

INTERNATIONAL IMMIGRATION THE IMPACT ON MARYLAND COMMUNITIES



DEPARTMENT OF LEGISLATIVE SERVICES 2008

International Immigration The Impact on Maryland Communities

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

January 2008

Primary Staff for This Report

Jennifer K. Botts
Hiram L. Burch Jr.
Jennifer B. Chasse
Amy A. Devadas
Chantelle M. Green
Evan M. Isaacson
Monica L. Kearns
Joshua E. Loh
Ann Marie Maloney
Rebecca J. Moore
Karen D. Morgan
Suzanne O. Potts
Tinna Quigley
Stanford D. Ward
David A. Warner

Other Staff Who Contributed to This Report

Mary L. LaValley
Laura J. McCarty
John W. Rohrer

For further information concerning this document contact:

Library and Information Services
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Baltimore Area: 410-946-5400 • Washington Area: 301-970-5400

Other Areas: 1-800-492-7122, Extension 5400

TDD: 410-946-5401 • 301-970-5401

Maryland Relay Service: 1-800-735-2258

E-mail: libr@mlis.state.md.us

Home Page: <http://mlis.state.md.us>

The Department of Legislative Services does not discriminate on the basis of race, color, national origin, sex, religion, or disability in the admission or access to its programs or activities. The department's Information Officer has been designated to coordinate compliance with the non-discrimination requirements contained in Section 35.107 of the United States Department of Justice regulations. Requests for assistance should be directed to the Information Officer at the telephone numbers shown above.



DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF THE EXECUTIVE DIRECTOR
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
Executive Director

January 2008

The Honorable Thomas V. Mike Miller, Jr., President of the Senate
The Honorable Michael E. Busch, Speaker of the House of Delegates
Honorable Members of the General Assembly

Ladies and Gentlemen:

Immigration policy is increasingly becoming a topic of interest for many people in Maryland and throughout the country. With comprehensive immigration reform stalled at the federal level, state and local officials are being asked to address various issues relating to immigration and, in particular, the perceived effects of undocumented immigration. In 2007, more than 1,500 proposals on immigrants and immigration were introduced in state legislatures across the United States. Of these, 244 bills were enacted in 46 states. Closer to home, the debate over immigration grew more intense as local officials in Northern Virginia, most notably in Prince William County, held public hearings and adopted local ordinances that restrict certain public services from being provided to undocumented immigrants. In Maryland, the debate has been less vocal centering on a range of issues, including providing driver's licenses and in-state tuition to undocumented immigrants.

The Department of Legislative Services has prepared this overview document to provide legislators and the public with a better understanding of the legal and fiscal issues surrounding immigration and the effects it has on our communities. Topics discussed in this report include demographic trends, labor markets and wage effects, labor and employment law, state and local spending, and legislative actions. The report does not attempt to quantify the actual cost relating to undocumented immigration. Instead the report provides an overview of the types of government services available to immigrants and the legal basis for providing such services. When possible, the fiscal effects on State and local governments are provided. An important finding from this study is that state and local governments are limited in their ability to deny services to immigrants, including those who are undocumented. State and local governments must provide certain services (*i.e.*, public K-12 education, emergency related health care, and law enforcement) to individuals regardless of their immigration status.

The preparation of this report was coordinated by Hiram Burch, who chaired a study group from the Department of Legislative Services. The report was reviewed by Laura McCarty and John Rohrer; the manuscript was prepared by Mary LaValley. The department trusts that this report will be useful to individuals interested in immigration related issues.

Sincerely,

Karl S. Aro
Executive Director

KSA/ml

iii

Contents

Executive Summary	vii
Part I. Introduction	1
Chapter 1. Overview.....	3
Chapter 2. Demographic Trends.....	11
Part II. Business and Economic Impact	31
Chapter 3. Labor Market and Wage Effects	33
Chapter 4. Labor and Employment Law	39
Part III. Government Services	49
Chapter 5. State and Local Spending.....	51
Chapter 6. Education Programs	55
Chapter 7. Health and Social Services.....	69
Chapter 8. Law Enforcement Services	79
Chapter 9. Courts and Criminal Justice	89
Part IV. Legislative Actions	101
Chapter 10. Federal Legislation.....	103
Chapter 11. State Legislation.....	107
Chapter 12. Local Legislation	111
Chapter 13. Driver’s Licenses	115
Chapter 14. English Language Designation	123
Appendix 1. Individuals Obtaining Legal Permanent Resident Status	135
Appendix 2. International Migration – Net Average Annual Net Migration	137

Appendix 3. Net International Migration for U.S. States	139
Appendix 4. International Immigration for Maryland Jurisdictions	141
Appendix 5. Demographics – Limited English Proficient Individuals	143
Appendix 6. Equal Access to Education Programs	145
Appendix 7. County Responses to DLS Survey	147
Appendix 8. Case Study – <i>Lozano v. City of Hazelton</i>	181

Executive Summary

Introduction

Maryland had its beginning shaped by European immigration. Maryland was established as an English colony in 1632 and since that time thousands of immigrants have made Maryland their home.

Today, Maryland is a dynamic and culturally enriched State comprising people from 180 different countries. The State remains a major destination for both legal and undocumented immigrants, with 130,000 immigrants coming to the State over a six-year period, from 2000 to 2006. This was the fifteenth largest gain from immigration among all states during that period.

Immigration to Maryland is concentrated in the suburban Washington region which includes Frederick, Montgomery, and Prince George's counties. Montgomery County is the most popular locality for immigrants, with nearly 50 percent of all recent immigrants deciding to live in the county.

Immigration has contributed significantly to the State's population growth in recent years, accounting for 41 percent of population growth between 2000 and 2006. Immigration's contribution to population growth varies greatly among Maryland's jurisdictions – being most pronounced in Montgomery County. Between 2000 and 2006, immigration accounted for 108 percent of Montgomery County's population growth, which means that without immigration, the county would actually have lost population during the period. In Prince George's County, another major destination for immigrants,

73 percent of the county's population gain was due to immigration.

The arrival of over 20,000 immigrants to Maryland each year brings with it unique challenges and opportunities. State and local governments are altering the way they deliver services and are adding additional programs to meet the needs of their new residents. In many cases, such assistance is mandated by federal law.

Several federal laws and directives mandate language assistance to individuals with limited English proficiency, many of whom are immigrants. In addition, the Civil Rights Act of 1964 prohibits discrimination based on several factors, including national origin.

Consequently, state and local governments are limited in their ability to deny services to immigrants, including those who are undocumented. State and local governments must provide certain services (*i.e.*, public K-12 education, emergency related health care, and law enforcement) to individuals regardless of their immigration status.

Immigration to the United States

Since 1820, over 72 million immigrants have obtained legal permanent status with millions more entering the country without proper documentation.

Today, approximately 1.2 million immigrants enter the United States each year. Six states (California, Texas, New York, Florida, Illinois, and New Jersey)

become home for nearly two-thirds of new immigrants and historically have been traditional destinations for immigrants. This trend is rapidly changing, with new immigrants dispersing throughout the country and locating in states that have not until recently been destinations for immigrants, including Maryland.

The United States is not alone in its effort to accommodate the influx of new immigrants. Canada, Australia, and several European nations are also major recipients of immigrants. According to the United Nations, each year, there is a net migration of 2.6 million people from the less developed regions of the world to the more developed regions. As a share of international net migration, the United States accounts for 45 percent of the gain in net migration; whereas European nations account for 42 percent and Canada accounts for 8 percent.

Immigrants come to the United States for many reasons including lack of employment opportunities, civil strife, violence, and natural disasters. For example, the migration of people from El Salvador to the United States has opened up opportunities for people in both countries.

The per capita gross national income in El Salvador is only around \$2,500 or less than 6 percent of the amount in the United States. In addition, 19 percent of El Salvador's population lives on less than \$1 dollar a day. Such dire economic circumstances have led many Salvadorans to come to the United States for greater opportunities.

El Salvador is the leading country of origin for legal immigrants to Maryland. In Montgomery County, Salvadorans account

for 10 percent of the county's foreign born population, more than any other nationality. Salvadorans living and working abroad send \$3.3 billion to family members back home. These remittances represent over 16 percent of the county's gross domestic product and have significantly reduced the number of people living in extreme poverty in that country.

Likewise, business in the United States has benefited with the influx of new workers helping to alleviate potential labor shortages. For example, Montgomery County, home to nearly 50 percent of the State's immigrants, has the lowest unemployment rate in the State at 2.8 percent.

National Immigration Policy

While the U.S. Constitution does not explicitly grant the federal government the authority to regulate immigration matters, the federal government has retained broad and exclusive power to regulate immigration laws and foreign nationals residing in the United States.

The Supremacy Clause of the U.S. Constitution provides that federal law is the supreme law of the land and thus invalidates any state or local law that either interferes or is contrary to federal law. This invalidation is termed federal preemption. Courts have consistently noted that immigration constitutes a federal concern, not a state or local matter, and that the U.S. Congress had made clear its intent that federal law preempt state law in the area of immigration.

Nonetheless, states and local governments are increasingly adopting laws and regulations that directly pertain to

immigration or foreign nationals living in their communities. Such laws or regulations typically apply to housing, employment, and local law enforcement issues but, in practice, are designed to target immigrant communities.

In many cases, when such laws are challenged in federal court they are found to be unconstitutional since they would have preempted the federal government's exclusive power to regulate immigration or they violate the Equal Protection Clause of the Fourteenth Amendment.

Labor Market and Wage Effect

Maryland's economy is heavily dependent on immigrant labor. Foreign born workers comprise approximately 15 percent of the State's civilian labor force, of which 46 percent are naturalized U.S. citizens and 54 percent are non-U.S. citizens.

The strong work ethic of Maryland's immigrant community is demonstrated by their high labor participation rates and low unemployment rates. Foreign born workers, particularly those who are non-U.S. citizens, are more likely to be employed in construction and service-related occupations that tend to have lower annual salaries. Consequently, immigrant families in Maryland generally earn somewhat less than native born families.

In addition, there are dramatic differences in the earnings and income of the foreign born depending on their world region of birth. The median household income of the foreign born from Latin America was \$54,777 and, of the foreign born from Africa, \$53,380. That was

significantly lower than the median household income of the immigrant population as a whole, \$62,334, and of the native population, \$65,441. However, the median household income of the foreign born from Asia is significantly higher than that of the native born, with the income of the Asian households at \$81,191.

Economists do not agree on the effect of immigration on wages. Some economists contend that the wages of native high school dropouts are indeed reduced by inflows of low-skill workers. It does not matter whether immigrants have legal or undocumented status, are permanent or temporary; it is the presence of additional workers that creates the effect. This position reflects what classical economics would predict – an increase in supply results in lower prices, which in this case are the wages paid to workers. Some economists assert that young, native minority men and foreign born minority men already in the workforce experience the greatest negative wage effects from new immigrant inflows.

Other economists argue that native worker wages are not significantly affected by immigration in that the increased supply of low-skill labor resulting from immigration do not lower the wages of high school dropouts as might be expected. To explain this result, economists argue that industries change their methods of production to employ the increased supply of low-skill foreign workers. Specifically, businesses may decide not to adopt certain labor saving technologies and instead carefully calibrate their production to take advantage of low-skill, low-wage labor.

