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Judiciary Committee--Immigration  
December 05, 2011

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[IMMIGRATION]

The Committee on Judiciary met at 10:00 a.m. on Monday, December 5, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing regarding immigration. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Amanda McGill; Burke Harr; and Tyson Larson. Senators absent: Scott Lautenbaugh. [IMMIGRATION]

SENATOR ASHFORD: Okay. The next item is...the 10:00 slot here is to study policies and procedures associated with immigrants who come in contact with law enforcement at federal, state, and local levels. I'm going to give just a brief overview of this committee's involvement on this issue and I'm going to do it from here, I think, rather than the table. The purpose of this hearing is to gather information regarding law enforcement practice with undocumented immigrants. It has been three years since we traveled across...this committee traveled across the state to discuss the impact of the undocumented immigrant population in Nebraska with community leaders. We had candid conversations with law enforcement representatives at that time, as well as with other school, hospital, and city and county officials. We know that local and state agencies work closely with ICE to apprehend those who commit crimes in our state and to get them deported to their country of origin. We also know that it is important for our state and local law enforcement agencies to build and preserve a positive and cooperative relationship with the immigrant population. In 2009, as a result of the federal government's failure to enact any kind whatsoever of comprehensive immigration reform, the Legislature acted responsibly, in my view, as did this committee under the constitution, to pass LB403 to address the impact of illegal immigration in two areas of the law where the states have some regulatory authority. The law LB403 addressed employment because available jobs attract undocumented immigrants to Nebraska. The Legislature decided that public employers and contractors must verify the employment eligibility of their employees using the federal E-Verify system. The public sector needs to provide an example for private employers across the state to

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assure that all Nebraskans practice...that the practice of hiring undocumented workers is not appropriate. The law also addressed the cost of undocumented immigration to our state and local governments by prohibiting undocumented immigrants from receiving state or local public benefits, unless they are specifically provided for in federal law. Despite the efforts by Nebraska in 2009, we still are in a situation where our federal government has utterly failed to address what is an incredibly important issue not only for Nebraska, but for every state in the United States. We are here today to check back with the law enforcement agencies....well, strike that. We are here today to check back with the law enforcement agencies who work with this population on a daily basis and update how these law enforcement agencies have interacted with the Obama administration under the current economic conditions since 2008 and under federal policy changes; also, in light of state laws passed in Arizona--states like Arizona and Alabama. We have invited various law enforcement agencies to testify this morning. The committee wants to know about the policies and procedures associated with immigrants who come in contact with law enforcement or are being held in federal or state...federal, state, or local custody in our state. The committee is particularly interested in the flow of information between law enforcement agencies at the federal, state, and local level in cases involving undocumented immigrants. The committee would also like to know about implementation of the Secure Communities program and any impact from the Obama administration's recent decision to prioritize deportation prosecutions to more serious criminal activities. With that, we have until 12:00, and there is no list of testifiers. So what I'm going to ask...well, there is some list, but we're not going to go by the list. What we're going to...I guess what we will do, though...Colonel...I did ask the colonel to come and I know he has to get back and perform his official duties so we'll start with Colonel Sankey and then we'll go down the list. There are some other people that have indicated that they'd like to testify, but I'd ask that we kind of jockey around and recognize everybody's desire to testify. We will limit the testimony to...with the light system. Colonel, I'm going to ask you to go ahead without the lights. But after the colonel completes his testimony, we will utilize the light system, which...and we'd ask you to limit your testimony to three minutes. At the...when

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the yellow light goes on, it means that there's one minute remaining and we'd ask you then to think about summarizing what you have to say. Obviously the three minutes doesn't include any questions that would be asked. But I...again I would ask, and I know this is a...can be a terribly difficult issue for many people, but I would ask that we try to limit our discussion to the law enforcement issues and how those law enforcement issues impact our state. With that, Colonel? [IMMIGRATION]

DAVID SANKEY: (Exhibit 1) Thank you, sir. Senator Ashford and members of the Judiciary Committee, good morning. I am Colonel David Sankey, D-a-v-i-d S-a-n-k-e-y, superintendent of the Nebraska State Patrol. I appear here today, at your request, as a member of the Nebraska law enforcement community. My remarks are intended to address the topic areas outlined by Senator Ashford in his invitation letter and to offer the committee some perspectives on law enforcement's interaction with and practices pertaining to undocumented immigrants. I understand you are interested in agency policy and current practice relative to law enforcement contacts with undocumented immigrants with the Nebraska State Patrol Troopers and how they interact with persons whose legal presence in the United States is in question. As you know, the responsibility for immigration enforcement rests with the federal government. When law enforcement encounters occur, our troopers have the resources available to them to contact the United States Immigration and Customs Enforcement Agency, also known as ICE, which functions as the principal investigative arm of the Department of Homeland Security. This contact is facilitated by our Communications Division, at which time ICE is advised of the information regarding the person in question. ICE then makes a determination as to what action, if any, they deem appropriate for the situation. It is our experience that most of the time, ICE's response is to take no further action unless the person is wanted by authorities for a serious criminal matter. Of course, state troopers pursue any violation to state law that exists within our authority and jurisdiction, regardless of ICE's action. Senator Ashford's letter also asked that I address the federal Secure Communities program and the Nebraska State Patrol's role in that program. The State Patrol has been designated as the Federal Bureau of Investigation's State

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Identification Bureau for Nebraska. As such, we are the conduit between the state and local agencies and the federal government. In short, when a person is booked into jail in Nebraska and fingerprints are taken, the prints pass through the State Patrol en route to the FBI and then the Department of Homeland Security. Secure Communities is a Department of Homeland Security program which focuses on identification and removal of undocumented immigrants who have been convicted of a specific criminal offense or are repeat immigrant violators. For years, when a person is booked into a jail and fingerprinted, the fingerprints are sent to the FBI via the State Patrol, due to the State Identification Bureau designation. Under the Secure Communities program, the FBI automatically sends the fingerprints to ICE to check against its immigration databases. If these checks reveal an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE determines what, if any, enforcement action will be taken. ICE prioritizes the removal of individuals who present the most significant threat to public safety as determined by the severity of their crime, their criminal history, and other factors, including those who have repeatedly violated immigration laws. ICE prioritizes removal enforcement based on the following: Level I, Aggravated Felonies; Level II, Non-Aggravated Felonies; and Level III, Misdemeanors. In cases where the checks determine the person may be removable, ICE may issue a detainer on the person, requesting the correctional facility hold the individual no more than an extra 48 hours, excluding weekends and holidays, to allow for an interview. I would defer to my law enforcement counterparts who have correctional facility responsibilities to address how this process works and its effects on their operations. In preparation for this hearing, the State Patrol requested information from our Secure Communities point of contact at ICE. Currently in Nebraska, 12 jurisdictions are active in the program. As of November 15, 2011, these jurisdictions had 28,492 submissions with 196 removals from Nebraska facilities in 2011. The attached handout outlines this information along with the prioritized levels assigned by ICE. On behalf of the Nebraska State Patrol, I wish to thank you for allowing me to provide you with this information today. Thank you.

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SENATOR ASHFORD: Thanks, Colonel. Any questions of the colonel? Would you go back, or just...would you just very, very briefly go back over the time frames that are applied once there's an apprehension? The fingerprints are checked on the federal database, against the federal database, and that information comes back within how...what period of time? Or what period of time do you allocate to that?

[IMMIGRATION]

DAVID SANKEY: Well, it depends. From the handout, you can see that the jurisdictions in our state that submit the fingerprints through this program, and some are ink submissions and some are live-scan submissions. The live-scan submissions that we receive are...can be instantaneous and sometimes it could be up to a week before we receive them. Ink card submissions are much slower, so it takes us time.

