

Immigration Working Group
Minutes
November 13, 2008
National Environmental Training Institute
12345 W. Alameda Parkway, Lakewood, CO

Attendees:

Peter Weir	Ann Terry	Dan Oates
Tom Raynes for John Suthers	Grayson Robinson	Dan Brennan
Lou Vallario	Kathy Sasak	Terry Maketa
Brenda Leffler	Stephanie Villafuerte	Nancy Todd
Doug Darr	Patricia Medige	Jim Kerr
John Morse	Doyle Eicher	Amber J. Tafoya
Gerald Whitman	Scott Storey	Steve King
Robert Brown for Troy Eid	Roxanne Huber	Ron Sloan

Absent: Dennis Harrison, Andrew Romanoff, Antoinette Salazar, Dave Schultheis, Kevin Eldridge, Stan Hilke and Ari Zavaras

Welcome and Introductions:

Pete Weir began the meeting at 1:13 p.m.

Licensing and Immigration Status – Federal Immigration Law *by Patricia Medige and Amber Tafoya:*

Amber Tafoya began with giving an overview of immigration law. Between 1910 and 1920, the U.S. experienced the biggest wave of immigration. One in four or 25% were immigrants. Currently 37.5% of our population is immigrants. It wasn't until 1986 that it became a civil violation to be in the U.S. without status.

The statistics for Colorado are not as concrete. Information from the Pew and Bell Institutes indicate that approximately 500,000 residents in Colorado are foreign born. How many of those are undocumented? The Pew Institute estimates that about 200,000 to 225,000 are undocumented.

In 2000, it was estimated that the undocumented immigrants from Mexico contributed \$220 billion to the U.S. gross domestic product. Another estimate has the Latino community contributes \$14 billion dollars a year to the Colorado economy.

How do you get Immigration Status? The U.S. Customs and Enforcement Service (USCIS) is part of the Department of Homeland Security. The Immigration and Nationality Act (INA) is a civil law and it governs who may enter the United States. It does not apply to citizens. The status granted through this act can be retroactive. The challenge to immigrants is to obtain and retain status. People can move between various types of status as well as in and out of status.

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What are the three ways to be a US Citizen?

1. Need to be born in the United States.
2. Children of US citizens can be us citizens.
3. Naturalized citizens: requires a 3-5 years of lawful permanent residence unless active duty military in the time of war.

Are children who are adopted and brought to the U.S. automatically citizens? It depends.

Lawful permanent residents are non-citizens who have permission to live and work in the U.S. indefinitely. Being a lawful permanent resident (LPR) is the most stable non-citizen immigration status. To obtain this status, it requires a family member or employer sponsor. The sponsor must pass income or salary requirements. The applicants must pass background checks and a health exam. Applicant must have certain vaccinations.

After three to five years, an LPR can naturalize. Lawful permanent residents may apply for visas which may or may not be approved. Documentation for LPR status is a green card – the status does not expire, but the card does. The old cards which do not have an expiration date have been revoked by law and new ones need to be obtained.

Visas:

Citizens from visa-waiver countries can enter the United States for 90 days without a requiring a visa. A permanent visa is the lawful permanent resident card. There are several types of

temporary visas, or non-immigrant visas. The types of visas are identified by a letter of the alphabet and currently go from “A” to “V”.

Temporary visas may or may not authorize employment in the U.S. It depends on the type of visa. They can be short or long term and can be renewed. Don’t make assumptions if you run across a particular visa because it is hard to know if it is a long term visa or renewable.

F-1 visas are also known as student visas. H-1B visas are for professional workers and H-2A are for agricultural workers, H-2B workers are temporary landscaping and construction workers. If the work is terminated they are subject to deportation. These workers are exploited because they cannot leave. There are only a certain number of visas that can be issued throughout the year. If the annual cap is reached, then no more visas are issued.

How does law enforcement deal with temporary visas? The State Patrol’s IEU has the same ability to check with ICE on visa information as well as other immigration information. If a street cop is told the suspect has a visa, the officer has no information to know if this is true or not.

For a temporary resident, their Colorado ID or driver’s license will only be issued for the length of time on their visa. With a work authorization, they can get a social security number and then they can get an ID or driver’s license.

