

**Immigration Working Group**  
**Minutes**  
**November 25, 2008**  
**Jefferson County District Attorney's Office**  
**500 Jefferson County Parkway, Golden, CO**

**Attendees:**

Peter Weir		Dan Oates
Tom Raynes for John Suthers	Grayson Robinson	Dan Brennan
Lou Vallario	Kathy Sasak	Terry Maketa
Brenda Leffler	Stephanie Villafuerte	Ron Sloan
Doug Darr	Patricia Medige	Jim Kerr
Stan Hilke	Doyle Eicher	Dave Schultheis
Kevin Eldridge	Scott Storey	Steve King
Ari Zavaras	Roxanne Huber	Scott Peck for Andrew Romanoff

**Absent:** Dennis Harrison, Nancy Todd, John Morse, Antoinette Salazar, Ann Terry, Gerald Whitman, Troy Eid, Amber Tafoya

**Welcome and Introductions:**

Pete Weir began the meeting at 1:15. He described the handouts which include the revised “Suggestions – Topics for Discussion”. Also in packet is the Memorandum Of Understanding between CSP and ICE, Arizona’s material witness statute and two documents that reflect the 2006 and 2007 reports to ICE pursuant to SB90. Gray Buckley and Stan Weeks have also presented some recommendations to the working group.

There was some confusion in the voting records from the prior week’s meeting, specifically on item 9 and 9(a). Votes were redone on these items for clarification.

The final report will contain the outcome of the voting on issues discussed on November 17<sup>th</sup> and November 25<sup>th</sup>.

**Suggestions – Topics for Discussion**

**Law Enforcement Issues:**

Items 1 through 8 and item 10 were discussed and voted upon on November 17, 2008.

**9. Local sheriff and police resources are stretched beyond capacity and cannot absorb additional unfunded mandates to deal with the federal immigration problem.**

Discussion:

There is no question that police and local sheriffs' resources are stretched. This is a priority issue. If the voters were asked to fund additional police resources that would be devoted specifically to immigration, they would say "yes."

**a. Special emphasis should be made by local governments to reprioritizing in their jurisdictions and provide priority to public safety issues as number one.**

Discussion:

Public safety has always been the number one priority of the elected officials. This report does not need to preach on this issue.

**11. ICE has a national policy of prohibiting its local officials in any jurisdiction, including Colorado, from engaging directly and openly with the local community and local media about its many challenges in enforcing federal immigration law. This policy should be ended immediately. Public discourse directly with ICE about its capacities and limitations is crucial for Colorado to fully partner with the federal government to solve our immigration problems.**

Discussion:

We appreciate the special dispensation that we have received from federal authorities for ICE to participate.

**12. Given the limited resources and need to prioritize functions the CSP Immigration Enforcement Unit should focus primarily on the apprehension of criminal aliens and not the detection of human smuggling and human trafficking.**

## Discussion:

What do you see as the role for the State Patrol? Should the State Patrol be responsible for addressing the significant issue regarding criminal aliens which could be as narrowly defined as a single driver who is contacted by a trooper? Or, should the State Patrol Immigration Unit continue working on the smuggling and trafficking of illegal aliens? The criminal alien aspect was not addressed in the smuggling and trafficking bills.

If the intent is for a statewide focus on the apprehension and investigation of criminal aliens and the support that local agencies would need, should we include the CBI? Fugitive apprehension is a function of the CBI.

Increasing law enforcement's responsibility or adding more law enforcement resources, without addressing the limitations in the other parts of the system infrastructure, is unwise. If the CSP works on the problem of criminal aliens, each contact would involve one person and the need for one bed in a jail facility. If you are looking at smuggling, you could be looking at fifteen people in a single case.

Much of the discussion during the past two Working Group sessions has focused on issues involving illegal aliens. The Colorado General Assembly has funded law enforcement positions in the Immigration Enforcement Unit of CSP to enforce offenses involving human smuggling and trafficking, which is only a piece of the entire discussion.

Aliens are not criminal aliens until they commit a crime. How does that fit with the mission of the State Patrol or any other law enforcement agencies?

The CSP trooper arrests a person in a traffic stop (DUI, or traffic and have an outstanding warrant). The trooper then identifies the individual as a criminal alien. IEU then has to go into the local jail and do the detainers on the individuals who they have arrested and investigate their alienage and process the detainers.