[IMMIGRATION]

SENATOR ASHFORD: But what is the 48-hour hold? [IMMIGRATION]

DAVID SANKEY: Forty-eight hours is the time frame that when ICE finds out that there's an individual in a facility that they want to perhaps interview, they can detain them for an additional 48 hours beyond what they're being detained for, so for whatever purpose. So they get arrested by one of our troopers for, say, driving under the influence, they're in jail, we run their fingerprints, it goes to the FBI, then to DHS. DHS sees that, they contact the facility and they say, hold that individual for 48 hours until we can get an ICE agent out there to interview the individual. And then they'll make the determination whether they do anything with that individual or they let them go or they deport them--start deportation procedures. [IMMIGRATION]

SENATOR ASHFORD: Senator Council. [IMMIGRATION]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford, and thank you, Colonel Sankey. I just need a little better explanation. Your testimony indicates there are

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currently 12 Nebraska jurisdictions active in the program. [IMMIGRATION]

DAVID SANKEY: Right. [IMMIGRATION]

SENATOR COUNCIL: How does a jurisdiction become active in the program?  
[IMMIGRATION]

DAVID SANKEY: ICE contacts the jurisdiction, the facility, and up until recently, they developed an MOU with those counties, facilities, and then they notified us that they have another MOU with another facility. Now recently, ICE has sent us a letter saying they no longer believe that they need an MOU with the facility to do this because we're already submitting these fingerprints to the FBI. They just need to work with the FBI to get the information from them. [IMMIGRATION]

SENATOR COUNCIL: Okay, so a county that doesn't currently has an MOU, if they arrest someone and fingerprints are taken, are those fingerprints automatically now just sent to the State Patrol? [IMMIGRATION]

DAVID SANKEY: If they send them to us, we send them to the FBI. [IMMIGRATION]

SENATOR COUNCIL: Okay, so if the jurisdiction doesn't send the fingerprints to you, then you have nothing to communicate to the FBI. [IMMIGRATION]

DAVID SANKEY: Correct. We don't have one in the state repository and then we don't submit them to the FBI for the federal repository. [IMMIGRATION]

SENATOR COUNCIL: Okay. Now, according to your data as of November 15, there were 28,500 submissions to the FBI... [IMMIGRATION]

DAVID SANKEY: Yes. [IMMIGRATION]

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SENATOR COUNCIL: ...who in turn submits to ICE. [IMMIGRATION]

DAVID SANKEY: Right. [IMMIGRATION]

SENATOR COUNCIL: And of those, there were 196 deportations? [IMMIGRATION]

DAVID SANKEY: Yes, as I understand it. There was 196 individuals removed from Nebraska. [IMMIGRATION]

SENATOR COUNCIL: Okay, so that I understand the process, these 28,500 submissions to the FBI, who in turn submits it to ICE. ICE then notifies Nebraska State Patrol that there are 196 of those individuals that they are going to take jurisdiction of... [IMMIGRATION]

DAVID SANKEY: Yeah. [IMMIGRATION]

SENATOR COUNCIL: ...and directed that they be turned over to ICE. I guess that's the... [IMMIGRATION]

DAVID SANKEY: Yeah, what they'll do is when they see an individual that's being held in one of these 12 facilities, they'll contact the facility and they'll say, we want to put a hold on that individual for 48 hours. Then they'll send an agent out. At that time, we have no knowledge or no active part in that, and then that agent will make the decision whether they remove the individual from Nebraska or they just let them go. [IMMIGRATION]

SENATOR COUNCIL: Okay. And now when you say just let them go, though, if that individual has violated a state statute, you don't just let them go. [IMMIGRATION]

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DAVID SANKEY: Yeah. [IMMIGRATION]

SENATOR COUNCIL: I mean, they're... [IMMIGRATION]

DAVID SANKEY: Yes. Whatever that individual has been arrested for, they have to follow through with that procedure. [IMMIGRATION]

SENATOR COUNCIL: Okay, thank you. [IMMIGRATION]

SENATOR ASHFORD: Yes, Senator Coash. [IMMIGRATION]

SENATOR COASH: Thank you, Chairman. I want to follow up, Colonel, of the question that Senator Council had with regard to the 28,500 submissions. Now, those were 28,000 people that had contact with law enforcement that you checked against this, or you checked and it was found. Did you come into contact with 28,000 undocumented? [IMMIGRATION]

DAVID SANKEY: No. No, that's 28,000 sets of fingerprints that we sent to the FBI--people that were arrested in those 12 jurisdictions. And as you can see, they're some of the largest jurisdictions in our state--28,000 fingerprints that were sent to the FBI. [IMMIGRATION]

SENATOR COASH: So you do that... [IMMIGRATION]

DAVID SANKEY: Of those, the DHS looks at...once the FBI sends it to DHS, then they look at those and determine which ones, potentially...they'll hit those against their database, and then those that come back against the ICE's database. If they want to talk to that individual further, then they'll contact the facility and put a hold on that individual. [IMMIGRATION]

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SENATOR COASH: Right. Do you know how many...your data says 196 of them were...ICE took... [IMMIGRATION]

DAVID SANKEY: They were removed. [IMMIGRATION]

SENATOR COASH: ...took them over. Do you know how many of them that were deemed to be undocumented that ICE took no action with? [IMMIGRATION]

DAVID SANKEY: No. [IMMIGRATION]

SENATOR COASH: And said, sorry, it's not high enough on our priority list. This person's your problem now. [IMMIGRATION]

DAVID SANKEY: I don't, no. We got that information by contacting ICE and asking them for it, so they provided that information to us. I have no idea how many they contacted that were...that hit against their database and then they didn't do anything with. [IMMIGRATION]

SENATOR COASH: Okay, thank you. [IMMIGRATION]

SENATOR ASHFORD: And we did contact ICE, but they chose not to... [IMMIGRATION]

DAVID SANKEY: They chose not to take enforcement action. [IMMIGRATION]

SENATOR ASHFORD: ...or not to come. [IMMIGRATION]

DAVID SANKEY: Oh, I'm sorry, yes. [IMMIGRATION]

SENATOR ASHFORD: Yeah. [IMMIGRATION]

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SENATOR COUNCIL: Yeah, well, and that's much-needed clarification, Senator Coash, because the impression is left that there were 28,500 undocumented individuals whose fingerprints were sent to the FBI. There were 28,500 arrestees whose fingerprints were sent to the FBI and we don't know, beyond 196, how many of those were undocumented individuals, correct? [IMMIGRATION]

DAVID SANKEY: Correct, correct. [IMMIGRATION]

SENATOR COUNCIL: Okay, thank you. [IMMIGRATION]

DAVID SANKEY: They just ran...the FBI got that information from us, they ran it against DHS. I don't know how many hits the DHS ICE database gave, so. [IMMIGRATION]

SENATOR COUNCIL: Okay, thank you. [IMMIGRATION]

SENATOR ASHFORD: As usual, thanks, Colonel, for your succinct response to our request. [IMMIGRATION]

DAVID SANKEY: Thank you, sir. [IMMIGRATION]

SENATOR ASHFORD: Thank you. I'm going to go back a little bit on my original comment, because we do have, apparently, two law enforcement people here and I do want to get them back to duty. So, is deputy chief here from Omaha? Mr. Schmaderer, good to see you. [IMMIGRATION]

TODD SCHMADERER: Thank you, good morning. [IMMIGRATION]

SENATOR ASHFORD: Yeah, and Deputy Chief, we are using the lights, as you remember the lights from being here before. [IMMIGRATION]

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TODD SCHMADERER: I recall. [IMMIGRATION]

SENATOR ASHFORD: Okay. And those of you who have not been here before, we do have sign-in sheets, and please sign in, and if you don't wish to testify, you may indicate...well, let's just...your comments on the sheet, but otherwise give us the information on those sheets before you testify. Go ahead. [IMMIGRATION]

TODD SCHMADERER: My name is Todd Schmaderer. I'm assistant chief of the Omaha Police Department. On behalf of Chief Hayes and the Omaha Police Department, we appreciate the invite to come down here and talk about our policies and procedures. Overall, we have kind of a two-part component to how we address undocumented immigrants that we come across. As a matter of routine practice, Omaha Police Department does not get involved and doesn't make it a habit of checking immigration statuses. However, there are rare exceptions, and that's the second part that I'll get into, in which we will reach out for assistance and seek deportation if it's appropriate. As a matter of routine practice, we do not enter into checking immigration statuses. For example, if we respond to a call, talk to witnesses, talk to victims, make a routine arrest, we don't get into the process of checking anyone's immigration status. We feel if that was enforced upon us, it would hinder our mission, it would harm our community policing efforts, etcetera. And also our resources are limited and...so as a matter of routine, that has been our practice. Now, as a matter of rare exceptions, we have asked ICE or Homeland Security to assist us with the deportation process, but those are in rare instances that would...we feel that public safety is of imminent threat and we feel deportation is appropriate. Just a couple of examples: about five years ago, we were involved in a large drug and gun investigation in which 20 gang members were indicted. Seven of them turned out to be undocumented or illegal to this country. We did seek assistance from the federal government for their deportation. And then earlier this year, we were sought out as kind of an assistance agency to assist with a Homeland Security investigation into a local gang and to assist them and cooperated with them, providing

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some surveillance, search warrants, etcetera, so that they could seek deportation of some gang members. So I wanted to leave my comments short, open it up for questions, but a twofold approach is a matter of routine. We do not get involved with checking immigration status. We also will do so on rare exceptions in which we feel public safety is imminent. But of course, anyone we do arrest, we take down to Douglas County Corrections and they are entered into the Secure Communities database. Outside of our purview we have nothing to do with it, but anybody who is arrested is entered into that database and stands the risk of having their name cross-referenced with anything that may cause them to have immigration status checked.