In summary, it is not clear how much immigrant inflows affect the wages of native workers, particularly low-skill workers who

would most likely experience an effect. Some adverse effect on native low-skill worker employment levels seems to be more detectable in the research. In any case, a number of factors may describe the dynamics of how the labor market responds to increased immigration. Despite growing numbers of immigrants, the size of the low-skill, low-wage labor force overall is declining.

Labor and Employment Law

In Maryland, undocumented immigrants are prohibited from receiving unemployment benefits; however, Maryland law is silent on whether workers' compensation benefits may be awarded to these individuals. Traditionally, undocumented immigrants who are injured on the job have been eligible for medical payments and lost income. A 2005 court ruling granted workers' compensation benefits to undocumented immigrants. Legislation to restrict these benefits was introduced at the 2006 and 2007 legislative sessions but was not passed.

State and Local Spending

In aggregate and over the long term, immigrants pay more in taxes (federal, state, and local) than they use in government services. However, the impact of undocumented immigrants on the federal government differs from the effect on state and local governments.

While most undocumented immigrants are ineligible for many federal programs (*i.e.*, Social Security, food stamps, Medicaid – other than emergency services, and Temporary Assistance for Needy Families),

state and local governments are limited in their ability to deny services to immigrants, including those who are undocumented.

State and local governments must provide certain services (*i.e.*, public education, health care, and law enforcement) to individuals regardless of their immigration status. Consequently, while the federal government receives a net benefit from undocumented immigrants, state and local governments realize a net loss with undocumented immigrants paying less in state and local taxes than the cost to provide services to that population. This is due partly to the fact that undocumented immigrants typically earn less than native born residents and thus pay a smaller portion of their income in taxes.

Exhibit 1 indicates whether undocumented immigrants are eligible for certain public services.

Education Programs

State and local governments are restricted in their ability to constrain costs related to providing educational services to undocumented immigrants. Due to a 1982 U.S. Supreme Court ruling, children cannot be denied a public education due to their immigration status. In addition, the federal No Child Left Behind Act requires all students, including those who are limited English proficient, to meet certain academic performance standards.

To assist these students, the State provides grants to local school systems based on each system's enrollment of limited English proficient students. State funding for this program has increased from \$5.9 million in fiscal 1994 to \$126.2 million

in fiscal 2008, with the fiscal 2009 State budget including \$144.0 million for the program.

Children from immigrant families may require additional educational services due to their lack of English proficiency, which is more costly to provide than regular academic programs. Fortunately, a majority of these students attend schools in counties with an above-average local wealth, which indicates that the counties have a greater ability to pay for additional academic programs required by limited English proficient students.

The number of limited English proficient students attending Maryland public schools has increased by 49 percent since 2000. Today, almost 36,000 students are identified as limited English proficient, representing 4.3 percent of total enrollment. Montgomery County, the State's third wealthiest county, has the highest proportion of limited English proficient students at 10.6 percent of total enrollment, followed by Prince George's County at 8.3 percent.

Upon graduating high school, access to public education is heavily constrained for many immigrants, particular those who are undocumented. The 1982 U.S. Supreme Court ruling that opened up the school house doors for countless undocumented students does not extend to higher education.

Because of their immigration status, undocumented immigrants who do well in high school may face steeper economic challenges to attending college than the typical college applicant in the United States. Federal law prohibits states from offering in-state tuition based on state residency to undocumented immigrants if the state does not make the same offer to all

U.S. citizens. Since 2001, 10 states have passed legislation to offer in-state tuition to undocumented immigrants.

In order to comply with federal law, many of these states crafted legislation offering in-state tuition to undocumented immigrants contingent on criteria other than state residence. All 10 states require students to have attended a high school in the state for a specified number of years, graduated from a high school in the state, and sign an affidavit stating that they have applied to legalize their status or will do so as soon as they are eligible.

Legislation to provide this benefit to Maryland students has been introduced in the State legislature on numerous occasions, but the measure has not been approved.

Health and Social Services

Since undocumented immigrants are less likely to have health insurance, they rely more heavily on emergency rooms and public clinics for health care. Hospitals that receive federal assistance are required to provide a certain level of service to residents, regardless of their ability to pay or their immigration status. The Congressional Budget Office (CBO) indicates that the cost of uncompensated care in many states is growing because more undocumented immigrants are using emergency room services for their health care needs.

In Maryland, the share of health care costs related to immigrants is relatively small. Direct costs related to both legal and undocumented immigrants are estimated at \$78.1 million; however, this amount does not include the cost for legal immigrants who have resided in the State for more than

five years. A considerable portion of health care costs for undocumented immigrants is covered as uncompensated care at hospitals and is paid mostly through hospital rates. Since hospitals do not collect information on an individual's immigration status, uncompensated care costs related to undocumented immigrants is not available.

Law Enforcement/Public Safety

Generally, the federal government does not immediately deport undocumented immigrants who commit crimes in this country. Instead, they are processed through the state and local criminal justice system. State and local governments are responsible for the costs to investigate, prosecute, and incarcerate undocumented immigrants.

According to CBO, the federal government may take custody of criminal immigrants once they have completed their sentence. Fortunately, according to researchers from Rutgers University, immigrants are generally less likely than native born citizens to be incarcerated. However, CBO indicates that the number of undocumented immigrants in some state and local criminal justice systems adds significantly to law enforcement costs, particular in the border states of California, Arizona, New Mexico, and Texas.

In Maryland, the response by local law enforcement agencies to undocumented immigrants varies considerably depending upon the jurisdiction. For example, the Harford County sheriff's office has a zero tolerance approach to handling undocumented immigrants. In practice, if an officer encounters an undocumented immigrant, federal immigration authorities are contacted. This policy applies to

individuals arrested as well as to victims and witnesses of crimes. For crime victims who appear to be undocumented, the sheriff's office would make sure that other needs are addressed, such as counseling; however, eventually the federal government would be contacted.

Montgomery County has a different approach in its interaction with undocumented immigrants. In Montgomery County, an officer will not question foreign nationals about their citizenship status without a reasonable basis for suspecting that the person committed a crime or traffic violation. In addition, an officer will not check the status of individuals, including victims, witnesses, or complainants solely for the purposes of immigration violations.

Montgomery County officials contend that immigrants would become even more distrustful of the police than they already are if they thought that every encounter would lead to an investigation of citizenship status. This view is supported by other national law enforcement organizations.

A professional organization representing the 64 largest police departments in the United States and Canada indicate that significant immigrant communities exist throughout the major urban areas, with immigrants comprising 50 to 60 percent of the population in some locations.

The organization believes that it is imperative to build relationships with immigrant communities to encourage immigrants to press criminal charges and provide information when they are the victim of or witness to a crime. Developing relationships with these communities is also crucial to strengthening homeland security, as they may have intelligence that can be

used to prevent future terrorist attacks. If local law enforcement began to actively enforce federal immigration laws, undocumented immigrants would likely avoid contact with the police for fear of deportation. Even immigrants who are in the country legally may avoid contact for fear that their family members who may be undocumented would be investigated.

Sanctuary Policies

Local officials in many communities across the nation have adopted “sanctuary” policies that generally prohibit city employees and police officers from asking individuals about their citizenship or immigration status. In these communities, public services are provided to individuals regardless of their immigration status; local officials, including law enforcement officers, are not permitted to assist the federal government with enforcing immigration laws.

According to the Congressional Research Service, two states (Alaska and Oregon) and several cities (Albuquerque, Austin, Detroit, Houston, Los Angeles, Minneapolis, New York, San Diego, San Francisco, and Seattle) have adopted sanctuary policies. In Maryland, two jurisdictions have adopted sanctuary policies: Baltimore City and Takoma Park.

Legislative Activity

As federal immigration legislation has stalled, state legislatures are seeing an increase in immigration-related bills. States have enacted nearly three times the number of laws relating to immigration in 2007 as they did in 2006. More than 1,500 proposals

on immigrants and immigration were introduced across the United States in the 2007 sessions as of November 16, 2007. Of these, 244 bills were enacted in 46 states. By comparison, 84 state immigration bills became law in 2006. The four states that did not enact legislation pertaining to immigration were Alaska, New Hampshire, New Jersey, and Wisconsin. Legislation addressed identification, employment, public benefits, and human trafficking, among other concerns.

Several localities have contemplated or enacted ordinances aimed at alleviating perceived or real problems created by the presence of undocumented immigrants, such as overcrowded housing, noise violations, and loitering by day laborers. One method commonly used by local officials to limit the negative effects of undocumented immigration has been the use of zoning laws and code enforcement. Zoning laws are often used to regulate occupancy limits and prohibit housing overcrowding. While some advocates for undocumented immigrants complain that restrictive zoning laws are applied in a discriminatory fashion against minority populations, regardless of their legal status, proponents of such laws may cite anecdotal evidence that undocumented immigrants create unsafe living conditions by violation of reasonable zoning restrictions.

Employment Laws

Three states – Arizona, Illinois, and Oklahoma – have enacted legislation affecting the employment of undocumented immigrants. Legislation in Arizona requires every employer in the state to verify an employee’s eligibility to work in the United States by using the federal Basic Pilot

Program, which is a federal electronic employment verification system. The Oklahoma legislation requires all state and local government employers to participate in the Basic Pilot Program.

Illinois adopted a dramatically different approach by passing a law that effectively prohibits all employers in the state from participating in the pilot program.

Driver's Licenses

Only six states in the nation, including Maryland, issue driver's licenses to undocumented immigrants. The general trend on the issue of providing licensure to undocumented immigrants since 2001 has been overwhelmingly toward requiring lawful presence. In 2003, 28 states had a lawful presence requirement; in 2004 that number increased to 39 and, by January 2008, 44 states had such a requirement.

Conclusion

While the actual cost of immigration and undocumented immigration may not be known, communities across Maryland are experiencing profound changes which can be depicted each day in the state's public schools, neighborhoods, and work sites.

Children of foreign born parents represent a sizeable and growing portion of our population as shown in **Exhibit 2**. In 2006, for children under the age of six in Maryland, 22.9 percent had foreign born parents. Most of these children (92.8 percent) were U.S. citizens. In Montgomery County, nearly one-half of children under the age of six (48.0 percent) had a foreign born parent, with most of these children also being U.S. citizens. These demographic trends will continue even if the federal government enacts comprehensive immigration reform.