Until we have expanded resources, it appears they are doing the best they can.

Additional issues brought to the Working Group for consideration and vote:

1. The statute should be expanded (or a new statute presented) specifically addressing criminal aliens (undocumented foreign nationals) who have committed criminal violations in Colorado.

2. Should the statute be expanded or a new state presented specifically addressing criminal aliens (undocumented foreign nationals who have committed criminal violations in Colorado.) )

### **Communication:**

1. Discussed and voted upon on November 17, 2008
2. Discussed and voted upon on November 17, 2008
3. Discussed and voted upon on November 17, 2008
4. **CBI should continue to explore and, when feasible, implement data entry to reflect the birthplace or country of origin of individuals within its database.**

Discussion:

A change in wording was suggested and was subsequently voted on.

*CBI should continue to explore and, when feasible, to generate auto generated flags to reflect non U.S. birthplace or county of origin or individuals within its database.*

5. **ICE should dedicate additional resources to the IAQ system to expedite inquiries from local law enforcement.**

Discussion:

ICE explained that they are adding resources to handle IAQ inquiries. This recommendation would reinforce what ICE is doing.

A change in wording was suggested and was subsequently voted on.

*This Working Group endorses ICE's efforts to dedicate additional resources to the IAQ system to expedite inquiries from local law enforcement.*

6. **When submitting an inquiry to the IAQ system, local law enforcement should use the "narrative" field to distinguish case priorities.**

Discussion:

If it something that is urgent and needs to get out to the officer on the road, then use the “narrative” field.

**7. Standards associated with law enforcement access to ICE databases should be significantly adjusted to allow local law enforcement authorities to have additional information regarding citizenship status.**

Discussion:

The intent of this recommendation is to allow greater access by local law enforcement to the databases used by ICE. Is this recommendation along the lines of the Secure Communities pilot program? Some of the databases that ICE uses are restricted because of privacy issues.

Could there be a state-by-state limited access? Local law enforcement would like to look at the same systems that the LESC or the duty officer uses. There may be a way other than an IAQ to the LESC who check seven databases. Can we explore having state or local agencies to have direct access to one or more of those databases? To have this type of access, the law enforcement agency would have to have 287(g) authority.

Are you asking for authority when coming in contact with someone who may be in the country illegally? Or do you want the information when doing a further investigation.

This needs to be tabled and reworked. No formal vote was taken.

**Legislative Changes:**

1. Voting complete
2. Voting complete
3. Voting complete
4. Voting complete
5. **Colorado should revise its policies regarding the operation of motor vehicles by illegal aliens.**

Discussion:

These items were raised during the educational portion of the working group.

The Hernandez case would have happened even if he was a citizen. Rather than focus on driving by illegal immigrants, we should focus on better enforcement of the statutes. There are many citizens in Colorado that are not abiding by the law.

Do all the subsections apply to just illegal immigrants? No, they were written for a broader impact.

Is being an illegal alien a “mitigating circumstance?” No – each crime has a statutorily prescribed penalty range. The sentencing challenge for those who are illegal immigrants is that they cannot be sentenced to probation, which would be a non-incarceration option that is available to citizens who are convicted of crimes.

Is there a Constitutional issue with this? Unknown.

Law enforcement is in contact with drivers all over the state. There is a deep seated issue here that goes beyond just illegal aliens.

Strike number five – not written well.

**a. Impose a mandatory, minimum 30 day impound for DUI, DUR and HTO (upon conviction);**

Discussion:

Does this mean the car? Yes. There is a storage bill at the end, and often the owner of the car won't pay the storage cost. The tow company then has to sell the car to recover their costs. Not all cars are valuable. This is situation not unique to illegal aliens at all. You are seeing more and more people driving without a license because there is no deterrent to driving without a license. Does this issue create more of a deterrent for people who are driving without a license?

Denver has an impound ordinance but it won't be implemented. There are 3,000 vehicles in Denver. The storage costs are a problem. This could be an unfunded mandate and overwhelm existing storage facilities. Also, the vehicle is to be returned in a similar condition as when it was impounded. If there are outside storage facilities, this could be a problem.