[IMMIGRATION]

SENATOR ASHFORD: Thank you, Chief. Yes, Senator Council. [IMMIGRATION]

SENATOR COUNCIL: Thank you. And thank you, Deputy Chief, for appearing. And again, I just want that clarification. If the Omaha Police Department arrests an individual and that individual is fingerprinted as a Secure Communities partner... [IMMIGRATION]

TODD SCHMADERER: Um-hum. [IMMIGRATION]

SENATOR COUNCIL: ...those fingerprints are sent to the State Patrol, who in turn forwards them to the FBI, correct? [IMMIGRATION]

TODD SCHMADERER: Yeah, that's correct. [IMMIGRATION]

SENATOR COUNCIL: So when you say that...when you make a statement that the OPD doesn't routinely get involved in determining immigration status, that's...in the absence of an arrest. But if there's an arrest, you go through the Secure Communities process? [IMMIGRATION]

TODD SCHMADERER: Well, you're correct, but let me kind of clarify the process.

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Omaha Police Department really has no role. We make the arrest, turn them over to Douglas County Corrections. We're out of the picture at this point. [IMMIGRATION]

SENATOR COUNCIL: Okay. [IMMIGRATION]

TODD SCHMADERER: Once it goes to Douglas County Corrections, that's when Secure Communities takes ahold and all the prints are uploaded to the state. [IMMIGRATION]

SENATOR COUNCIL: Okay. So when you say you don't routinely...so if an Omaha police officer makes a routine traffic stop... [IMMIGRATION]

TODD SCHMADERER: Yes. [IMMIGRATION]

SENATOR COUNCIL: ...what you're stating to us is that the officer does not inquire into someone's status--immigration status--as a part of that routine stop. [IMMIGRATION]

TODD SCHMADERER: As a part of that routine matter, they do not. Of course, if an arrest stems from that traffic stop, they would enter into the Secure Communities if we were to book them into Douglas County Corrections. [IMMIGRATION]

SENATOR COUNCIL: Okay, thank you. [IMMIGRATION]

SENATOR ASHFORD: And just to follow up, Chief, the colonel mentioned that there were three levels of Secure Community Offenses and I believe, and maybe Colonel, if I could just ask you from there, are all three levels entered into the database? Are all three levels of offense, once they're turned over...once the fingerprint is obtained, are all three levels sent to NCIC? [IMMIGRATION]

DAVID SANKEY: Yes, sir. What we do is we send the fingerprints to the FBI, then they

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go to the Department of Homeland Security. Then, I assume in the Department of Homeland Security's database, when they get a hit on that individual, it will tell them that this is what it was for. And then, as you can see from the handout, (inaudible)...to a Level I, or a misdemeanor would be a Level III. [IMMIGRATION]

SENATOR ASHFORD: And those levels, are they...are Level I, II, and III crimes are Secure Community Levels, correct? That are...that apply...those are Secure Community designations, is that correct? [IMMIGRATION]

DAVID SANKEY: Correct. Those were determined by ICE. [IMMIGRATION]

SENATOR ASHFORD: By ICE. Okay, thank you. One other quick question. And just for the record, even the Level III crimes that are in the NCIC database are crimes related to immigration, to extortion, to the damage of property, family offenses, gambling, liquor offenses, obstruction of the police, health and safety violations, civil rights violations, election law violations, so there are a number of offenses that are within the ICE levels of concern, as evidenced by these three levels. But I have one last question and that is, you mentioned the community policing strategies in the city of Omaha... [IMMIGRATION]

TODD SCHMADERER: Sure. [IMMIGRATION]

SENATOR ASHFORD: ...which are, I know, critical to your operation. And as we went around the state three years ago, the law enforcement officials were--in every community we visited--mentioned that concern. And could you explain how that works in Omaha or why that is a concern? [IMMIGRATION]

TODD SCHMADERER: Sure. Our entire policing model is based on working with the community to resolve crimes, obtain information, develop witnesses so that we can make an arrest and further prosecution. As part of that community policing effort, which

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is basically information gathering and how we improve the areas in which people live, they take ownership of it. If we're interviewing witnesses, if we're responding to crimes, if segments of the community are concerned about placing a call to us or are afraid to be a witness or even a victim because their immigration status may be checked, it would completely hinder our operations to the point we would probably have to revise our approach and our strategy. [IMMIGRATION]

SENATOR ASHFORD: Okay, thanks. Thanks, Chief, thanks for coming down.  
[IMMIGRATION]

TODD SCHMADERER: Thank you. [IMMIGRATION]

SENATOR ASHFORD: Let's see, I think Chief Hiltner is here somewhere. There he is. Okay, Chief. Yeah, Chief Casady is here, too. Chief, why don't you come up? And I know that we visited Schuyler and I remember our visit when we went there and you're still here. Good. [IMMIGRATION]

CHIEF HILTNER: Yes, sir. [IMMIGRATION]

SENATOR ASHFORD: Okay, go ahead. [IMMIGRATION]

CHIEF HILTNER: Thank you. Senator Ashford and Committee, I'll try to make it brief because it may sound redundant. The Schuyler Police Department currently does not have specific policy and procedures pertaining to undocumented workers. We have policy and procedures that reflect state law, operations of the city of Schuyler, and crime prevention. When we come in contact with an individual and they're arrested for a violation of state statute, they are then taken to Platte County Jail in Columbus, which is approximately 16 miles from us, which is contracted with Colfax County to house our prisoners. And then that is when they are booked in the jail, fingerprinted, and the Secure Communities takes place, which has nothing to do with me, the Schuyler Police

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Department, or the city of Schuyler. The result of that, they may be placed with an immigration "detainor" until their criminal case is resolved in Colfax County. And then, with the recent decision of the Obama administration, those individuals may be deported and/or what most recently we've experienced because of prioritization of those crimes, they're returned to our community after their criminal case is resolved, depending on where they fall into that priority. We do communicate really well with state officials, the Nebraska State Patrol and federal officials, due to our limited resources with the Schuyler Police Department. And the little or no contact that we have with undocumented workers would be somewhat mirrored by Omaha PD and the Nebraska State Patrol, where we have worked a criminal case. That person, because of that criminal case, we had knowledge that they had been deported and then they returned to our community after being deported, where we would then initiate contact with the federal government to confirm that. And then the federal government, ICE specifically, would come out with a "detainor" to pick that individual up. I've identified...and keep in mind our whole community is not undocumented at all. But three big obstacles for us as Schuyler Police Department is identification, which is really difficult when they have contact with individuals that may be driving or involved in a criminal case. Secondly, another big obstacle is translation or interpretation, because everything has to be in a different language and/or finding certified... [IMMIGRATION]

SENATOR ASHFORD: That's okay. [IMMIGRATION]

CHIEF HILTNER: ...interpreters that we can meet the state statute's requirement of criminal elements for that case. And last but not least, just like Omaha Police Department, I believe a lot of crimes are not reported and/or people are not willing to cooperate with law enforcement in our community for fear of their status in this country and/or being identified as an undocumented worker. [IMMIGRATION]

SENATOR ASHFORD: Thanks, Chief. Any questions of the chief? Thank you.  
[IMMIGRATION]