Exhibit 1
Undocumented Immigrants Are Not Eligible for Many Programs in Maryland

<u>Program/Service</u>	<u>Eligibility Status</u>	<u>Comments</u>
Unemployment Insurance	No	State law requires proof of legal residence.
Workers' Compensation	Yes	State court ruling indicates that State law broadly defines a covered employee to include undocumented workers.
Social Security	No	
Food Stamps	No	Federal law requires that immigration status be verified for noncitizen applications.
Medical Assistance	No	Undocumented immigrants can receive Medicaid-funded emergency medical care. Also, U.S. born children of undocumented immigrants are eligible for Medical Assistance and other public assistance programs.
Temporary Cash Assistance	No	Federal law requires that immigration status be verified for noncitizen applications.
Energy Assistance	No	Federal law requires that immigration status be verified for noncitizen applications.
Public Schools	Yes	U.S. Supreme Court ruling guarantees access to free public and primary secondary education to undocumented children.
School Breakfast/Lunch Programs	Yes	
Higher Education – In-state Tuition	No	Undocumented students must pay out-of-state tuition.
Language Assistance Programs	Yes	

Exhibit 2
Children Under the Age of Six – Nativity of Parents

	Maryland		Montgomery County	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Native Born Parents	321,633	77.1%	39,951	52.0%
Foreign Born Parents	65,710	15.7%	26,529	34.6%
Native and Foreign Born Parents	29,950	7.2%	10,308	13.4%
Total	417,293	100.0%	76,788	100.0%

Source: 2006 American Community Survey, U.S. Census Bureau

Part I. Introduction

- Chapter 1. Overview
- Chapter 2. Demographic Trends

Chapter 1. Overview

The United States is a country of immigrants. European immigration to the United States began a few decades after Columbus discovered the new world in 1492 with Spanish colonists establishing the first settlements in present day Florida and New Mexico. Nearly 50 years after the Spaniards arrived in the United States, the first permanent English settlement was established at Jamestown, Virginia in 1607. Maryland was established as an English colony in 1632 when King Charles I granted a charter to Cecelius Calvert, the second Lord Baltimore. Lord Calvert and his group of English settlers landed on St. Clement's Island in 1634, marking the official origin of Maryland.

Maryland is today a dynamic and culturally enriched State comprising people from 180 different countries speaking a multitude of languages. Approximately 12.2 percent of Maryland's residents were born in a foreign country. This is accentuated by the fact that Maryland continues to be a major destination for immigrants, with over 20,000 legal immigrants coming to the State each year. This increased diversity brings with it unique challenges and opportunities. State and local governments are altering the way they deliver services and are adding additional programs to meet the needs of their new residents.

This chapter explores the basis for our nation's immigration policy and the various avenues by which immigrants enter the country. An historical overview of immigration to the United States is provided along with how current global conditions are resulting in a large-scale migration of people from their country of origin.

National Immigration Policy

While the U.S. Constitution does not explicitly grant the federal government the authority to regulate immigration matters, the federal government has retained broad and exclusive power to regulate immigration laws and foreign nationals residing in the United States. Nonetheless, states and local governments are increasingly adopting laws and regulations that directly pertain to immigration or foreign nationals living in their communities. Such laws or regulations typically apply to housing, employment, and local law enforcement issues but, in practice, are designed to target immigrant communities. In many cases, when such laws are challenged in federal court, they are found to be unconstitutional since they are preempted by the federal government's exclusive power to regulate immigration or they violate the Equal Protection Clause of the Fourteenth Amendment.

Federal Preemption

The Supremacy Clause of the U.S. Constitution provides that federal law is the supreme law of the land and thus invalidates any state or local law that either interferes with or is contrary to federal law. This invalidation is termed federal preemption. Courts have consistently noted

that immigration constitutes a federal concern, not a state or local matter, and that the U.S. Congress had made clear its intent that federal law preempt state law in the area of immigration.

Lawful Admission

U.S. immigration policy reflects multiple goals: (1) reuniting families by admitting immigrants who already have family members living in the United States; (2) meeting employment needs by granting admission to workers with specific skills and to fill positions in occupations experiencing labor shortages; (3) providing refuge for people facing the risk of political, racial, or religious persecution in their native country; and (4) ensuring diversity by admitting people from countries with historically low rates of immigration to the United States. In 2006, family unification accounted for about two-thirds of permanent admissions, employment base preferences accounted for 13 percent, refugees/asylum seekers accounted for 17 percent, and diversity preferences accounted for only 4 percent of permanent admissions.

Individuals entering the country lawfully may be granted either permanent admission status or temporary admission status. Individuals with permanent admission status are called lawful permanent residents and are classified formally as “immigrants.” Lawful permanent residents are eligible to work in the United States and may later apply for U.S. citizenship. These individuals receive a permanent resident card, commonly referred to as a green card. In 2006, 1.3 million individuals were granted legal permanent residency status. Temporary admission, granted to millions of individuals each year, enables individuals to enter the country for a specific purpose and length of time. These individuals are formally classified as “nonimmigrants.” Reasons for temporary admissions include tourism, diplomatic missions, study, and temporary work. These individuals are not eligible for citizenship through naturalization; those wishing to remain in the United States on a permanent basis must apply for permanent admission.

Unlawful Admission

Foreign residents who live in the United States without obtaining proper authorization from the federal government are considered undocumented immigrants. These individuals can be categorized into two primary groups: those who enter the country without approval from national immigration authorities; or those who violate the terms of a temporary admission without obtaining either permanent resident status or temporary protection from removal. Other terms used to reference this group include unauthorized aliens, illegal immigrants, and unauthorized immigrants. For purposes of this report, the term undocumented immigrant is used to reference these individuals.

The precise number of undocumented immigrants within the United States is not known. The U.S. Department of Homeland Security (DHS) puts the number at 11.6 million as of January 2006. DHS estimates that nearly 4.2 million undocumented immigrants have entered the United States since January 2000 and that 6.6 million of the undocumented immigrants are from Mexico

and 0.5 million are from El Salvador. These estimates are consistent with projections made by other research organizations. The Pew Hispanic Center assumes that between 11.5 million and 12.0 million people are undocumented immigrants. The Pew Hispanic Center also estimates that approximately one-half of undocumented immigrants (4.5 to 6.0 million people) were admitted legally to the country but overstayed or otherwise violated the terms of their authorization. The remaining number of undocumented immigrants (6.0 to 7.0 million individuals) entered the United States unlawfully. These statistics do not include the U.S. born children of undocumented immigrants, since all children born within the United States are granted U.S. citizenship at birth.

Major Federal Laws Pertaining to Immigration Matters

The federal government first enacted legislation pertaining to immigration in 1790 by establishing a uniform rule for naturalization. Prior to this legislation, immigration matters were under the control of the individual states. In 1819, the first significant federal law relating to immigration was enacted which included reporting requirements and restrictions on the number of passengers on all vessels either coming to or leaving the United States. In 1875, the federal government enacted legislation that established the policy of direct federal regulation of immigration by prohibiting for the first time entry to undesirable immigrants. The federal government established a system of central control of immigration through state boards under the Secretary of the Treasury in 1882 and the first comprehensive law for national control of immigration in 1891. More recently, three significant immigration reform measures have been passed by the U.S. Congress.

Immigration Reform and Control Act

This legislation, enacted in 1986, granted amnesty to undocumented immigrants who had resided in the United States since 1982; increased border enforcement; and established sanctions against employers knowingly hiring, recruiting, or referring for a fee individuals not authorized to work in the United States.

Personal Responsibility and Work Opportunity Reconciliation Act

This legislation, enacted in 1996, established restrictions on the eligibility of legal immigrants for means-tested public assistance and broadened the restrictions on public benefits for undocumented immigrants.

Illegal Immigration Reform and Immigrant Responsibility

This legislation, enacted in 1996, established measures to control U.S. borders, protect legal workers through worksite enforcement, and remove criminal and other deportable immigrants. The legislation also added restrictions on federal benefits and programs.

History of Immigration to the United States

Since 1820, over 72 million immigrants have obtained legal permanent status with millions more entering the country without proper documentation. The United States experienced a high level of foreign immigration beginning in the 1880s which continued through the 1920s. During this period, almost 28 million individuals obtained legal permanent resident status, with most of the immigrants coming from Europe. During the 1930s and 1940s, legal immigration to the United States dropped off sharply with only 1.6 million obtaining legal status during the 20-year period. After World War II, foreign immigration began to increase steadily reaching a peak in the 1990s when 9.8 million individuals obtained legal permanent resident status. From 2000 through 2006, over 7 million legal immigrants have entered the United States. If current trends continue, this decade will see the highest number of immigrants entering the country. **Exhibit 1.1** shows the number of individuals obtaining legal permanent resident status for various periods. A more detailed listing is provided in **Appendix 1**.

Until the 1960s, a majority of legal immigrants to the United States came from Europe. Since then the number of immigrants from Latin America, Asia, and Africa has increased considerably. In 2006, 41.4 percent of legal immigrants came from Latin America, 32.5 percent came from Asia, and 8.9 percent came from Africa compared to 13.4 percent from Europe. **Exhibit 1.2** shows the percent of legal immigrants coming from each region for various periods.

Exhibit 1.1
Individuals Obtaining Legal Permanent Resident Status
1820-2006

<u>Region</u>	<u>1820-1879</u>	<u>1880-1929</u>	<u>1930-1949</u>	<u>1950-2006</u>
Europe	8,640,586	23,333,408	916,923	6,455,210
Asia	224,826	828,748	53,763	9,417,944
Americas	651,523	3,501,802	558,754	15,370,331
Africa	988	22,750	8,840	1,043,402
Oceania	10,373	51,619	17,568	220,282
Not Specified	203,876	49,813	135	483,150
Total	9,732,172	27,788,140	1,555,983	32,990,319

Source: U.S. Department of Homeland Security

Exhibit 1.2
Individuals Obtaining Legal Permanent Resident Status
Distribution by World Region
1820-2006

<u>Region</u>	<u>1820-1879</u>	<u>1880-1929</u>	<u>1930-1949</u>	<u>1950-2006</u>
Europe	88.8%	84.0%	58.9%	19.6%
Asia	2.3%	3.0%	3.5%	28.5%
Americas	6.7%	12.6%	35.9%	46.6%
Africa	0.0%	0.1%	0.6%	3.2%
Oceania	0.1%	0.2%	1.1%	0.7%
Not Specified	2.1%	0.2%	0.0%	1.5%
Total	100.0%	100.0%	100.0%	100.0%

Source: U.S. Department of Homeland Security

Global Extent of Immigration

The United States is not alone in its effort to accommodate the influx of new immigrants. According to the United Nations, the less developed regions of the world account for 81 percent of the world's inhabitants. Lack of employment opportunities, civil strife, violence, and natural disasters have led many people to leave their country of origin in search of greater opportunities. Each year, there is a net migration of 2.6 million people from the less developed regions of the world to the more developed regions. The United States, Canada, Australia, and European nations are the recipients of most immigrants. Nearly two-thirds of immigrants come from five countries – China, India, Iran, Mexico, and Pakistan. **Exhibit 1.3** shows the world population and net migration of people by world region. **Appendix 2** shows the average annual net migration in 2000 through 2005 for various nations.

Exhibit 1.3
World Population and Net Migration

<u>Region/Country</u>	<u>Population (in Millions)</u>	<u>Percent of Total</u>	<u>Net Migration</u>	<u>Rate per 1,000 Residents</u>
Africa	905.9	14.0%	-454,700	-0.5
Asia	3,905.4	60.4%	-1,297,400	-0.3
Latin America	561.3	8.7%	-803,800	-1.5
Europe	728.4	11.3%	1,083,000	1.5
Northern America	330.6	5.1%	1,369,600	4.2
Oceania	33.1	0.5%	103,300	3.2
Total	6,464.7	100.0%	0	0.0
Canada	32.3	0.5%	209,900	6.7
United States	298.2	4.6%	1,160,000	4.0

Note: Northern America includes Canada, the United States, and Greenland. Mexico, Central America, and South America are designated as Latin America.