Is the impoundment before the court action? Are we impounding cars before conviction? These people are being charged with a crime and given a 30 day penalty before they are convicted. This is backwards. The penalty should be imposed after the conviction.

Having a requirement to impound all vehicles involved in these offenses would increase the time spent by the traffic officer. Many additional steps and much time is required to impound the vehicle. The function of a traffic officer is to patrol, not sit on the side of the road waiting for a tow and processing impound paperwork.

There is some validity to a mandatory impound on DUI, DUR and HTO cases. However, there are problems with it being pre-conviction and not post conviction.

This suggestion evolved into Legislative issue #7. (see below)

**b. Block registration of a vehicle if the individual cannot produce a valid driver's license.**

Discussion:

There could be some unintended consequences of this suggestion. Why can't an unlicensed driver buy a car? The buyer could be a collector, or purchasing the car for a child or another individual. Sometimes the vehicle is registered in two names. If one of the owners is revoked, the other driver could be penalized. Many of the vehicles are owned by someone other than the person driving.

Can you get a registration without insurance? No, you have to have secured and verifiable ID and proof of insurance. Department of Revenue checks that database.

The concept is good, but it needs to be done in a manner that would not impact the law abiding citizens.

A vote was taken on the recommendation as stated. If it passes, the wording could be fine-tuned.

Recommendation was tabled.

**c. If a person is driving with a foreign driver's license that cannot be verified, or without any valid identification, then that constitutes probable cause for an arrest and referral to ICE. (Congressman Tancredo)**

Discussion:

There is an international compact that allows people to drive on a foreign license for a year. This violates some international compacts. Is this a state department issue? Yes.

- d. Any repeat DUI violator who does not have a valid driver's license or a foreign license that cannot be verified shall be taken into custody and held for up to 72 hours for referral to ICE. (Congressman Tancredo)**

Discussion:

What are the various law enforcement policies on DUI? The 72 hours time frame is in conflict with the rules of ICE. Not all departments have facilities that could hold people for 72 hours.

This recommendation would apply to everyone. Even an 8<sup>th</sup> generation citizen would be held for 72 hours and referred to ICE.

- e. Reinforce the provision in current law that any foreign driver's license is invalid after 90 days if the person is employed in Colorado. (Congressman Tancredo)**

Discussion:

Colorado Law already says that foreign worker have to obtain a license within 30 days. What about the citizens who are seasonal workers, such as in the oil industry or the ski industry? The current law is prohibitive to them. Department of Revenue is working on this issue. It should be addressed in a different forum.

- 6. NEW - Colorado should vigorously advocate to be designated as a new site for the Immigration and Customs Enforcement's (ICE's) "Secure Communities" program, which allows state and local law enforcement authorities to automatically check fingerprints of arrestees against national fingerprint databases. Our Congressional Delegation should urge the Department of Homeland Security to make implementing this program in Colorado a top priority.**

Secure Communities is a pilot program in counties in Texas and North Carolina. It ties into the state's fingerprinting system. Once the process occurs, it generates a message back to the agency

that it has in its custody an undocumented person. It can provide information that could be used in bond decisions. When could this be available in Colorado?

Would this relate to fingerprints of unauthorized aliens that are criminals? Or all unauthorized aliens? The fingerprints in AFIS are criminal fingerprints. Those fingerprints would be compared with the ICE database called IDENT. The fingerprints in the IDENT system are from the immigrants with whom ICE has had contact.

Does it constitute an automatic notification to ICE? Yes, it would generate an IAQ.

If someone is arrested and fingerprinted in this state, ICE would then be seamlessly notified using fingerprints as an identifier and given the name at time of arrest? Yes. We can amend SB 90 because ICE is being contacted automatically. There would not be any claims of discrimination because any person arrested would have their fingerprints compared against IDENT.

How is it funded? Secured Communities is federally funded. ICE was provided with \$350 million to institute a pilot program in Dallas, Texas and in three counties in North Carolina.

Colorado should apply for the grant. We should demand that this technology is available to all jails across the country. For those agencies that couldn't go into 287(g) authority, this would be a stop gap.

Remember, this notification is only the IAQ step, it doesn't mean that a detainer has been done.