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CHIEF HILTNER: Thank you. [IMMIGRATION]

SENATOR ASHFORD: Thanks for coming over. Chief Casady, and then we're going to move on to the... [IMMIGRATION]

TOM CASADY: (Exhibit 2) Good morning, Senators. I apologize for the frog. The Lincoln Police Department doesn't inquire about people's immigration status when we encounter folks. We do, however, check the immigration status of people who are arrested and fingerprinted when they're booked into the Lancaster County Jail as a matter of practice similar to what was described to you by the assistant chief and the colonel. I want you to know, though, that not everyone who is arrested is fingerprinted--far from it. About 90 percent of the people that we arrest here in Lancaster County are arrested for misdemeanors. And for misdemeanors, about 90 percent of those people are never taken to jail. They're released with a citation to appear in court at a later date. So your typical kind of arrest, the drunk driver for example today, would be taken to Cornhusker Place Detox, tested, given a citation with a future court date. A shoplifter at Target this morning, same thing--a citation with a future court date 90 percent of the time. So as a result, even though we arrested 26,972 people here--the Lincoln Police Department did last year--only about 5,000 of those were booked into jail, and those would be the people who are routinely fingerprinted as part of the book-in process. Now, beginning on August 17, 2010, Lancaster County started transmitting electronically all of those fingerprints from people who are booked into jail to the FBI, and from there to ICE as part of Secure Communities. But for a far longer period of time, our department--the Lincoln Police Department--has been submitting fingerprint records on all people that we arrest who report being foreign-born to ICE. And I have some rather detailed data about that that's in the written testimony I passed out. In the first 13 months of Secure Communities, we submitted...we made 260 of those submissions to Homeland Security investigations. There were 153 hits. And of those 153 hits, eventually 13 people were deported, so it's a very, very small fraction.

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It's two-tenths of 1 percent of the people that are booked into the Lancaster County Jail who were ultimately deported, and that's people that were booked into the jail. Remember that that's only about 20 percent of the total people that were arrested. So I hope this helps you as you consider the impact of Secure Communities, and I'd be happy to answer any questions you have. [IMMIGRATION]

SENATOR ASHFORD: Thanks, Chief. I think one of the purposes of this hearing is to think about the roles of the various law enforcement agencies that deal with crime and deal with...as a result, dealing with undocumented persons. And obviously, the city of Lincoln, your department, has no authority to deport anybody, correct? [IMMIGRATION]

TOM CASADY: We do not. [IMMIGRATION]

SENATOR ASHFORD: And so you really do have to rely on your federal partners to do that. And so...but at least in your case, you do participate in the identification and transmittal of information to ICE as...and you have done so for a period of time, correct? [IMMIGRATION]

TOM CASADY: Yes, we were doing this well before Secure Communities ever existed. [IMMIGRATION]

SENATOR ASHFORD: Yeah. [IMMIGRATION]

TOM CASADY: It was simply a manual process, and we've continued that, by the way... [IMMIGRATION]

SENATOR ASHFORD: Right. [IMMIGRATION]

TOM CASADY: ...because there's a higher level of quality control on that, so we continue to submit records of...fingerprint records of arrestees who report being

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foreign-born, and that's where these data come from. [IMMIGRATION]

SENATOR ASHFORD: And the 13 deportations are commenced by ICE or by federal officials? [IMMIGRATION]

TOM CASADY: That's correct. We have no role in that. As the Schuyler chief testified, there have been a couple of cases--I can remember three during my 17 years as police chief--where we tried to get someone deported because they were simply a criminal pain in the neck to us and we were sick and tired of repeatedly seeing people victimized by someone who was a...just a career criminal who also happened to be foreign-born. And I can recall three occasions--two successfully--where we tried to pursue that way of ridding the community of someone that we thought was an ongoing, continuing threat through their criminal conduct. [IMMIGRATION]

SENATOR ASHFORD: Let me just follow up. And I think that's a key point, is that the idea of Secure Communities to focus on the most severe cases or egregious cases, hopefully in the future--at least until the federal government addresses the issue of immigration generally--that at least there's some focus on this; more focus than had been the case prior. [IMMIGRATION]

TOM CASADY: Yes. You know, when I read the Secure Communities documents and the book, it's hard not to agree with it. As a law enforcement officer, this is exactly what I want. I realize that ICE has limited resources, and I realize that we have a huge problem with people that are in the United States illegally--many of whom, by the way, have simply overstayed visas. It makes sense to me that you should prioritize your resources by trying to initiate deportation proceedings against those people who are in that group and who have committed serious, violent crimes. It makes eminent sense to me. That's how I want my tax dollars being spent. [IMMIGRATION]

SENATOR ASHFORD: And you arrive at that opinion, Chief, at...from many years of

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public service as a police officer in this state, as the chief, and how many...just out of curiosity, because you're not chief anymore, are you? [IMMIGRATION]

TOM CASADY: I'm not. I'm the Public Safety Director now, which means the chief reports to me... [IMMIGRATION]

SENATOR ASHFORD: Right. [IMMIGRATION]

TOM CASADY: ...along with the fire chief and the 911 director. [IMMIGRATION]

SENATOR ASHFORD: And you were chief for 20 years, 18, 19? [IMMIGRATION]

TOM CASADY: Seventeen. [IMMIGRATION]

SENATOR ASHFORD: Seventeen. And then prior to that, you were on the force? [IMMIGRATION]

TOM CASADY: I was the Lancaster County Sheriff for four years. I started my career in 1974 as a Lincoln Police Officer, so 37 years. [IMMIGRATION]

SENATOR ASHFORD: Yeah, yes, thank you for all your service. [IMMIGRATION]

TOM CASADY: Thank you. [IMMIGRATION]

SENATOR ASHFORD: Any other questions of the chief? Seeing none, thank you. [IMMIGRATION]

TOM CASADY: Thanks. [IMMIGRATION]

SENATOR ASHFORD: Next...well, what we're going to do now is open this up to

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whomever wishes to come. Why don't we start over here and then go down the line, here? And those who wish to testify, come on up to the...if you can, to the front. And if...once you have testified, if you would move to the...some of the back chairs and then everybody, hopefully, will get a chance to talk. How are you? [IMMIGRATION]

DALE MONSELL: (Exhibit 2a) Fine, thank you. Dale Monsell of Omaha, and a member of the Nebraska Taxpayers for Freedom. And while we realize that this hearing has to do with the criminal aspect of illegal immigrants, we would like to still present a brief description of the high cost of the Hispanic cheap labor in this state. Some of this will have to do with law enforcement, too. Illegal immigration proponents argue that illegal aliens constitute a net gain for Nebraska, supposedly because their labor and tax payments outpace taxpayer cost to subsidize them with education, health and welfare benefits. The revised February 2011 study produced by the Federation for American Immigration Reform shows irrefutable evidence that illegal immigrants cost far more to Nebraska taxpayers annually than what "illegals" pay to our economy. Net fiscal costs equaled \$251.6 million from the pockets of Nebraska taxpayers. Illegal aliens cost each Nebraska household over \$501 annually. Members of our organization strongly resent this burden and strongly urge this committee to advance legislation, like that proposed by Senator Janssen, to stand and reverse the tide of illegal immigrants swarming into our state, burdening our social services, education, and judicial systems. In order to alleviate part of the \$26.4 million judicial, law enforcement, and incarceration costs to the state of Nebraska from illegal aliens, we strongly urge that the Nebraska...the Legislature to immediately press state and local law enforcement agencies to participate in the following programs: removal of eligible parolees accepted for transfer, a program in which ICE works with state prison and local jail authorities to alleviate local, state, and incarceration crowding and expenditures involved in criminal aliens who, in return for early release, voluntarily will become repatriated to their home countries. Our Douglas County Jail spends thousands annually to house illegal aliens. The U.S. Law Enforcement Support Center offers immigration status and ID information and help to local and state law enforcement agencies in regarding illegal suspected, arrested, or