Source: United Nations

Mexico is the leading source nation for immigrants, with approximately 400,000 more people leaving the country than entering. Most of these individuals come to the United States. According to DHS, 174,000 people from Mexico became legal permanent residents of the United States in 2006. This amount is significantly lower than the estimated number of people leaving Mexico for the United States each year.

According to the United Nations, in 2005, 191 million people, or 3 percent of the world population, lived outside their country of birth. In more developed countries about 9.5 percent of the population is foreign born; whereas in less developed countries less than 1.5 percent of the population is foreign born. Approximately one in every five international immigrants lives in the United States. Most immigrants come to the United States to seek a better life for themselves and their families.

El Salvador is the leading country of origin for legal immigrants to Maryland and the second leading country of origin for undocumented immigrants to the United States. Mexico is the leading country of origin for legal immigrants and undocumented immigrants to the United States. **Exhibit 1.4** provides selected social indicators for both El Salvador and Mexico.

Exhibit 1.4
Selected Economic and Social Indicators for
El Salvador and Mexico

<u>Indicator</u>	<u>El Salvador</u>	<u>Mexico</u>
Population	7.0 million	104.2 million
Population Growth (yearly)	1.6%	1.1%
Per Capita Gross National Income (GNI)	\$2,540	\$7,870
Per Capita GNI (% of U.S. amount)	5.6%	17.5%
Life Expectancy	71 years	75 years
School Enrollment (primary)	92.7%	98.0%
Child Malnutrition (children under 5)	10.3%	n/a
Population Living Below \$1 a Day	19.0%	3.0%

Source: The World Bank

El Salvador, located in Central America, is a major source of immigrants to the United States and Maryland. Years of civil war (1980-1992) which killed more than 75,000 people and several natural disasters, including major earthquakes, hurricanes, and volcanic eruptions, brought ruin to the nation's economy, particularly in the rural areas of the country. Since the signing of the peace accord in 1992, the Salvadoran economy has enjoyed steady and moderate growth, and the nation's poverty rate has been reduced from 66 percent in 1991 to 35 percent in 2005. The U.S. State Department notes that the Salvadoran government is committed to free markets and careful fiscal management, including several major privatization initiatives. These reforms were accentuated in 2001, when the U.S. dollar became the legal currency of the country. The U.S. State Department indicates that the county's economy is fully "dollarized."

Salvadorans living and working abroad send approximately \$3.3 billion to family members back home in El Salvador, according to the U.S. State Department. These remittances, which represent 16.2 percent of the country's gross domestic product, have had a profound impact on reducing poverty and improving the lives of people throughout the country. According to a report by the United Nations Development Program (UNDP), due to remittances, the number of Salvadorans living in extreme poverty has been reduced from 37 to 16 percent. Remittances also help to alleviate the negative effects of income inequalities that continue to plague the county. Through remittances, financial support can be provided directly to family members for housing, medical, and other basic necessities. UNDP surveys indicate that an estimated 22.3 percent of families in El Salvador receive remittances.

Chapter 2. Demographic Trends

Approximately 1.2 million immigrants enter the United States each year. California remains the top destination for immigrants with 22.5 percent of new immigrants calling the state home. Other leading states include Texas, New York, Florida, Illinois, and New Jersey. Together, these six states are home to 62.1 percent of new immigrants and historically have been traditional destinations for immigrants. However, new immigrants are beginning to disperse throughout the country and are locating in states that have not until recently been destinations for immigrants, such as Georgia, North Carolina, and Tennessee. **Appendix 3** shows the net international migration for each state over the last six years.

Extent of Immigration to Maryland

Maryland continues to be a major destination for immigrants. International immigration added 129,730 people to the State's population between 2000 and 2006, according to population estimates prepared by the U.S. Census Bureau (**Exhibit 2.1**). This was the fifteenth largest gain from immigration among all states during that period. From 2000 to 2006, Maryland accounted for 1.7 percent of the total national population gain from international immigration. In the year ending July 1, 2006, the State gained 21,135 people through international immigration. **Appendix 4** shows the level of international immigration for each county on an annual basis.

Immigration to Maryland is concentrated in the suburban Washington region which includes Frederick, Montgomery, and Prince George's counties. Approximately 72.5 percent of immigrants arriving in Maryland since 2000 decided to locate in these counties. Montgomery County is the most popular locality for immigrants to Maryland, with nearly 50 percent of all recent immigrants deciding to live in the county. Between 2000 and 2006, Montgomery County added 62,627 people through international immigration, and Prince George's County added 29,602. Montgomery and Prince George's counties gained more than twice as many people through international immigration than the rest of the State combined. Other jurisdictions with significant population gains from immigration during these years include Baltimore County, Baltimore City, and Howard County.

Exhibit 2.1
International Immigration for Maryland Jurisdictions
April 1, 2000 to July 1, 2006

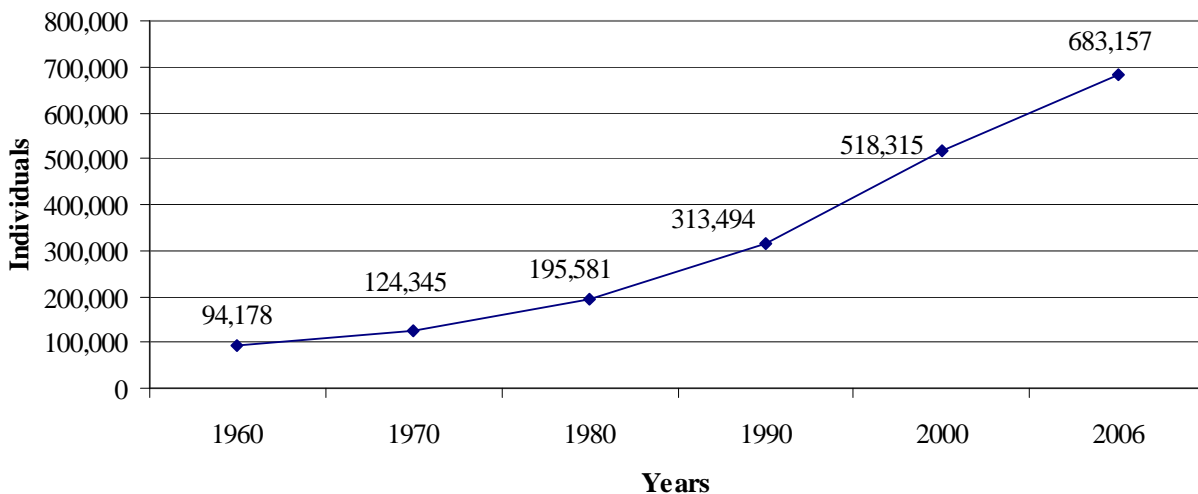
County	Number of Individuals				Ranking by Number of Individuals		Ranking by Percent of State Total	
	7/1/2000- 7/1/2001	7/1/2004- 7/1/2005	7/1/2005- 7/1/2006	4/1/2000- 7/1/2006	County	2000-2006	County	2000-2006
Allegany	26	21	22	137	1. Montgomery	62,627	1. Montgomery	48.3%
Anne Arundel	644	508	992	2,644	2. Prince George's	29,602	2. Prince George's	22.8%
Baltimore City	1,429	1,195	1,212	7,943	3. Baltimore	12,782	3. Baltimore	9.9%
Baltimore	2,287	1,921	1,949	12,782	4. Baltimore City	7,943	4. Baltimore City	6.1%
Calvert	52	42	65	243	5. Howard	6,892	5. Howard	5.3%
Caroline	65	49	50	343	6. Anne Arundel	2,644	6. Anne Arundel	2.0%
Carroll	88	73	78	474	7. Frederick	1,832	7. Frederick	1.4%
Cecil	60	50	53	328	8. Wicomico	983	8. Wicomico	0.8%
Charles	68	50	136	200	9. Harford	876	9. Harford	0.7%
Dorchester	13	8	9	60	10. Washington	487	10. Washington	0.4%
Frederick	343	285	327	1,832	11. Carroll	474	11. Carroll	0.4%
Garrett	6	4	4	29	12. Worcester	370	12. Worcester	0.3%
Harford	181	148	218	876	13. Caroline	343	13. Caroline	0.3%
Howard	1,250	1,048	1,091	6,892	14. Cecil	328	14. Cecil	0.3%
Kent	31	29	29	180	15. Queen Anne's	280	15. Queen Anne's	0.2%
Montgomery	11,202	9,428	9,566	62,627	16. Calvert	243	16. Calvert	0.2%
Prince George's	5,373	4,507	4,791	29,602	17. Somerset	222	17. Somerset	0.2%
Queen Anne's	49	45	47	280	18. Talbot	204	18. Talbot	0.2%
St. Mary's	39	25	135	-8	19. Charles	200	19. Charles	0.2%
Somerset	40	33	34	222	20. Kent	180	20. Kent	0.1%
Talbot	39	30	30	204	21. Allegany	137	21. Allegany	0.1%
Washington	93	74	81	487	22. Dorchester	60	22. Dorchester	0.0%
Wicomico	175	152	157	983	23. Garrett	29	23. Garrett	0.0%
Worcester	65	58	59	370	24. St. Mary's	-8	24. St. Mary's	0.0%
Maryland	23,618	19,783	21,135	129,730				

Source: Maryland Department of Planning; U.S. Census Bureau

Foreign Born Population

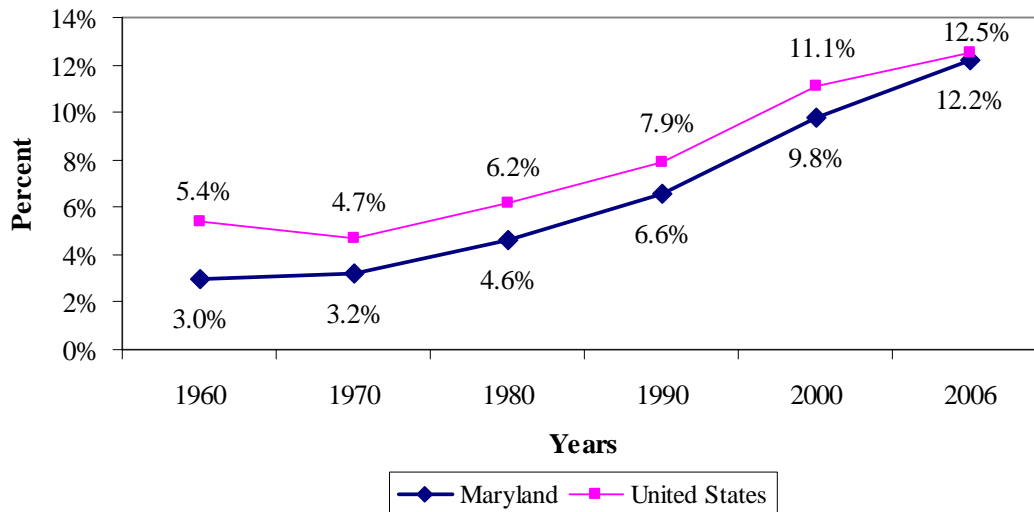
Another measure of immigration to Maryland is the number of residents who were born in another country. Foreign born residents have steadily increased in number over the last four decades from 94,178 in 1960 to 683,157 in 2006 (**Exhibit 2.2**). According to the U.S. Census Bureau, 12.2 percent of Maryland residents are foreign born compared to 12.5 percent at the national level (**Exhibit 2.3**). Of the State's foreign born population, 44.7 percent are naturalized U.S. citizens, and 68.1 percent entered the United States before 2000. Maryland had the fifteenth highest percentage of residents who are foreign born among the states in 2006. The foreign born population in Maryland is concentrated in the Baltimore/Washington, DC corridor. Montgomery County is home to 40.0 percent of the State's foreign born population, and Prince George's County is home to 23.3 percent. **Exhibit 2.4** shows the number of foreign born residents in each county.