7. **NEW - (first version) Under current Colorado law, asset forfeiture is unworkable and ineffective as a tool to prevent traffic and driving-related offenses, because proceeds from vehicle seizures cannot effectively be used to recover prosecution and law enforcement costs. The Colorado Legislature, in conjunction with law enforcement and other appropriate stakeholders, should explore whether there is a need to revise state law to allow seizure and forfeiture of a vehicle when the vehicle is the proceeds of or instrumentality of a crime and further provide for cost recovery for prosecutors and law enforcement entities that invest resources to bring these civil actions to prevent criminal drivers from threatening the community. Among the additional crimes to be added to the state statute, thereby allowing seizure and forfeiture of the offender's vehicle, should be Driving Under the Influence, Driving Under Revocation, Habitual Traffic Offender.**

Chief Oates suggested the seizure statutes. In New York, they could seize cars if they were the proceeds or instrumentalities of a crime. Before you forfeited the property, you would have a court proceeding. This was not a cost beneficial system. It was a crime prevention tool. Do we want to go along those lines with state statutes?

Colorado had laws like this on the books (Asset Forfeiture Laws) but those were repealed. We could look at the civil forfeiture statutes. Those statutes looked out for the rights of innocent owners. Should we have a comprehensive look at the asset forfeiture laws? The General Assembly will not be looking at it.

(second version)

**The Immigration Working Group recommends a comprehensive revision of asset forfeiture laws in Colorado to deter criminal activity, including those committed by illegal aliens. Forfeiture proceeds disbursement should be prioritized to include investigation, apprehension, detention and deterrence of criminal activities committed by illegal aliens, as well as cost recoveries for bringing these civil actions.**

A comprehensive look at the asset forfeiture laws might be in order. The cash forfeitures had few associated costs compared to the seizures of vehicles. When law enforcement was seizing various types of assets, including cash, they could afford to seize the worthless vehicles.

Can we put a five year sunset provision on this law? We can see if this is an effective law enforcement tool.

## **Recommendations for Federal Actions:**

- 1. The U.S. Congress needs to examine the complexities of current immigration laws and the impact of these laws on policies and practices.**

Discussion: none.

- 2. The U.S. Congress needs to set policy for the nation regarding the commission of crimes by illegal aliens. (Source: PERF Police Executives Research Forum)**

Discussion: none.

- 3. Congress should adopt the recommendations contained in the Western States' Governors' Association 2006 "Policy Resolution on United States—Mexico Border Security and Illegal Immigration" and Colorado House Joint Resolution 06-1023.**

Discussion:

The citizens of this nation don't want this. It talks about a nationwide immigration policy. It provides for a potential path for citizenship for those people who entered this country illegally. It talks about updating visas. We can't keep the visas updated now.

- 4. Congress should appropriate significant additional resources to ICE to implement effective detention, removal and training functions in support of local law enforcement.**

Discussion:

Would this include adequate training for those agencies wanting 287(g) authority?

- 5. The federal government should provide supplemental funding to Colorado to provide for a useful state "material witness" statute (applicable to human smuggling and human trafficking prosecutions) for sheltering, housing or detention of victims and witnesses so that admissible depositions may be conducted..**

Discussion:

Colorado has a material witness statute but a case must be filed first before it is implemented.

The state sheriffs would be opposed to having victims or witnesses placed in their general jail population. The Arizona statute contains language so the witnesses are segregated from the general population. Could the feds build a facility where these individuals could be housed? Or would temporary housing or shelter be a better location. The costs of maintaining witnesses in a segregated area is prohibitive.

The district attorneys would be in favor of the ability to detain these individuals so the criminal case could be effectively prosecuted. It would give the DA the time to do an appropriate deposition with the defense and judge present. They do not need to keep the witness until the trial date.

The vote was taken first as this being a federal government directive. Should also be a state directive.

- 6. The federal government should provide supplemental funding to Colorado to offset the costs of 287(g) training for local law enforcement as well as for overtime and compensation time associated with the training.**

Discussion: Should also make this a state directive.