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convicted...of, excuse me, regarding "illegals" suspected, arrested, or convicted of criminal activity. Document and brief...excuse me. Document and benefit fraud task forces can include local and state law enforcement agencies in cooperative activities. The 287(g) program, prepared by the Obama administration, was established in 1996. In this program, state and local law enforcement officers undergo training by ICE and immigration law enforcement, then are deputized to perform duties as illegal...as immigration agents. Those locally identified as illegal and deportable aliens are, if confirmed by federal authorities, taken into custody and entered into deportation proceedings. I would like to comment briefly on this statement that nothing more can be done on the state level about illegal immigration, and I submit that if we get elected officials to stand up to the meat packers in this state, then something more can be done. In other words, please still push for LB48. [IMMIGRATION]

SENATOR ASHFORD: Thanks, Mr. Monsell, and any questions of Mr. Monsell? And for the record, we do have a statement from Doug Kagan as well, which I think you read into the...mostly into the record, so that will be in the record as well. Thank you. Thanks, Mr. Monsell. [IMMIGRATION]

DALE MONSELL: Thank you. [IMMIGRATION]

SENATOR ASHFORD: Yeah. Okay, any...next person who's...why don't we start here on the right and proceed on down or... [IMMIGRATION]

KATHLEEN GRANT: (Exhibits 3 and 4) Good morning. I'm Kathleen Grant, K-a-t-h-l-e-e-n G-r-a-n-t, representing OTOC--Omaha Together One Community. OTOC believes that a strong and mutually respectful relationship between law enforcement officials and community members is vital to the public's safety. However, given the climate in Nebraska surrounding immigration, many of our immigrants live in fear of police. OTOC has hosted 3 large assemblies, 19 educational presentations, and many house meetings with clergy, congregations, and school/parent organizations in the past

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year. Almost 2,000 have attended these events. In many of these events there are questions and concerns about interactions with police and other public safety officials. We have heard of situations where Omaha police were thoughtful and helpful in difficult, tension-filled situations with new immigrants. We have also been told of an officer who appeared to be targeting Latinos day after day, in the same location on I-80 between Omaha and Lincoln, for following too close. My high school-age son, who is Latino, was stopped in Sarpy County and interrogated by police when he was 16 years old about why he was in such an upscale neighborhood. However, the most consistent report we hear is that people are afraid--afraid of being targeted because of their appearance or their neighborhood, afraid of being stopped for trivial reasons as a pretext to harass or incarcerate them, afraid of being separated from their families, afraid of not being able to work and support their families, and afraid of the unknown. As you know, public safety officials have tremendous power. Many members of our community and even immigration lawyers are unclear about how best to respond to police officers. Do members of our community have to provide identification in all circumstances? Is a Matricula Consular considered a valid identification in Nebraska? Is an international driver's license valid in Nebraska? Will a routine traffic stop result in jail...a stay in jail while immigration status is being determined? Added to this uncertainty are situations where there are language barriers and cultural differences. This fear is having a corrosive effect on the immigration community in Omaha. As you know, it increases the risks that immigrants will be exploited by unscrupulous employers and victimized in the worst possible ways. It also decreases the likelihood that law-abiding individuals will report violence in their homes and neighborhoods. This fear results in isolation and distrust in the entire community. They say, who can we trust? Who will betray us? As you know, an interaction with a police officer may be the first step for an immigrant into what can be, in Nebraska, a years-long nightmare of jail, immigration court appearances, prolonged detention, finally resulting in deportation. This fear must be replaced with clarity and consistency. This fear must be replaced by comprehensive federal immigration reform. We call upon members of the Unicameral, leaders of our community, to apply pressure to Nebraska members of Congress to adopt thorough,

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commonsense, workable and humane federal immigration reform. [IMMIGRATION]

SENATOR ASHFORD: Thanks, Kathleen. Any questions of Kathleen? I don't see any, thank you. Next person to testify? And again, if...not that we don't want you in the front row, but if you'd move to the second or third row, and then someone else can come up if they wish to. [IMMIGRATION]

NEAL WILKINSON: Morning. [IMMIGRATION]

SENATOR ASHFORD: Morning. [IMMIGRATION]

NEAL WILKINSON: I'm father Neal Jose (phonetic) Wilkinson, first name N-e-a-l, last name W-i-l-k-i-n-s-o-n. I'm an associate pastor of Our Lady of Guadalupe-St. Agnes Parish and St. Therese Parishes in Omaha. Approximately three years ago when I was visiting a local hospital, I encountered a young woman by the name of Maria (phonetic) who was hospitalized for difficulties in her pregnancy. One day, she reported to me that her husband, Jose (phonetic), who had been visiting her every day, had been incarcerated. I went to see her husband, Jose (phonetic), in the Douglas County Jail. I have had wide pastoral experience. I have seen a number of women cry under various occasions. I was quite undone seeing a 23-year-old man in the prime of his life break down in tears. He reported to me that he had never been in trouble with the law on any occasion before. The police had come to their home, were looking for information about an illegally parked car and asked, by the way, what is your immigration status? Jose (phonetic) was incarcerated for several weeks. During that time, Jose (phonetic) and Maria's (phonetic) son was born and Maria was left alone in the hospital to make some very difficult healthcare decisions. The baby died. Jose (phonetic) was deported. As a committed husband and father, Jose (phonetic) found a "coyote" and has returned to the United States, is living in the shadows. This is an example of precisely why we do not want law enforcement officials involved with immigration enforcement.

[IMMIGRATION]

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SENATOR ASHFORD: Thanks, Father. Any questions? Seeing none, thank you.  
[IMMIGRATION]

NEAL WILKINSON: Thank you. [IMMIGRATION]

SENATOR ASHFORD: Yes, sir. [IMMIGRATION]

DIMITRIJ KRYNSKY: Mr. Chairman, members of the committee, my name is Dimitrij Krynsky, K-r-y-n-s-k-y, and I have privilege to testify on the front of this committee several times before, so we know each other. [IMMIGRATION]

SENATOR ASHFORD: We recognize you. [IMMIGRATION]

DIMITRIJ KRYNSKY: (Exhibit 5) I recognize you, of course. And I will not talk too long today, actually. Everybody knows from previous hearings that I am strongly against illegal immigration and many people who will testify on the favor of it usually testify on the line that those people are poor and are...they are prostituted and they have distrust. And so I think that perhaps this is true, that they distrust anybody and that this is okay, because whoever is breaking law should distrust law enforcement. This is very, very healthy relationship. It's very bad when those who break law are comfortable and fear nothing. Now, I would like to give you those papers which I get, actually, through the e-mail and I guess that a picture is worth a thousand words and so this is what I am trying to do. Thank you for your patience with me. [IMMIGRATION]

SENATOR ASHFORD: Thank you for your comments. We will look at your handout, okay? [IMMIGRATION]

OMAIID ZABIH: (Exhibits 6-9) Morning. My name is Omaid Zabih, that's spelled O-m-a-i-d; my last name is spelled Z-a-b-i-h. I am the staff attorney for the Immigrant

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Integration and Civic Participation Program at Nebraska Appleseed. I just wanted to give the committee a very quick legal and policy overview of the Arizona-style-type bills or state laws, and then move into the...a discussion about national studies on Secure Communities and local law enforcement's trying to enforce immigration laws. Just to go into a quick legal overview of where the cases are now, as many of you know, core components of the Arizona law were blocked by federal courts. Many of these components were the same as Nebraska's Arizona-style bill, LB48. The petition before the Supreme Court to hear that case is still pending. As many of you also know, Alabama passed a law that went farther than the Arizona bill. That caused immediate social and economic upheaval as well as immediate litigation. A federal court has blocked many of the provisions in that bill, so I provided some articles that demonstrate the economic and social impacts of that law in Alabama that have drawn unfavorable national and international attention. Just, for example, last week a German...or two weeks ago a German business executive was arrested for not having his driver's license and was then detained for a period of time before being able to show his identification. Moving on to the national studies regarding Secure Communities and local law enforcement with immigration trying to enforce immigration laws. First of all, these studies document the growing concerns with local police and immigration enforcement programs, and other problems caused by a failure to bring our federal immigration system into the twenty-first century. The first study--which is published by the Earl Warren Institute at Berkeley Law School--that study on Secure Communities nationally showed that, contrary to the program's stated goals of focusing on high-level, dangerous criminal aliens, it has instead led to the mass deportation of people who commit traffic laws or those without criminal histories at all. Arturo Venegas, who is on the Secure Communities Task Force, a former Sacramento police chief who resigned the day that the task force report came out, said that Secure Communities, without stronger reforms, does harm to local police and immigrants in terms of their relationship and undermines public safety in order to fight crime. The second study I provided to the committee is by the Applied Research Center, and that shows that 5,000 children are in foster care across the country due to parents who are in detention or have been