Issue: If the temporary worker is employed for several years, he/she must renew their visa annually. This can take months. While waiting for the renewal to come through, the driver’s license expires. The worker is illegal until the visa is renewed and driving on an expired license.

What documents can an individual show to get work? The I-9 process has been in place since 1986. The I-9 lists the documents a prospective employee can show to get a job. The employee gets to choose which of the documents they are going to show. If the employer asks for additional documentation, they could be charged with discrimination (employment discrimination – document abuse).

Bars to immigration:

- Time bars make it difficult to immigrate legally.
- There are criminal grounds that may bar a person to immigrate.
- A person in the U.S. without a valid visa for more than 180 days faces a three year bar upon exit from the US when trying to immigrate.

- A person in the USA without a valid visa for more than 365 days faces a ten year bar. There is a waiver for US spouses and children if extreme hardship. (Medical conditions, extreme financial conditions).
- There is another bar if someone has been ordered to be removed. The length of the bar varies on the charge that made the person get deported

Issue with time limit bars: An example was given of a woman who entered the U.S. in 2002 and overstayed her visa because of family problems back home. She now has an employer who would like her apply for a worker's visa because she such a hard worker. The only way for her employer is to get her in the country legally, is for her to leave the country and then the employer can be her sponsor. However, since she had overstayed her visa, the 10 year bar goes into effect. The employer would have to wait 10 years to get the employee back into the U.S. legally.

Deportation:

- Order from administrative judge that the immigrant is to be expelled from the U.S. triggers a bar to reentry. Removal is a civil process. Being in the U.S without a visa or after visa expires, or the commission of certain crimes.
- Notice to Appear – summons to appear in immigration court.
- Immigration detainer – notice to local authorities that ICE wants to investigate a non citizen. Subject is still in state or local custody.
- Administrative removal happens when someone is removed while they are in prison.

In this process, the person is not provided a public defender. This is not a criminal case. They have a right to an attorney and they do have a right to have their case heard before an immigration judge. The process for an individual to be removed without a detention hearing is called a voluntary removal.

They have the right to post a bond. They have the right to ask a judge to reduce their bond. Immigration Court cases can be appealed to an administrative appeals board, and in some cases, to the US Circuit Court and the US Supreme Court.

What is the percentage of people return to court after bonding out? It varies nationally. It is over 50% that do return for their hearing. In some areas, the rate of return is 80%.

Can they do PR bonds? Yes, but they are pretty rare. In order to post a bond, one must use a certified bond agency that is certified by ICE. They require 20 – 30% down as opposed to a normal criminal bond that requires 10% down.

What is the total number of people removed this year? ICE said it was over 6,000 for the Colorado / Wyoming area.

Victims of Crime:

The rationale for providing visas to victims of violent crime is that if they are lacking immigration status, they are reluctant to report the crimes. This makes them more susceptible for being victimized again. Victims can apply for a “U visa”.

In a domestic violence situation the perpetrator uses various methods to control the victim. The threat of deportation can be one of those methods.

A “T visa” is available to help victims of human trafficking and is valid for four years. The caveat is that the victim must comply with reasonable requests from law enforcement in the prosecution of the crime. They have to prove they were the victim of a crime. The head of the local law enforcement agency is required to sign a form saying the individual is a victim of a violent crime and they are cooperating. The form is taken to USCIS who decides whether to issue a visa or not.

Federal, state or local law enforcement agencies do not grant the visa, but are asked to verify the victim/witness’ cooperation. Visas are not a reward but a means of stabilizing victim/witnesses to assist in a case.

Communication and Data Bases *by Ron Sloan:*

One of the issues the Governor asked to the working group to investigate is communication between agencies. Ron Sloan spoke about some ideas the Colorado Bureau of Investigation is working on to facilitate this communication.

How does law enforcement handle contacts with individuals who are in this country illegally? CBI comes into the picture in several ways. Not only through the first contact and the query into the CCIC, but housing those databases that have little information in them with regard to immigration status.

Where CBI can do a better job and be of more assistance comes upon arrest? How can we determine earlier on that we have a reason believe that the individual is in the country illegally? Maybe if we know this information some repeated arrests can be eliminated.