Exhibit 2.2
Total Number of Foreign Born in Maryland
1960-2006



Source: U.S. Census Bureau

Exhibit 2.3
Foreign Born as a Percent of Total Population in Maryland
and the United States
1960-2006



Source: U.S. Census Bureau

Limited English Proficiency

The number of people who speak a language other than English at home is also an indicator of the scope of immigration in Maryland. The U.S. Census Bureau indicates that 780,199 Maryland residents speak a language other than English at home, or 14.9 percent of the total population (**Exhibit 2.5**). Among all the states, Maryland had the eighteenth highest percentage of residents who speak a language other than English at home in 2006. Nationwide, 19.7 percent of individuals speak a language other than English at home. A sizeable portion of these individuals are limited English proficient (LEP), which is defined by the U.S. Census Bureau as someone older than five who cannot speak English very well.

In Maryland, 5.7 percent of the State's population is LEP compared to 8.7 percent nationally. The percentage of State residents, who are LEP, ranges from a high of 14.2 percent in Montgomery County to less than 1 percent in Allegany County. While Montgomery County has a high percentage of LEP residents, the percentage is even higher for several surrounding jurisdictions in Northern Virginia. In Fairfax County, 15.1 percent of county residents are LEP (**Exhibit 2.6**). **Appendix 5** shows the number of LEP individuals in each Maryland county for 1990 and 2000, the most recent data available for all counties.

Exhibit 2.4
Foreign Born Population in Maryland

County	Foreign Born Population	Percent of Total Population	Naturalized U.S Citizen	Not a U.S. Citizen	Entered U.S. 2000 or Later	Entered U.S. Before 2000
Allegany	523	0.7%	70.2%	29.8%	n/a	n/a
Anne Arundel	30,748	6.0%	47.8%	52.2%	30.9%	69.1%
Baltimore City	38,579	6.1%	38.5%	61.5%	42.9%	57.1%
Baltimore	68,850	8.7%	48.3%	51.7%	36.4%	63.6%
Calvert	1,856	2.1%	66.3%	33.7%	9.5%	90.5%
Caroline	n/a	n/a	n/a	n/a	n/a	n/a
Carroll	6,225	3.7%	60.3%	39.7%	9.6%	90.4%
Cecil	2,193	2.2%	71.7%	28.3%	26.9%	73.1%
Charles	5,104	3.6%	65.8%	34.2%	22.2%	77.8%
Dorchester	n/a	n/a	n/a	n/a	n/a	n/a
Frederick	19,437	8.7%	47.7%	52.3%	29.9%	70.1%
Garrett	n/a	n/a	n/a	n/a	n/a	n/a
Harford	9,841	4.1%	60.2%	39.8%	21.5%	78.5%
Howard	44,828	16.5%	54.1%	45.9%	29.7%	70.3%
Kent	n/a	n/a	n/a	n/a	n/a	n/a
Montgomery	273,227	29.3%	46.3%	53.7%	29.4%	70.6%
Prince George's	159,468	19.0%	34.7%	65.3%	35.2%	64.8%
Queen Anne's	n/a	n/a	n/a	n/a	n/a	n/a
St. Mary's	4,554	4.6%	53.8%	46.2%	33.2%	66.8%
Somerset	n/a	n/a	n/a	n/a	n/a	n/a
Talbot	n/a	n/a	n/a	n/a	n/a	n/a
Washington	4,969	3.5%	50.2%	49.8%	18.6%	81.4%
Wicomico	4,697	5.1%	56.9%	43.1%	26.7%	73.3%
Worcester	n/a	n/a	n/a	n/a	n/a	n/a
Maryland	683,157	12.2%	44.7%	55.3%	31.9%	68.1%
United States	37,547,789	12.5%	42.0%	58.0%	25.3%	74.7%

Source: 2006 American Community Survey, U.S. Census Bureau

Exhibit 2.5
Languages Spoken at Home – Limited English Proficient Individuals
2006

County	Population 5 Years +	Speak Language Other than English	Percent of Population	Limited English Proficient	Percent of Population
Anne Arundel	475,687	41,087	8.6%	13,161	2.8%
Baltimore City	586,620	49,333	8.4%	20,145	3.4%
Baltimore	740,825	82,799	11.2%	30,890	4.2%
Frederick	208,110	23,668	11.4%	9,412	4.5%
Harford	226,552	12,089	5.3%	3,344	1.5%
Howard	254,890	49,415	19.4%	18,308	7.2%
Montgomery	866,247	307,739	35.5%	123,361	14.2%
Prince George's	780,849	154,141	19.7%	65,532	8.4%
Maryland	5,247,226	780,199	14.9%	299,736	5.7%

Note: The *American Community Survey* does not provide information on limited English proficiency for the other counties in Maryland.

Source: 2006 *American Community Survey*, U.S. Census Bureau

Exhibit 2.6
Languages Spoken at Home – Limited English Proficient Individuals
2006

	Population 5 Years +	Speak Language Other than English	Percent of Population	Limited English Proficient	Percent of Population
Surrounding States					
Delaware	796,385	96,130	12.1%	36,554	4.6%
District of Columbia	546,550	83,776	15.3%	30,616	5.6%
Maryland	5,247,226	780,199	14.9%	299,736	5.7%
Pennsylvania	11,716,171	1,076,799	9.2%	395,321	3.4%
Virginia	7,139,393	937,609	13.1%	401,101	5.6%
West Virginia	1,714,041	38,991	2.3%	12,322	0.7%
United States	279,012,712	54,858,424	19.7%	24,212,711	8.7%
DC Region					
Alexandria City	126,440	36,789	29.1%	18,072	14.3%
Arlington County	186,915	54,608	29.2%	18,128	9.7%
Fairfax County	937,087	308,066	32.9%	141,769	15.1%
Loudoun County	244,514	64,280	26.3%	27,015	11.0%
Montgomery	866,247	307,739	35.5%	123,361	14.2%
Prince George's	780,849	154,141	19.7%	65,532	8.4%
Prince William County	326,289	95,168	29.2%	47,354	14.5%

Source: 2006 American Community Survey, U.S. Census Bureau

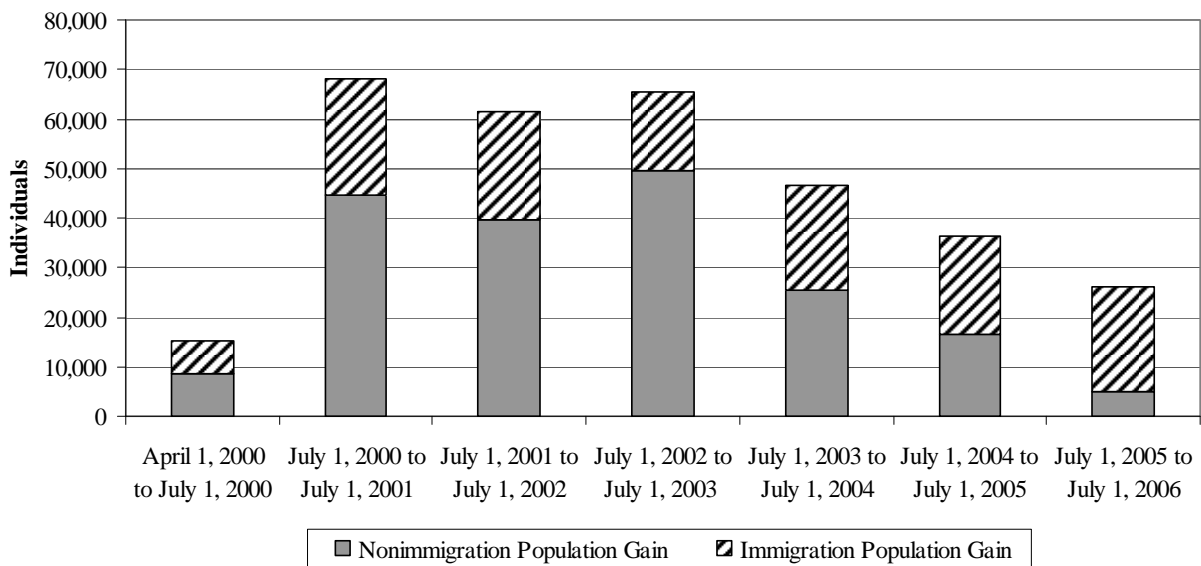
Undocumented Immigrants

A significant portion of Maryland's immigrants are undocumented, according to estimates made by private research organizations. The Pew Hispanic Center, which does not take positions on policy issues, estimated that there were between 225,000 and 275,000 undocumented immigrants in Maryland in 2005. Maryland had the eleventh highest number of undocumented immigrants among the states that year, according to the center. The Center for Immigration Studies, which advocates reducing immigration, estimated that there were 268,000 undocumented immigrants in Maryland in 2007. This estimate was based on an analysis of data from the U.S. Census Bureau's 2007 *Current Population Survey*.

Impact of Immigration on Maryland’s Population Growth

Immigration has contributed significantly to Maryland’s population growth in recent years. International immigration accounted for 41 percent of Maryland’s total population growth between 2000 and 2006, according to U.S. Census Bureau population estimates. During that period, Maryland gained a total of 319,221 residents, of whom 129,730 came to the State through immigration (**Exhibit 2.7**). Immigration was the dominant factor driving population growth in Maryland during the year ending July 1, 2006, the most recent year for which population estimates are available. In that year, immigration accounted for 81 percent of the State’s population gain of 26,128 people.

Exhibit 2.7
Maryland Population Growth
2000-2006



Source: U.S. Census Bureau

The impact of immigration on population growth varies greatly among Maryland’s jurisdictions; it is most pronounced in Montgomery County, a major destination for immigrants. Between 2000 and 2006, immigration accounted for 108 percent of Montgomery County’s population growth, which means that without immigration, the county actually would have lost population during the period. In Prince George’s County, another major destination for immigrants, 73 percent of the county’s population gain was due to immigration. **Exhibit 2.8** shows the share of each county’s population change due to international immigration.