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deported. The study importantly notes that localities with aggressive policies involving local police and immigration enforcement are more likely to separate children from their parents. I see that my red light is on. [IMMIGRATION]

SENATOR ASHFORD: I don't know, do we...there may be some questions.  
[IMMIGRATION]

OMAID ZABIH: Yeah, okay. I can take any questions. [IMMIGRATION]

SENATOR ASHFORD: I do have a question. [IMMIGRATION]

OMAID ZABIH: Yes. [IMMIGRATION]

SENATOR ASHFORD: Would you...Nebraska law...the statutes that were passed by this...well, first of all, by this committee and by Legislature, deal with public benefits on one hand and deal with contracts with public agencies on another. Our analysis...the legislation that was introduced by members of this committee dealt with the transactions with public agencies, as opposed to public benefits section. But I...in reviewing those...that initial proposal, it was my reading of the law that such a proposal, where public contracts are the underlying part of the transaction, there is a public money, tax money being paid. But that did meet--at least at that point, which was three years ago--current federal law. Do you have...have you had an opportunity to look at that provision? And how would you opine on the constitutionality of that? [IMMIGRATION]

OMAID ZABIH: Mr. Chairman, I haven't been able to look deeply into that issue. I do know that Alabama has...one part of their law prohibits business transactions with state and public agencies, which as it has shown, so far that is still being played out in the courts. [IMMIGRATION]

SENATOR ASHFORD: And that has not been enjoined, I don't think, has it?

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[IMMIGRATION]

OMAID ZABIH: No, the federal district courts did not yet, but it's still being...it's still in the appellate process in the courts, so... [IMMIGRATION]

SENATOR ASHFORD: Okay, but it wasn't in the initial parts in...of the provision. There is an injunction in place, isn't there? [IMMIGRATION]

OMAID ZABIH: Yes. [IMMIGRATION]

SENATOR ASHFORD: In Alabama? [IMMIGRATION]

OMAID ZABIH: Yes...I'm sorry to interrupt. [IMMIGRATION]

SENATOR ASHFORD: No, no. There is an injunction on some aspects as you testified. [IMMIGRATION]

OMAID ZABIH: Yes. [IMMIGRATION]

SENATOR ASHFORD: And generally, what aspects of the Alabama law are currently under...have been enjoined? [IMMIGRATION]

OMAID ZABIH: So Alabama has a panoply of sections, so there are about six sections that have been enjoined and four that have not been, and some of those deal with police enforcement that have been enjoined, and there is one that hasn't that has to do with enforcement. But on the whole, the majority of sections in the Alabama law have been enjoined at this point, so. [IMMIGRATION]

SENATOR ASHFORD: Right. And can you characterize--and we can look at the sections, obviously. [IMMIGRATION]

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OMAID ZABIH: Yeah. [IMMIGRATION]

SENATOR ASHFORD: Okay, could you...can you characterize the underlying legal approach to the injunction of those sections versus those that have yet to be enjoined. [IMMIGRATION]

OMAID ZABIH: Sure, the...basically, a lot of the courts have looked at this through the supremacy clause analysis, so whether federal law preempts state law on state immigration laws in general. So many of the laws that were blocked by the federal courts looked to federal statutes and determined that the state laws were not constitutional because federal law, as a whole, occupies the field of immigration law. And either there were specific explicit statutes on the books that precluded states from entering into those particular sections... [IMMIGRATION]

SENATOR ASHFORD: Okay. [IMMIGRATION]

OMAID ZABIH: ...and so those are the majority of analysis. [IMMIGRATION]

SENATOR ASHFORD: So there are specific federal enactments that were in conflict with the Alabama laws. [IMMIGRATION]

OMAID ZABIH: Yes, and a couple of sections--although maybe it wasn't explicit--the court found there's a difference of legal doctrines for preemption in which there's an implicit preemption that goes on as well. So, but yes, on the whole, federal law does preempt many...it's on all the sections, so. [IMMIGRATION]

SENATOR ASHFORD: And we don't know what the court will do with the other four, but...and anyway, just going back to LB...the part of LB403 that came out of this committee, the analysis really was that the state of Nebraska enters into a contract with

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a...or the city of Omaha or any other public entity in the state enters into a contract for construction work to be done in a particular locality. And that, as a matter of contract, I think we felt--or at least the committee felt--that advancing that provision, that there was a reasonable basis for that law. That in fact, as a condition of that contract being signed and implemented, that it was not unreasonable to require that there be a verification of employment of the employees. That stemmed, quite frankly in my case, from a situation involving a very large public contract at the Qwest Center which...where there was a conflict involving hiring of undocumented workers. So my only comment there would be that it is not, in my view, not unreasonable or violative of federal law to require in a contract that the contracting party do what they're supposed to under federal law anyway, which is to check to make sure that the workers they hire have status to work. And I know part of the committee's concern at that time was, you know, if that weren't the case, that somehow the state would be implicated in supporting, potentially supporting working conditions which were not up to standard and that that was...on that alone, that standard also was a factor. So, when I...I'm not here to defend what I do--that's not what this hearing's all about. But I do think that it is important for the public to understand that when we talk about public contracts, we're talking about certainly during the time of the last three years, when there's been an infusion of federal dollars into public construction contracts across the state--road building, whatever it is--that is a substantial part of our economic activity in the state, at least on the construction side, for the last three years. So for the state to...it's not as if the state of Nebraska has simply disregarded and ignored the...what is an underlying federal obligation, which is to ensure that your workers are...I mean, I think that was the thinking of the...of that provision. [IMMIGRATION]

OMAID ZABIH: Can I just respond to that for a second, Mr. Chairman? [IMMIGRATION]

SENATOR ASHFORD: Yeah. [IMMIGRATION]

OMAID ZABIH: I don't think my testimony today on the legality of the different laws went

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to that. The contract revision that's in Alabama right now has to do with private contracts, and so... [IMMIGRATION]

SENATOR ASHFORD: Right, but I was trying to draw... [IMMIGRATION]

OMAID ZABIH: Yeah, yeah, yeah, yeah, yeah. [IMMIGRATION]

SENATOR ASHFORD: I was trying to draw that differentiation, is that I thought that the state certainly had a...the ability to contract because it's existing common law, you know, state law and it's been in effect for a long period of time, so. [IMMIGRATION]

OMAID ZABIH: Um-hum. Yeah. A private contracts prohibition may very well violate state constitutions as well. [IMMIGRATION]

SENATOR ASHFORD: Okay, any other questions? [IMMIGRATION]

OMAID ZABIH: Thank you. [IMMIGRATION]

SENATOR ASHFORD: Who would like to come up next? Anybody in the front row is qualified, so. [IMMIGRATION]

CHUCK BENTJEN: Good afternoon, Senator Ashford and members of the committee. My name is Reverend Chuck Bentjen. I serve as director of the Manna and Mercy Center for Faith in Public Life of Lincoln, Nebraska. I am here today representing Interchurch Ministry's Joint Strategic Action Team. I apologize that I do not have written testimony, but I find it always best when I speak about matters of faith from my heart. Nearly 90 percent of Nebraskans claim to be people of faith, and a majority of those who claim to be people of faith claim to be Christian. So any time we are talking about public policy, and I hear a lot of people talking about public policy from a faith perspective. But any time we're talking about public policy from a faith perspective, I

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think that it's important that we examine those faith principles on which we base our belief system. Ninety percent of Nebraskans, or a majority of Nebraskans being Christian, and I think it's important that we look at those Christian values and what those Christian values teach us in shaping our public policy. Clearly, the two most important commandments from Jesus, who is the basis of our Christian belief system, are that we should love the Lord our God with all our heart, our soul, and our mind, and we should love our neighbor as ourselves. And when asked who is my neighbor, Jesus tells us very clearly that even our worst enemy is our neighbor. And so whatever public policy comes out of this hearing or out of these matters ought to be reflective of those values where we love neighbor. And we ought not to be putting restrictive...restrictions on people that are overwhelming, and I would simply urge that we take a step back, look at what those values really are, look at what it means in terms of people's lives, and that we support comprehensive reform at the federal level. I think it's important to note that it's almost impossible for someone from south of our border to come to the United States legally. I hear people say, I don't care if they come, I just want them to come legally. We spend a lot of time talking about how to keep people out. We ought to be talking about spending more time and more resources talking about the humane way that we can allow people in who are helping our economy and who are much needed in our society, and we ought to be reflecting those true Christian values that we proclaim to share. Thank you very much for your time. [IMMIGRATION]

