debt. Debts commonly include the initial smuggling fee, charges for food, clothing, housing and medical expenses.

Victims are taught to mistrust law enforcement and other government agencies by the traffickers, due to the immigration status and the crimes the individual may have been forced to commit.

### **Identity Theft and Fraud Scams**

Illegal aliens are buying genuine documents with real identities that are stolen from victims. Identity crime results from crimes committed utilizing personal identifiers that have been stolen, compromised, altered or forged.

According to the Better Business Bureau, approximately 9 million people in the United States were victims of identity crime in 2005. Approximately one-third of identity crime victims contacted police to report the crime. Identity crime is often times tied into other criminal enterprises including terrorism, drugs and gangs. These crimes are complex to investigate and the perpetrators and/or victims are immigrants. Many of the purposes for identity crime are relevant to illegal immigration: to obtain employment, government benefits as well as driver's licenses.

### **Gangs**

One of the most dangerous gangs in America is the Mara Salvatrucha or MS-13 gang. It is considered the fastest growing, and one of the most violent of gangs known in the United States and in the County. Gang members originated from El Salvador with thousands of members across the United States. MS-13 is involved in extortion, car thefts, gang on gang attacks, drugs and human trafficking and often prey on immigrants in the Latino community. However, it is important to note that gang behavior is not reflective of the immigrant communities that gang members come from.

Other Latino gangs and Asian gangs have grown in the region as well. Both Asian and Latino communities suffer with a large number of incidents of robberies and extortion because of the general distrust of banking and government institutions. Immigrants tend to have and carry large sums of cash and valuables making them vulnerable to crime and extortion.

According to a report from the Center for Immigration Studies, there is a direct relationship between illegal immigration and gang activity in Virginia. The study concluded 25% to 50% of gang members in the Northern Virginia region and the western part of the state are deportable immigrants.

Any successful program in dealing with the gang issue will require assistance from many County agencies and working within the communities in which the gang activities are taking place.

## VI. PARTNERS

As would be expected with any contentious public policy issue, there is little consensus on the issue of immigration, particularly illegal immigration, and how County government should respond. There are a number of policy areas where Federal government agencies disagree on the proper response. Accordingly, illegal immigration policy has become an overwhelming issue for County government in general. County agencies must fully understand the position of the Board of County Supervisors to provide a consistent message to the community. Unfortunately, County policy may not please all citizens of the community. Services to or for children, mental health and mental retardation, overcrowding in housing, schools and day laborer hiring sites are examples of policy issues that are fraught with controversy for County government.

There is no simple solution to the problem of illegal immigration. However, County agencies and the community can work successfully together as partners. The most required skill is awareness of conflicting positions of those entities that are involved with the immigration issue including:

- Business Community
- Human Service Agencies
- Community Associations
- Immigration and Anti-Immigration Advocacy Groups
- Community Residents
- News Media
- County Schools
- Park Authority
- Criminal Justice Agencies
- Public Health Agencies
- Elected Officials
- Public Safety Agencies
- Federal Government
- Public Works
- Housing and Community Development

It is highly unlikely that all of the above entities will agree on immigration policy. Accordingly, knowledge of the conflicts among these constituent groups is a powerful tool for County staff. Being aware of the sensitivity and issues of any one group can allow County staff to address or engage that group with a level of sensitivity that may diffuse complaints, issues and anger, even if County agencies must support or enforce unpopular policy.

## VII. *ACHIEVING THE FUTURE VISION*

Achieving a successful County response to illegal immigration issues will not be easy. Illegal immigration issues are complex in nature and difficult to address. Further, positions on these issues vary radically among the citizens and community groups, the County government serves. The potential for adverse consequences exist in regards to the County's illegal immigration enforcement initiatives to include: fear and distrust of government within the immigrant communities, increased police officer exposure to allegations of racism and misconduct and fear and intimidation of victims and witnesses of crime.

Achieving a successful outcome in dealing with illegal immigration will require continued dialogue and education between government leaders and agencies, citizens, community groups, business leaders, educators as well as other entities.

Successful outcomes may include:

- Adopting measures to secure and promote the health, safety and general welfare of County residents.
- Promoting the belief that legal immigration has been, and will continue to be, a benefit to PWC and Virginia has enriched countless of communities across the nation, and is one of the very bedrock principles upon which PWC's thriving society is built.
- Protecting crime victims and witnesses regardless of immigration status.
- Solving problems in the community at large as they relate to criminal illegal activity and minimize unreasonable fear in immigrant communities.
- Protecting children that have been separated from their parents as a result of illegal immigration enforcement activities through At-Risk Youth and Family Services, Child Welfare program, Child Protective Services (CPS) investigations and foster care programs.
- Providing effective media outreach in an effort to develop reasonable expectation, in both the community at large and in the immigrant community, about what the County government will do and can do in regards to illegal immigration.

Immigration patterns and projected growth throughout the United States, Virginia and PWC will cause the issue of illegal immigration to be one of continuing importance to all local government agencies and citizens. These groups provided with accurate and reliable information on the complex set of immigration issues can surely arrive at fair and effective local policies to respond to illegal immigration issues in PWC.

There is no question illegal immigration related issues are placing enormous pressure on local governments to do something. The national issue is a local one as well and state and local governments face a growing set of illegal immigration related duties in the face of scarce and limited resources. The goal is to craft reasonable approaches that can be accomplished in collaboration with County government agencies and community residents. These approaches must be implemented in a manner fully consistent with federal laws regulating to protect the civil rights of all citizens and aliens. Further, these

approaches should not be construed so as to prohibit the rendering of emergency medical care or any public benefits mandated by federal or state laws or the reporting of a crime or criminal activity to any law enforcement agency.