Exhibit 2.8
Components of Maryland Population Change – April 2000 to July 2006

County	International Immigration	Internal Migration	Net Natural Increase	Residual	Total	Ranking by International Immigration	
						County	Percent of Total Gain
Allegany	137	-626	-1,367	-243	-2,099	1. Montgomery	108.0%
Anne Arundel	2,644	-1,679	20,282	-1,603	19,644	2. Prince George's	72.9%
Baltimore City	7,943	-64,168	8,609	27,828	-19,788	3. Baltimore	38.6%
Baltimore	12,782	12,096	10,595	-2,381	33,092	4. Howard	28.0%
Calvert	243	11,195	2,898	-95	14,241	5. Kent	22.9%
Caroline	343	1,862	723	-83	2,845	6. Somerset	21.6%
Carroll	474	14,757	4,473	-341	19,363	7. Worcester	15.9%
Cecil	328	10,540	2,916	-229	13,555	8. Anne Arundel	13.5%
Charles	200	13,867	6,013	-210	19,870	9. Wicomico	13.4%
Dorchester	60	1,269	-264	-108	957	10. Caroline	12.1%
Frederick	1,832	16,404	9,913	-487	27,662	11. Talbot	9.1%
Garrett	29	31	38	-85	13	12. Frederick	6.6%
Harford	876	14,415	8,079	-558	22,812	13. Dorchester	6.3%
Howard	6,892	4,632	13,934	-848	24,610	14. Queen Anne's	4.9%
Kent	180	1,066	-403	-57	786	15. Washington	4.1%
Montgomery	62,627	-50,872	49,076	-2,865	57,966	16. Harford	3.8%
Prince George's	29,602	-30,567	44,601	-3,012	40,624	17. Carroll	2.4%
Queen Anne's	280	4,628	846	-76	5,678	18. Cecil	2.4%
St. Mary's	-8	8,051	4,747	-168	12,622	19. Calvert	1.7%
Somerset	222	927	-51	-72	1,026	20. Charles	1.0%
Talbot	204	2,487	-309	-132	2,250	21. Allegany	n/a
Washington	487	9,628	2,110	-400	11,825	22. Baltimore City	n/a
Wicomico	983	4,427	2,212	-279	7,343	23. Garrett	n/a
Worcester	370	2,613	-513	-146	2,324	24. St. Mary's	n/a
Maryland	129,730	-13,017	189,158	13,350	319,221		

Source: Maryland Department of Planning; U.S. Census Bureau

If recent demographic trends continue, immigration will be a major factor in Maryland's relatively high projected future population growth. The U.S. Census Bureau projects that by 2030 Maryland will have gained 1.4 million more residents than it had in 2000, an increase of 27.2 percent. This projection is based on the 2000 census and assumes that recent trends in fertility, mortality, domestic migration, and international immigration continue.

Characteristics of Maryland's Immigrant Population

World Region of Birth

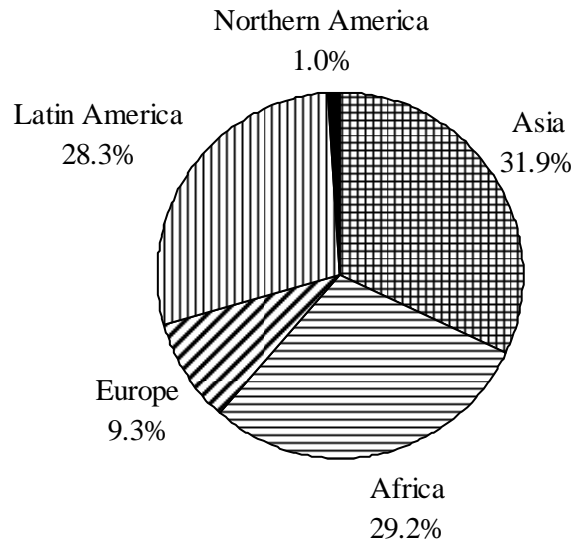
Immigrants come to Maryland from all regions of the world. Immigrants who became legal permanent residents of Maryland hailed from approximately 180 countries in fiscal 2006, according to the U.S. Department of Homeland Security. Of those legal immigrants, 31.9 percent came from Asia, 29.2 percent from Africa, 28.3 percent from Latin America (including Mexico and Central America), 9.3 percent from Europe, and 1.0 percent came from Northern America (Canada and Greenland) (**Exhibit 2.9**). The leading countries of origin for the legal immigrants were El Salvador, Ethiopia, China, Nigeria, the Philippines, and India (**Exhibit 2.10**). Of those who became legal permanent residents, 40 percent were immediate relatives of U.S. citizens, 19 percent received employment-based preferences, 17 percent were granted refugee and asylum status, and 13 percent received family-sponsored preferences.

A similar picture of Maryland's immigrants emerges from the U.S. Census Bureau's *American Community Survey*, which depicts the foreign born population of the State. Of the State's foreign born population in 2006, 35.4 percent were born in Latin America, 33.7 percent were born in Asia, 16.1 percent were born in Africa, and 12.8 percent were born in Europe. Maryland has a relatively high percentage of foreign born residents from Africa and Asia compared to other states and a relatively low percentage of foreign born residents from Latin America. The percentage of Maryland's foreign born population from Asia ranks thirteenth among the states. However, the State's percentage of foreign born residents from Latin America ranks thirty-sixth among the states, and its percentage of foreign born from Europe ranks thirty-fourth. **Exhibits 2.11** and **2.12** show the world region of birth for foreign born residents.

Year of Entry and Citizenship

The longer Maryland's foreign born are present in the country, the more likely they are to become naturalized citizens. The *2006 American Community Survey* shows that 38.6 percent of Maryland's foreign born population entered the country before 1990, and 75.9 percent of those immigrants have become citizens. Of the 29.5 percent who entered between 1990 and 1999, 43.1 percent have become citizens. Of the 31.9 percent who entered the country in 2000 or later, just 8.5 percent have become naturalized citizens (**Exhibit 2.13**).

Exhibit 2.9
World Regions of Origin for Immigrants
Who Became Legal Permanent Residents of Maryland in Fiscal 2006



Source: U.S. Department of Homeland Security

Exhibit 2.10
Leading Countries of Origin for Immigrants
Who Became Legal Permanent Residents of Maryland in Fiscal 2006

	Country	Number of Immigrants
1.	El Salvador	2,422
2.	Ethiopia	1,917
3.	China	1,605
4.	Nigeria	1,605
5.	Philippines	1,576
6.	India	1,533
7.	Korea	887
8.	Cameroon	881
9.	Jamaica	841
10.	Sierra Leone	735

Source: U.S. Department of Homeland Security

Exhibit 2.11
Foreign Born Population in Maryland – Region of Birth

Jurisdiction	Europe	Asia	Africa	Latin America	Northern America	Oceania
Anne Arundel	7,111	12,738	1,546	7,717	1,571	65
Baltimore City	6,846	10,484	7,811	12,801	559	78
Baltimore	14,731	29,097	8,774	14,173	1,785	290
Howard	6,648	23,646	4,040	9,378	922	194
Montgomery	30,563	106,822	38,437	94,141	2,845	419
Prince George's	5,589	24,196	43,692	84,512	1,070	409
Maryland	87,396	230,478	109,751	242,099	10,785	2,648
United States	4,993,135	10,052,929	1,375,676	20,088,292	855,296	181,987

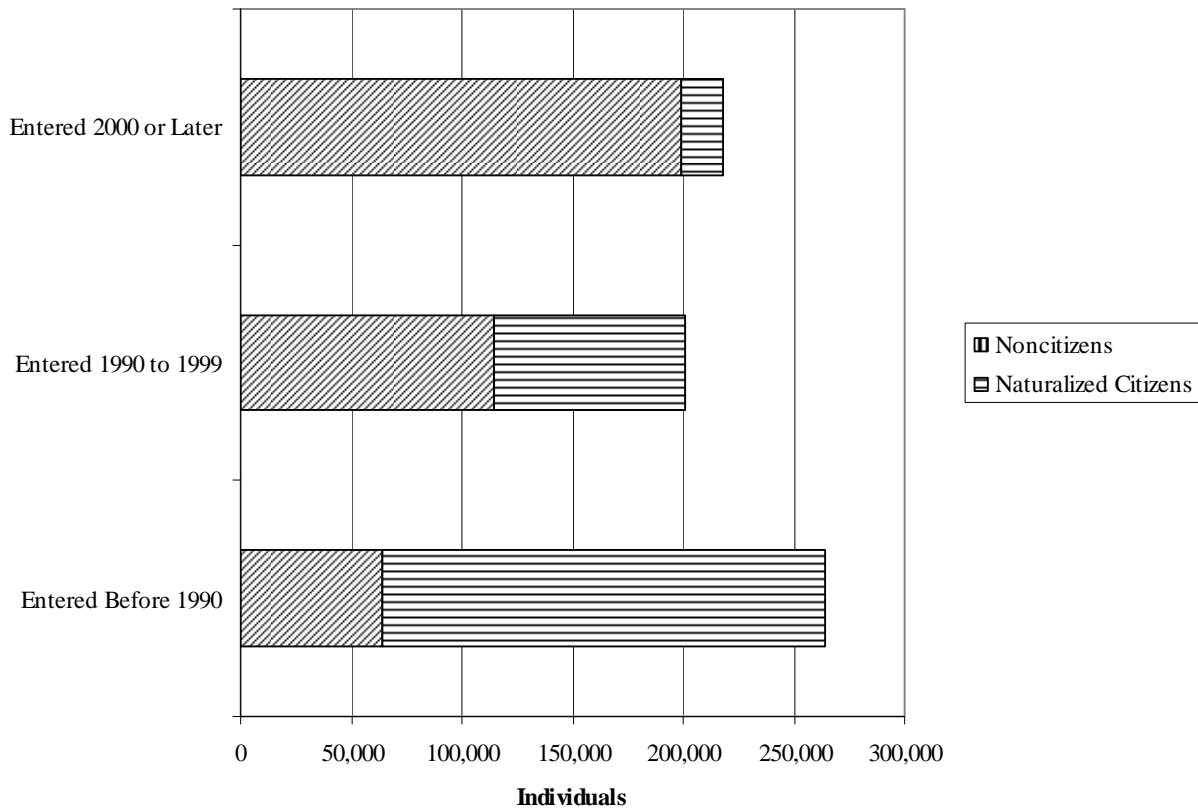
Note: The *American Community Survey* does not provide this information for the other counties in Maryland.
Source: 2006 *American Community Survey*, U.S. Census Bureau

Exhibit 2.12
Foreign Born Population in Maryland – Region of Birth
Percent of Total

Jurisdiction	Europe	Asia	Africa	Latin America	Northern America	Oceania
Anne Arundel	23.1%	41.4%	5.0%	25.1%	5.1%	0.2%
Baltimore City	17.7%	27.2%	20.2%	33.2%	1.4%	0.2%
Baltimore	21.4%	42.3%	12.7%	20.6%	2.6%	0.4%
Howard	14.8%	52.7%	9.0%	20.9%	2.1%	0.4%
Montgomery	11.2%	39.1%	14.1%	34.5%	1.0%	0.2%
Prince George's	3.5%	15.2%	27.4%	53.0%	0.7%	0.3%
Maryland	12.8%	33.7%	16.1%	35.4%	1.6%	0.4%
United States	13.3%	26.8%	3.7%	53.5%	2.3%	0.5%

Note: The *American Community Survey* does not provide this information for the other counties in Maryland.
Source: 2006 *American Community Survey*, U.S. Census Bureau

Exhibit 2.13
Foreign Born Population in Maryland by Year of Entry and
Citizenship Status in 2006