SENATOR ASHFORD: Thank you. I just would remind everyone that LR39 still exists. It is...and having just been through the pipeline debate, the states do, apparently, have some authority at some point in the process to make their opinions known. So LR39 remains in committee and so we have that opportunity in LR39. [IMMIGRATION]

CHUCK BENTJEN: The faith community strongly supports LR39. [IMMIGRATION]

SENATOR ASHFORD: Okay, thank you. [IMMIGRATION]

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CHUCK BENTJEN: Thank you. [IMMIGRATION]

SENATOR ASHFORD: Next person. Anybody? [IMMIGRATION]

HOWARD DOTSON: (Exhibit 10) Good morning, Senator Ashford and committee members. My name is Reverend Howard Dotson, D-o-t-s-o-n. For six years I've served as an urban pastor, and my last parish was in Omaha in the Latino context, and my heart is heavy when I realize the impact just having this debate is having on community policing in urban communities, not just here in Nebraska, but in the several states that have had this debate. I saw in Omaha, on Park Avenue, the impact that just the Fremont debate was having in the community where a lot of people are afraid of the police. And community policing is something that a large consensus of police chiefs across the nation recognize as a priority and they see that federalizing local law enforcement compromises those efforts. Chief Bratton, the former chief of Boston, L.A., and the police commissioner in New York City, wrote commentary to the Omaha World-Herald last January, and I've shared that with you today. He is probably the most outspoken police chief about the need for community policing. I have shared with the mayor and police chief in Omaha the Special Rule (sic) 40 and I've asked Chief Bratton to consult with the leadership in Omaha. Special Rule (sic) 40 has been in place in L.A. since 1979, which draws a clear line between community policing and not having MOU or being federalized with ICE because of the impact it has on the communities. We saw in Prince William County, Virginia, the only place that's ever implemented a local version of SB1070, and the impact it had on their community, in the documentary "9500 Liberty." And what is ironic is that the people that live in the shadows, the people that we serve in the urban communities, are more likely to be a victim of a crime than a perpetrator of a crime. And as a pastor who has worked with many families after a homicide, seeing the fear and the barrier that's there for them to work with the police, there are bad people benefitting from this debate that's underway, and you're going to need something significant to restore the community policing that's been damaged because of this debate. And some of the motives behind this are really, really

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disappointing, that there's a lot of people benefitting politically from this debate. And the people that are suffering are my brothers and sisters who are in the shadows, and we need to keep a human face on this debate as we seek a humane solution, which is only going to come from the federal government. So thank you for your service and if there's any questions, I'd be happy to answer them. [IMMIGRATION]

SENATOR ASHFORD: Thank you, Howard. Any questions? I do find it ironic that, going back to President Eisenhower, who had a work permit plan in effect, and President...obviously President Reagan, President Bush, President Obama, John McCain, Governor Perry, now Newt, all believe we ought to have comprehensive immigration reform. And that's sort of a rogue's gallery, depending upon your outlook. (Laughter) But it does sort of reflect an odd irony, does it not? That people on all sides of other issues--similar, I thought, to the pipeline debate--people who are on all sides of other ideological divides, whether it's the business community, the faith community, several presidents, candidates, the current president, that we still don't have comprehensive...any kind of a plan as to address what cannot be addressed by the states under any...you know, we can dance around it, but we're going to come into conflict with all sorts of constitutional issues, as has been the case in Arizona and Alabama. And I think the guy--and maybe I'm wrong--but the senator in Arizona that introduced the Arizona law has since been... [IMMIGRATION]

HOWARD DOTSON: Pearce. [IMMIGRATION]

SENATOR COUNCIL: De-seated, recalled. [IMMIGRATION]

SENATOR ASHFORD: "De-Senated" or whatever. So, I mean, all I say by that is I think there are people of goodwill who may disagree on every other ideological issue we can find, who seem to agree on some rational policy, whether it's labor that wants to make sure we have conditions of employment that are fair for all. You know, it just goes right down the line, so. [IMMIGRATION]

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HOWARD DOTSON: One of the things that's been difficult to think about in terms of community policing is that what happens, like in the city of Fremont, when they have to spend \$750,000 on legal costs for something that's so futile? [IMMIGRATION]

SENATOR ASHFORD: Well, that's up to them, but... [IMMIGRATION]

HOWARD DOTSON: Yeah, but I worry that as more states... [IMMIGRATION]

SENATOR ASHFORD: Yeah. [IMMIGRATION]

HOWARD DOTSON: You've kind of averted. You've been able to avert the fiscal consequences of this debate that's playing out in other states. It's... [IMMIGRATION]

SENATOR ASHFORD: Well, and Nebraska is benefitted by a very vibrant farm economy and the income is greater than it's ever been in the history of our state. So, I mean, we've averted some of that debate, but I don't...I mean, whatever, so thanks, Howard. [IMMIGRATION]

HOWARD DOTSON: Thank you. [IMMIGRATION]

SENATOR ASHFORD: Okay, next person. Yeah. [IMMIGRATION]

CAROLINA QUEZADA: (Exhibit 12) Good morning, everyone. My name is Carolina Quezada, and I'm the executive director of the Latino Center of the Midlands, based in Omaha. And I just want to thank you for allowing me a couple of minutes just to offer testimony into Reverend Dotson's point about really putting a human face to this issue that we're talking about, which is something that we see every single day in our office. I just wanted to share a case with you that has recently come across our office. It's a case of a couple that we're currently assisting, a Latino couple who, back in October,

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had a domestic violence dispute. And Pablo (phonetic), the husband in this case, called the Omaha Police Department because his partner, Maria (phonetic), was threatening to attack him. When the police arrived, they were informed that they would both go to jail. A policewoman informed them that they had to look for a temporary custodian for their two young daughters. It was really unclear to both Maria (phonetic) and Pablo (phonetic) at this point why they were both being taken in. While Pablo (phonetic) and Maria (phonetic) are not legal residents here in this country, their two young daughters are U.S. citizens. Now, neither partner filed a claim against the other for domestic violence. However, they were both arrested and held at the county jail for two days, until they were informed that a lawyer would speak to each of them separately. Pablo (phonetic) and Maria (phonetic) soon found out that they, in fact, did not speak to lawyers, but they spoke to immigration officials. From this point forward, they were held for an additional 27 days at the jail until they were released. They had to post bail at this point. The couple now has a case pending in immigration court. This is the latest case that we've seen, and this case really underscores a lot of the confusion and the fear that our families are being faced with. There's another case of a gentleman that has just gone through our office where he was caught speeding close to a rural community north of Omaha and he was given a court date and he is actually terrified of showing up to court because he's just certain that he's going to get turned over to ICE officials at this point. And his biggest fear, obviously, is that he will get separated from his family. So more than anything, this is a lot of what we're seeing, and I think these cases really underscore the human face of what's really happening in our communities. I think this means my time is up? [IMMIGRATION]

SENATOR ASHFORD: Well, it means it's coming to an end, so. [IMMIGRATION]

CAROLINA QUEZADA: Okay, I wasn't sure what the light meant. I was going to buzz it. [IMMIGRATION]

SENATOR COUNCIL: You've got a minute; 45 seconds now. [IMMIGRATION]

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CAROLINA QUEZADA: Oh, oh, good, good, good. So again, I'm just really here to give this testimony, offer a voice to what we're seeing in our organization. Again the trends--there's a lot of confusion, a lack of certainty about the future of a lot of our families. Quite frankly, quite a few of the folks who come to our office have claimed that they're actually being lied to in some instances when they're caught, such as this couple, Pablo (phonetic) and Maria (phonetic), where they thought they were actually speaking to a lawyer and in fact they were not. [IMMIGRATION]

SENATOR ASHFORD: Okay. [IMMIGRATION]