## **STATE RECOMMENDATIONS**

- 1. The state government should provide supplemental funding to Colorado to provide for a useful state “material witness” statute (applicable to human smuggling and human trafficking prosecutions) for sheltering, housing or detention of victims and witnesses so that admissible depositions may be conducted..**

Without this recommendation, a material witness statute would be an unfunded mandate. Should it be in the report even if we cannot find the funding? We have a state smuggling statute and a state trafficking statute. We have an obligation to make sure the state statutes can be enforced

From a standpoint of prioritization of state resources we have not talked about the needs of other state issues other than immigration issues.

Could there be a cooperative agreement between sheriff’s departments to assist other departments in housing material witnesses? There are some facilities that can segregate the witnesses from the general population. Have to ensure that the time these witnesses are held is a minimal amount of time.

The material witnesses have the right to counsel. Will counsel want to show up within the 48 hours so that the witness can be deposed?

- 2. The state government should provide supplemental funding to Colorado to offset the costs of 287(g) training for local law enforcement as well as for overtime and compensation time associated with the training.**

There are so many other training issues in this state that there shouldn't be some money especially designated for only 287(g).

#### **RECOMMENDATION BY GRAY BUCKLEY:**

- 1. Stop giving multiple driver licenses to the same person who uses different names. Compare driver license applicant fingerprints with each other. If legal status were correctly verified at the time of license or ID card issuance, employers would only need the license or ID card to document a job applicant's legal status.**

Discussion:

This would be possible by using the technology that is currently present at CBI and Department of Revenue (DOR). The fingerprints that are currently taken by DOR could be processed through the CBI. DOR would then be alerted to any duplicate prints with different names.

What would be the initial start-up costs? Unknown. There are protocols in place for duplicate files. You take the duplicate file from DOR and match up duplicates. This may be something that could be funded through a grant request.

DOR obtains a "touch print". Those have been collected these since 1940, however DOR has not had access to AFIS. Jan Simkins from the CBI stated that both the CBI and DOR have explored this in the past. The technology is possible. However, it would still require a latent print examiner to do the comparison. It would take a substantial amount of effort and would be a heavy workload.

Could this be done only when necessary? Or could this be done from a set date forward?

What kind of biometric technologies does DOR have? They have facial recognition. Facial was an easier process and less intrusive to citizen. DOR was told initially that it would take all 10 prints to get a match. They have also applied for a grant to run their prints against their own data, but they were not awarded the grant.

Is the facial comparisons are sufficient at this point? If DOR had rolled fingerprints, the information would be better than facial recognition.

The recommendation also provided narrative comments. One comment stating, “employers would only need the license or ID card to document a job applicant’s legal status” was discussed. Also, how would this have affected Hernandez who never applied for a license?

Could the recommendation be framed something like this – “The concept is worthy of additional study with the recognition that additional costs would have to be studied before implementation.”

## **2. Colorado should create a certificate of driving privileges, separate and distinct from a driver’s license.**

Discussion:

Look at the Utah system. The immigrant community did not want anything to make them look different. A driver’s license is a domestic passport. In Utah, is stated that it would not be an ID for anything other than giving them driving privileges.

This is a path to residency. The citizens would be outraged.

### **Legislator’s Bills for 2009:**

Rep. Kerr pulled bill title is Interdepartmental Communications where departments can utilize central databases. Currently one department does not have access to information that is found in another department’s database. There should be a central database that can incorporate some of the ideas we have been talking about here.

Sheriff Robinson stated that COPLINK will do exactly what Representative Kerr is talking about. COPLINK is data collected by each law enforcement agency that would be available to all. It is not solely based on fingerprints but also incident sharing. The CCIC system is a centralized database, so long as fingerprints are taken.

Sen. Schultheis’ primary bill will be concerning the hiring of illegal aliens in the state. He will also look at the expansion of state funds for housing illegal aliens in the state and increasing the CSP Immigration Enforcement Unit.

Sheriff Robinson asked him to give serious consideration to a bill with a no-bond component. The county jails are experiencing overcrowding and a no-bond hold would expand the number of people in these jails. This would be harmful. Is there a way to narrowly tailor a no-bond bill without creating an unfunded mandate? Bonds are for individuals considered a flight risk.

Rep. King is looking at DUI issues and setting of higher bonds to reduce flight risks.

DA Scott Storey said we may want to look at the federal human smuggling issue and the material witness aspect to that and if we could tighten up our legislation.

Meeting adjourned at 4:59 p.m.