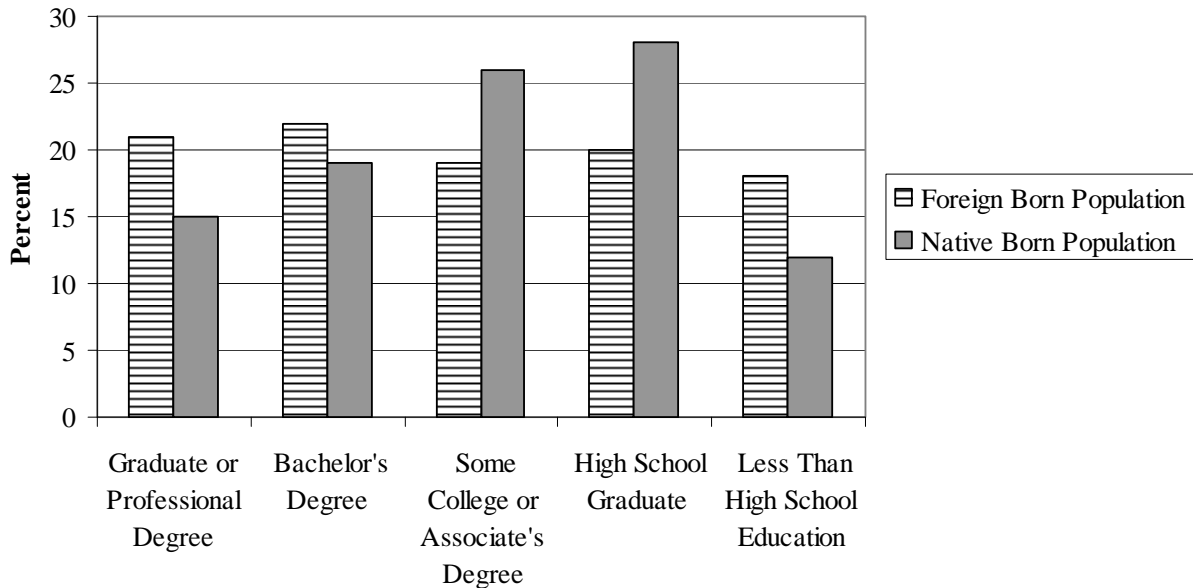
Source: U.S. Census Bureau

Educational Attainment

Maryland's foreign born population is relatively well educated compared to the native population, according to the *2006 American Community Survey*. Individuals with a graduate or professional degree account for 21.0 percent of the State's foreign born population, compared to 14.7 percent of the native population. While 21.6 percent of the foreign born have bachelor's degrees, 19.0 percent of the native population do. Of the remainder of the foreign born population, 19.4 percent have some college or an associate's degree, 19.6 percent are high school graduates, and 18.3 percent have less than a high school education. This compares with 26.2 percent of the native population who have some college or an associate's degree, 28.2 percent who are high school graduates, and 11.9 percent who have less than a high school

education. **Exhibit 2.14** compares the educational attainment of foreign born residents in Maryland and native born residents.

Exhibit 2.14
Educational Attainment of Foreign Born and Native Born Populations in Maryland in 2006

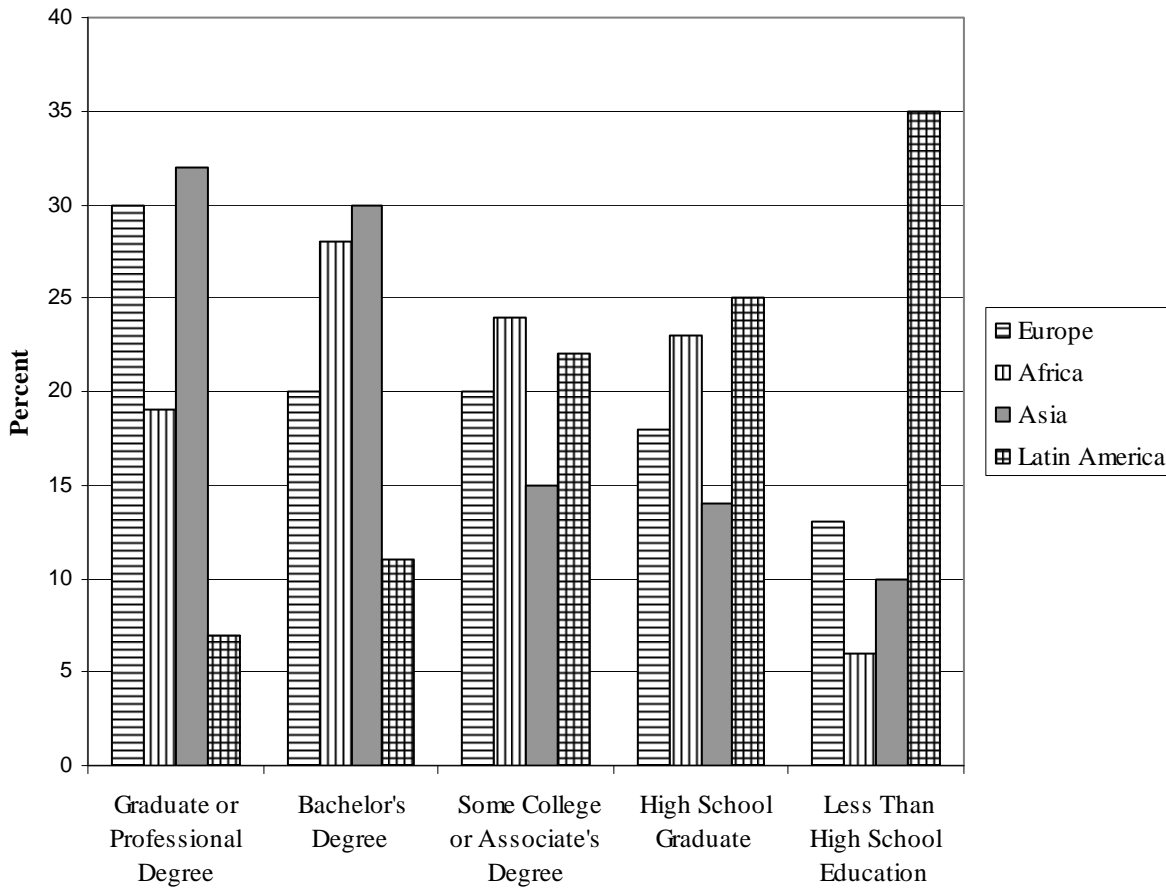


Source: U.S. Census Bureau

The educational attainment of the foreign born in Maryland varies greatly based on their world region of birth. The foreign born population from Asia has the highest educational attainment, with 31.7 percent having attained a graduate or professional degree and another 30.2 percent having attained a bachelor's degree. Within the Asian foreign born population, individuals from South Central Asia and Western Asia have the highest educational attainment, with around 41.5 percent holding graduate or professional degrees.

The foreign born population from Latin America has the lowest educational attainment, with 35.1 percent having attained less than a high school education and another 24.9 percent having only graduated from high school. Among the Latin American foreign born population, individuals from Mexico and Central America have the lowest levels of educational attainment, with 52.6 and 54.4 percent, respectively, having less than a high school education. The foreign born population from Europe has a relatively high level of education, while the foreign born population from Africa falls in the middle of the spectrum of educational attainment (**Exhibit 2.15**).

Exhibit 2.15
Educational Attainment of the Foreign Born Population in Maryland by
World Region of Birth in 2006



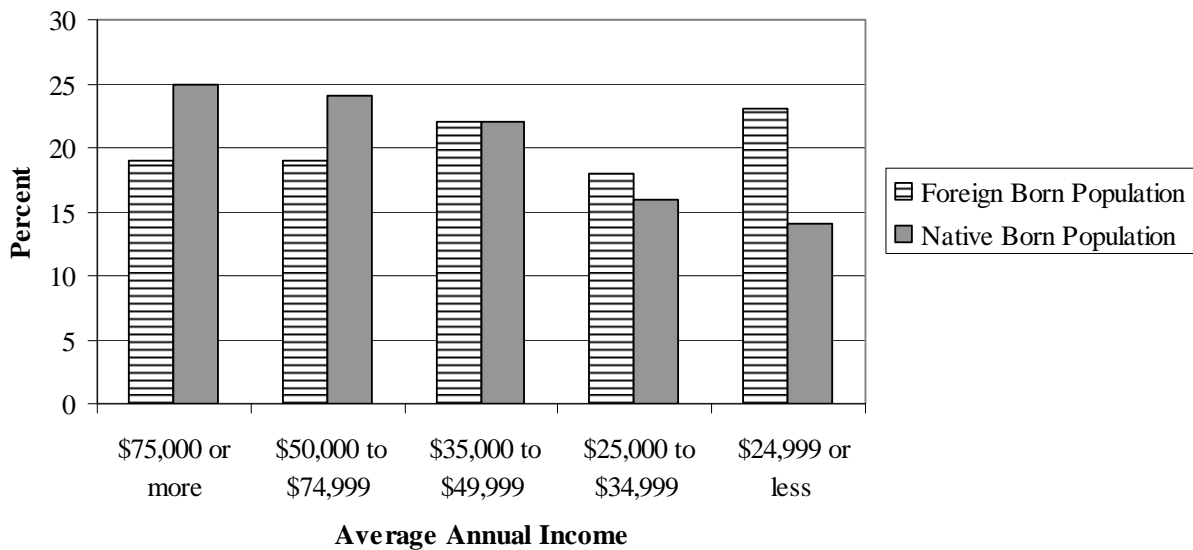
Source: U.S. Census Bureau

Income Levels

Immigrant families in Maryland generally earn somewhat less than native born families. The average annual earnings for foreign born households in 2006 were \$81,545, according to the *American Community Survey*. That compares with \$83,521 in average annual earnings for native born households. Of foreign born individuals who were full-time, year-round workers in 2006, 18.8 percent made \$75,000 or more; and 18.8 percent made between \$50,000 and \$74,999. This compares with 24.5 percent of native born, full-time, year-round workers who made \$75,000 or more in 2006, and 23.9 percent who made between \$50,000 and \$74,999. Of the foreign born workers, 22.0 percent made between \$35,000 and \$49,999, 17.9 percent made between \$25,000

and \$34,999, and 22.5 percent made \$24,999 or less. This compares with 14.0 percent of native workers who made \$24,999 or less. According to estimates prepared by the Center for Immigration Studies, which advocates reducing immigration, illegal immigrants earn significantly less than the native born. The average household income for illegal immigrants was \$58,061 in 2007 and \$83,964 for the native born. **Exhibit 2.16** compares income levels of foreign born residents in Maryland and natives.