The place to start on the arrest is the identification system. Upon arrest for any violation, (traffic, municipal or felony) the fingerprints of the suspect are taken. The fingerprints can be taken

through livescan and electronically submitted to CBI or on the old ink ten-print cards and then submitted. One of the mandatory fields on fingerprint submissions is the suspect's place of birth.

The place of birth is self proclaimed. There is a lower level of confidence on the validity of the information. This is the most difficult thing to verify. CBI does receive that information and it entered into the AFIS system and the criminal history files contained in the CCIC system.

CBI might be able to provide an electronic tool to law enforcement. The CBI identification unit classifies the fingerprints and then the information is entered into AFIS for an automated identification. CBI is looking at developing a mechanism that, in instances where the self-reported place of birth is outside the U.S. on any arrest in the criminal history, an automated message will go to the designated routing code. In other words, a reminder message will be sent to the booking agency that the individual has self-reported they were born outside the United States. This message could also be sent to the originating agency (if it is different from the booking agency) as well as ICE. This can give law enforcement the probable cause to go further and do an IAQ query.

What if there are reports of multiple places of birth, but still within the US? The mechanism would not flag a person unless they declared a place of birth as out of the United States.

If that information was sent to ICE, how welcome would that information would be and would they act on it? ICE said it is a quicker way of doing an IAQ.

This would give the agency an opportunity to do an IAQ and would give the agency the opportunity to decide on how long to hold on to the person as they wait for an IAQ response.

Mr. Sloan also spoke about the Department of Homeland Security and Federal Bureau of Investigation Interoperability Project. The purpose would be to establish interoperability between FBI's IAFIS (national automated fingerprint identification system) and the DHS identification system (fingerprint based system).

A pilot project is underway in North Carolina and Texas. If the pilot projects are successful, the product should be available to law enforcement in 2009. Upon arrest, using the fingerprint identification system and using electronic interoperability between states, the FBI and DHS, criminal history and immigration identity information will be accessible to and shared among other federal state and local law enforcement.

It won't matter about having multiple identifications, because you have identified someone by fingerprint. This would provide quick flags for ICE on the re-entry of an individual.

CBI doesn't know when it will be able to work toward this interoperability. ICE has indicated its willingness to work with other states once the pilot projects have completed their study.

Can the system also flag discrepancies on social security numbers? The identification of an individual is done through fingerprints. It links to DHS and you know this is the individual. It won't make any difference how many social security numbers the individual is using.

Is the project done in North Carolina being done locally or statewide? Are there any known costs? The projects are county based. The article it says that Congress has appropriated \$350 million but the actual costs are not listed.

CBI does not house any databases designed for immigration status. This is a federal responsibility. It will take partnering with ICE and state agencies to develop data sharing.

CBI is nothing more than a conduit for an IAQ query. Information is sent from the local agency, through CBI and NLETS to an ICE office in Virginia.

Number for LESC is 1-866-DHS-2ICE or 1-866 -347-2423.

Review of Pertinent State Statues *by Ann Terry, and Tom Raynes:*

Ms. Terry's and Mr. Raynes' comments were restricted to legislation that pertained to law enforcement efforts only. The Working Group was asked to weigh-in on the laws have been implemented and if they have been effective or not.

In 2006, the State Legislature introduced 16 bills concerning Immigration.

SB06-90: This is the Anti-Sanctuary bill. It has a requirement that if law a enforcement officer has probable cause to arrest an individual, and if the officer believes the individual is in the county illegally, the officer is required to contact ICE. Local law enforcement agencies must file a report every year stating if they are in compliance with SB90. Legislative Council is putting together a spreadsheet of those agencies that are not in compliance. The penalty is that they do not receive grant money from DOLA.

The history behind the bill is that some city councils directed their local law enforcement agencies not to inquire as to the individual's immigration status. These cities which formalized the directive in the form of a resolution, had to revoke it. Lately the public is looking at specific areas and accusing them of being sanctuary cities. The public does not understand the limitations of 287(g) authority and why every officer is not hauling in illegal immigrants.

SB 06-110: This bill outlines civil penalties of up to \$50,000 if a person creates fraudulent documents for the purpose of unlawfully establishing legal status. The Attorney General's Office has had no cases based on this law. Most law enforcement agencies are charging people creating fraudulent documents with criminal charges, such as forgery and criminal impersonation.