CAROLINA QUEZADA: So again, just wanted to underscore a lot of the uncertainty that many of our community members are facing at this time. [IMMIGRATION]

SENATOR ASHFORD: Thank you for your comments. [IMMIGRATION]

CAROLINA QUEZADA: Thank you. [IMMIGRATION]

SENATOR ASHFORD: Any questions? Thank you. Actually, I think President Kennedy was another one, because before he died, I think a month before he died, he had actually drafted legislation on comprehensive immigration reform. So there's another one. Next testifier. [IMMIGRATION]

SHIRLEY MORA JAMES: (Exhibit 11) Senator Ashford, members of the committee, I am Shirley Mora James, that's S-h-i-r-l-e-y, Mora, M-o-r-a, James, J-a-m-e-s. I am here today as the president of the Nebraska Hispanic Bar Association, and to share some recent developments in regards to the changes of the priorities in the Department of Homeland Security and in ICE. First of all, recently, on June 17, 2011, John Morton, the director of Immigration and Customs Enforcement, issued a memo that outlined the special factors that ICE agents and ICE attorneys should use when deciding whether to

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exercise discretion in dismissing a deportation, pursuant to the new priorities. The Morton memo called for "particular care and consideration" for veterans, active-duty troops--and what he's talking about is individuals that have mixed-status families, where the individual may be married to someone that's undocumented--elderly immigrants and minors, and those brought illegally here as children. We're talking about the dreamers. Moreover, in August 18, 2011, the Secretary of Homeland Security announced additional measures to forcefully implement the June 17, 2011, memo's guidelines to take an effect. The Secretary's memo encompassed a mandatory review of all deportation cases, which was at that time approximately 300,000 that were currently in the immigration courts across the nation. I should let you know that I do practice in immigration. Now recently, and this is not on my document, but recently there has been talk about increasing that 300,000 to 600,000. Anyway, Homeland Security's purpose of the August 18, 2011, memo was to identify and close cases that did not meet the new priorities. Recently, a report was released and it was conducted by the American Immigration Lawyers Association, that's AILA, which I'm a member of, and the American Immigration Council, they collected 252 cases from immigration lawyers across the state who had asked the director, Morton, to exercise discretion to spare noncriminal immigrants from deportation. The AILA-AIC report found that training for immigration officers on the new guidelines had been lacking. In turn, ICE director Morton has ordered the retraining of all ICE personnel, including its agents and attorneys. Therefore, the federal agencies implementing immigration law, policies, and procedures are still in the midst of retraining their ICE lawyers and their ICE agents. Therefore, it would clearly behoove us here in Nebraska, our local and state law enforcement agencies, to stay away from federal immigration enforcement, since the agencies that are directed to do it are still in training. [IMMIGRATION]

SENATOR ASHFORD: Okay, good. Any questions? I have one, I think, basic question. These ICE regulations were...and these changes are implemented pursuant to what act? [IMMIGRATION]

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SHIRLEY MORA JAMES: That...they're... [IMMIGRATION]

SENATOR ASHFORD: Do you know? Is it a...what federal statute? [IMMIGRATION]

SHIRLEY MORA JAMES: It's under the...it's like...the original act is like 1984, but right now I can't tell you off the top of my head what it...but this is the... [IMMIGRATION]

SENATOR ASHFORD: Right, but it's a federal statute that enables or authorizes the...and in this case, the agency that came before ICE... [IMMIGRATION]

SHIRLEY MORA JAMES: Right. [IMMIGRATION]

SENATOR ASHFORD: ...Immigration Naturalization Services. [IMMIGRATION]

SHIRLEY MORA JAMES: And so then you would look at the 1996 act that was recently, after 9/11? [IMMIGRATION]

SENATOR ASHFORD: Right. [IMMIGRATION]

SHIRLEY MORA JAMES: The two--either the work--and I apologize that I don't have them at the tip of my tongue. [IMMIGRATION]

SENATOR ASHFORD: Well, I guess my question is, Congress could, if it so desired, it could either repeal those provisions, could it not, or it could modify those provisions, could it not, to in effect make the federal policy more restrictive? [IMMIGRATION]

SHIRLEY MORA JAMES: Yes, they could. [IMMIGRATION]

SENATOR ASHFORD: So had the Congress, which I think has totally lost its will and its way in a manner never before seen in our history--I can't even recall anything similar to

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this. But had it, if it really wanted to do what it says in...politically it wants to do, which basically the sense is that there's not enough votes to pass comprehensive immigration reform because the people get elected on being tough on illegal immigrants and that's...but when it comes to actually voting to repeal the statutory language which authorizes the President to adopt rules and regulations to deal with the current undocumented aliens or immigrants, there is no effort in Congress that I've seen to actually do what they say...what those who oppose these immigrants say they support. So it seems to me that it's...not only are they not passing anything that would...for example, as Newt says, people who have been here for a long period of time have the opportunity, maybe not to be citizens, but to become legal residents and come out of the shadows, that there aren't votes for that, but there...and nor are there votes to do the opposite, which is to say to Obama, you can't do this. We don't want...we want everybody to be deported today. [IMMIGRATION]

SHIRLEY MORA JAMES: They could do that, but fiscally... [IMMIGRATION]

SENATOR ASHFORD: The Congress...well, but, I mean they could do it, couldn't they? They could pass that law. [IMMIGRATION]

SHIRLEY MORA JAMES: Sure they could do it, but they... [IMMIGRATION]

SENATOR ASHFORD: I mean, if Steven King from Iowa wants to change the law to say we don't want any laxity at all for kids or elderly people or sick people, they could simply pass federal statute that says whatever you're doing, don't do it anymore, correct? [IMMIGRATION]

SHIRLEY MORA JAMES: They could, but they wouldn't have the money to deport all the U.S. citizens that are married to the folks that are undocumented, and then you have the mixed-status families. [IMMIGRATION]

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SENATOR ASHFORD: What I'm get...I grant you that. [IMMIGRATION]

SHIRLEY MORA JAMES: Yeah. [IMMIGRATION]

SENATOR ASHFORD: But what I'm getting at is, it is unrealistic... [IMMIGRATION]

SHIRLEY MORA JAMES: Yes. [IMMIGRATION]

SENATOR ASHFORD: ...for the citizens of this state or any other state to think that no matter with all the discussion that goes on about being tough on immigrants--and people get elected being tough on immigrants. With all that, because I am tough and I'm going to...we're going to get them, and we're going to take them and get them out of here, that for all that claptrap, none of...there's never been a piece of legislation that I know of passed--at least in recent memory--that would affect that. [IMMIGRATION]

SHIRLEY MORA JAMES: Never has been, except the Chinese Exclusion...  
[IMMIGRATION]

SENATOR ASHFORD: Well, they...well, 1921... [IMMIGRATION]

SHIRLEY MORA JAMES: The Chinese Exclusion Act... [IMMIGRATION]

SENATOR ASHFORD: Right. [IMMIGRATION]

SHIRLEY MORA JONES: ...was one of them. [IMMIGRATION]

SENATOR ASHFORD: Right. [IMMIGRATION]

SHIRLEY MORA JAMES: I mean, I wrote the research. [IMMIGRATION]

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SENATOR ASHFORD: Right. [IMMIGRATION]

SHIRLEY MORA JAMES: My research law paper was on immigration. [IMMIGRATION]

SENATOR ASHFORD: Well, I guess if politicians don't want to do anything, that's one thing. But if what they...if they want to get illegal immigrants, it seems to me they could. In Congress, they could get them. [IMMIGRATION]

SHIRLEY MORA JAMES: If they wanted to. [IMMIGRATION]

SENATOR ASHFORD: Okay, well, they really don't want to. [IMMIGRATION]

SHIRLEY MORA JAMES: But if they did, then they wouldn't have a wedge issue to get elected on. [IMMIGRATION]

SENATOR ASHFORD: That's...okay, thank you. [IMMIGRATION]

SHIRLEY MORA JAMES: You bet. [IMMIGRATION]

SENATOR ASHFORD: Do we have anybody else who would like to chat with the committee? Okay, thank you all for coming and I believe that will conclude the hearing, and we'll meet again at 2:00. (See also Exhibits 13-22) [IMMIGRATION]