SB 06-206: The Human Smuggling bill. There have been fifty smuggling cases filed in seventeen counties. Twenty seven of these cases have pled, one is pending sentencing, and one went to the jury trial. Of the twenty six cases where the defendant was sentenced, only one went to jail. Of those who did not go to prison, what do you do with them?

The State Patrol has difficulty with witnesses to smuggling as well as the language of "thing of value." CSP wants to make changes to the existing statute so that our statute mirrors the federal human smuggling statute. In the federal system they do not have to prove a "thing of value". In the federal system the crime is transporting illegal aliens, whether you are doing it for free or just giving them a ride.

Has there been any discussion to adding human smuggling and trafficking to the COCA statutes? Not in CDPS. The District Attorney's Council would be the one that would look at this. When discussed earlier, the DAs said they could not deal with the fiscal impact of the bill.

What is the issue with the "thing of value"? The smuggling organizations have figured out that one element of smuggling is the receipt of a "thing of value." Without an exchange of the thing of value, law enforcement and prosecutors cannot continue. The material witnesses are being briefed on what not to say to a trooper. There is concern in the Latino community that the "thing of value" could be gas money.

SB06-207 – Human Trafficking. Ms. Terry outlined the specifics of this law

- If you are trafficking an adult it is a Class 3 felony.
- If the adult is illegal it is a Class 2 felony.
- If the individual is a child, it is a class 3 felony.

The problem with this statute is that it is a more serious crime to traffic an illegal adult than it is to traffic a child. What is the fiscal impact? To compute the fiscal impact, multiply the number of individuals expected to be sent to prison by \$28,000.

SB06-004: Makes it illegal to extort a thing of value from immigrants in exchange for not reporting them to law enforcement.

SB06-005: Makes it illegal to coerce immigrant into involuntary servitude. This is a class 6 felony.

SB06-007: Makes it a Class 5 felony if a person votes when they know they are not legally entitled to vote.

SB06-1009: Requires any state agency, board or division under the Department of Regulatory Agencies to verify lawful presence in the United States as a condition for a license.

SB06-1014: Concerns the recovery of federal reimbursement of prosecuting illegal aliens. This directed the Attorney General to seek reimbursement of costs by the state in dealing with immigration. The state spent \$48 – \$49 million to house illegal immigrants in the Department of Corrections. The state was reimbursed 7% of that total.

SB06-1022: Directed the Attorney General to join in a lawsuit against the federal government to demand enforcement of the federal immigration laws. This was done by other states and they ultimately lost. The Attorney General came up with a new argument – the federal government has violated the invasion clause – the federal government shall protect the states from invasion. This lasted 23 hours after oral arguments.

SB06-1023: Addresses a concern about illegal aliens getting state benefits. If you are 18 years old or older and seeking benefits, you had to sign under oath saying that you are a lawful citizen. If you sign the form and you are not a citizen, it is perjury, a class 1 misdemeanor.

There is the issue of the definition for “benefits.” The term incorporated licenses and permits. Applications for licenses and permits are often done on-line. The state had to design some on-line affidavits.

There is no accurate data on the effectiveness of this statute. The perjury charge associated with this law is merged with all other perjury cases.

HB07-1040: If a person has posted a bond in a criminal case and the individual is released to ICE, the case cannot be dismissed by the DA and a warrant shall be issued for that person. The warrant is to be a national warrant.

Ms. Terry also spoke about the Joint Resolution sent to the Western Governors' Association in 2006: She is unaware of the results or impacts. The Western Governor’s approved the resolution and the Colorado Legislature endorsed it.

Identify Issues and Recommendations:

Mr. Weir asked if there are any other areas that anyone would like covered. Are there current communication practices that can be improved? Are there things that can be offered on a state

level to assist local law enforcement? Are there things that can be suggested for federal law improvements that could be forwarded to our Congressional delegation?

The next scheduled meeting is Monday at the Jefferson County D.A.'s Office. That meeting will focus on problem identification and specific solutions and recommendations.

Next meeting:

The next meeting will be on Monday, November 17, from 1:00 -5:00. The location will be the Jefferson County District Attorney's Office at 500 Jefferson County Parkway, Golden, CO.

Meeting adjourned at 4:30 p.m.