Exhibit 2.16
Income Levels of Foreign Born and Native Born Populations
in Maryland in 2006

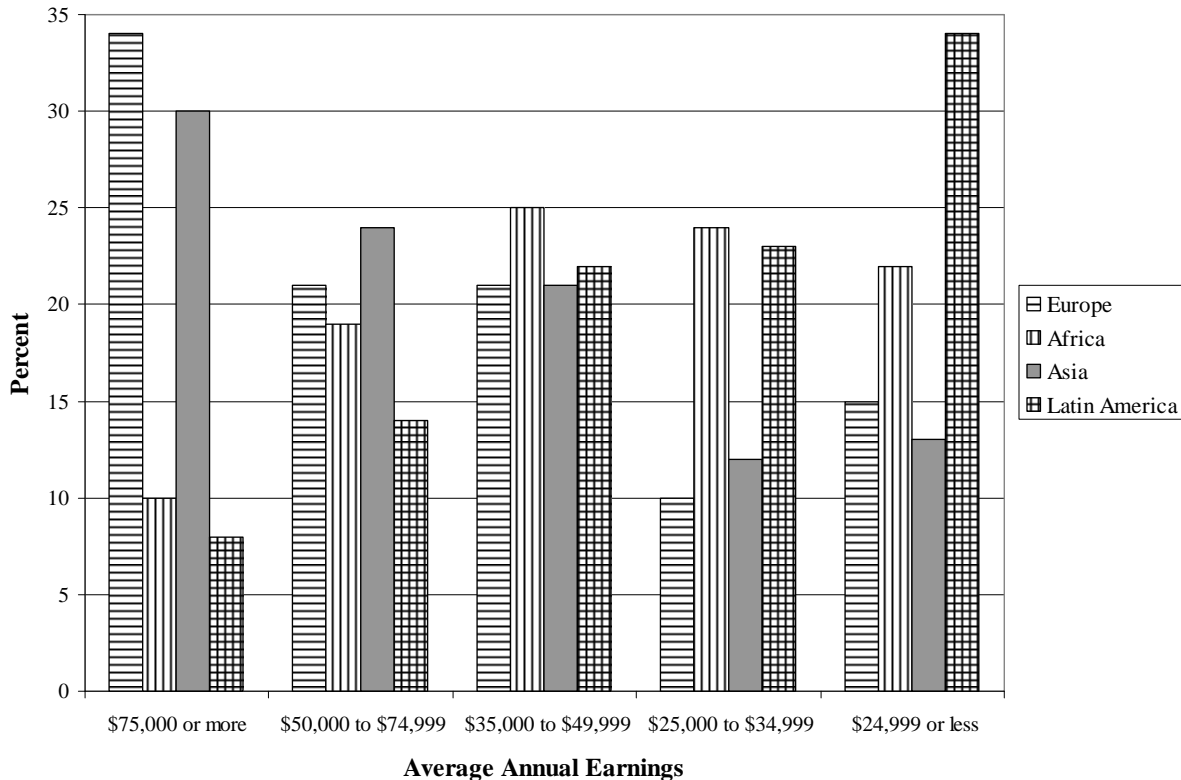


Source: U.S. Census Bureau

Economic Conditions Vary by Region of Birth

There are dramatic differences in the earnings and income of the foreign born depending on their world region of birth (**Exhibit 2.17**). The same immigrant groups with high levels of educational attainment also have relatively high earnings and income. Of the foreign born population from Europe and Asia, 34.0 percent and 29.9 percent, respectively, earn \$75,000 or more a year. The median household income of the foreign born from Asia is significantly higher than that of the native born, with the income of the Asian households at \$81,191 and of native born households at \$65,441. European households had a lower median income at \$61,503.

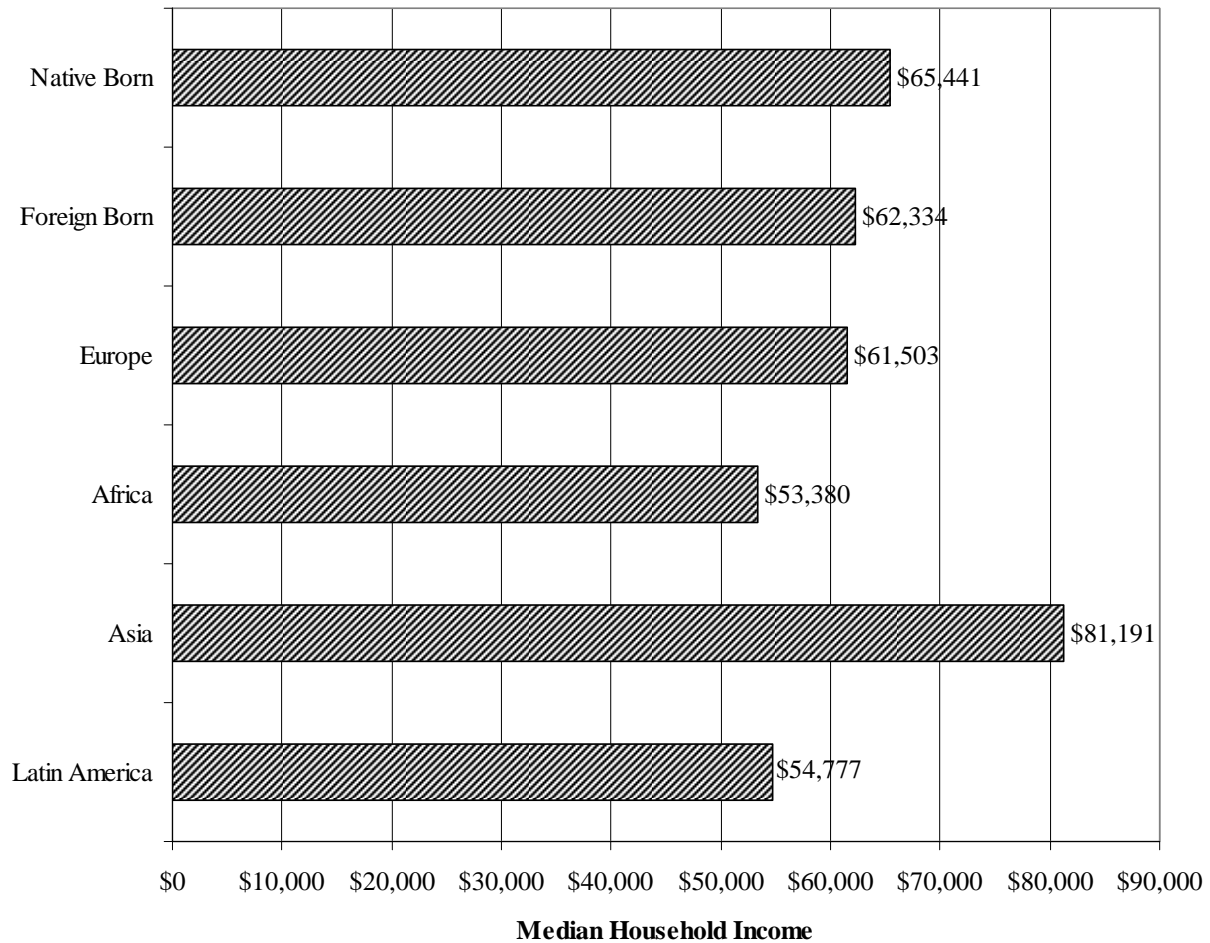
Exhibit 2.17
Earnings of the Foreign Born Population in Maryland by
World Region of Birth in 2006



Source: U.S. Census Bureau

The foreign born from Latin America and Africa, with lower levels of educational attainment, also have lower income and earnings and higher rates of poverty. Of the foreign born from Latin America, 33.8 percent earned \$24,999 or less in 2006, as did 22.0 percent of the foreign born from Africa. Only 8.0 percent of individuals from Latin America had earnings of \$75,000 or more while 10.2 percent of Africans did. The median household income of the foreign born from Latin America was \$54,777 and, of the foreign born from Africa, \$53,380. That was significantly lower than the median household income of the immigrant population as a whole, \$62,334, and of the native population, \$65,441. Of the foreign born from Latin America and Africa, the percentage of people living in poverty was 10 percent, slightly higher than the poverty rate for the foreign born population as a whole and the native population, at 8 percent. More significantly, the percentage of those living near the poverty level was 20.9 percent for immigrants from Latin America and 19.5 percent for immigrants from Africa, while those living near poverty accounted for 15.9 percent of the foreign born population as a whole and 11.6 percent of the native population. **Exhibit 2.18** shows median household income by nativity and world region of birth, and **Exhibit 2.19** shows poverty rates for the different groups.

Exhibit 2.18
Median Household Income by Nativity and World Region of Birth in 2006

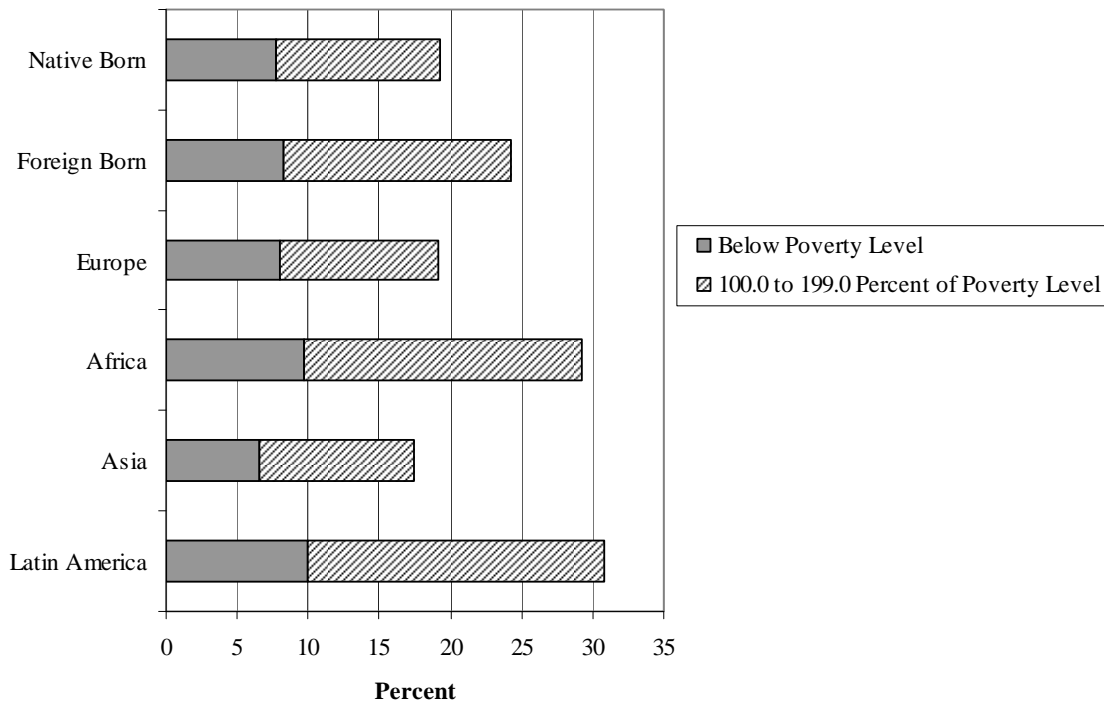


Source: U.S. Census Bureau

Africa

Foreign born individuals from Africa are concentrated in professional and service-related occupations. Education and health-related fields account for 33.8 percent of employment; professional, scientific, and management-related fields account for 15.7 percent of employment; and retail trade accounts for 13.9 percent. The median earnings for full-time, year-round workers were \$38,232 for men and \$36,467 for women. Africans also had a high labor participation rate at 81.9 percent. Approximately 5.5 percent of the foreign born from Africa were unemployed.

Exhibit 2.19
Poverty and Near Poverty Status by Nativity and World Region of Birth in Maryland in 2006



Source: U.S. Census Bureau

Asia

Foreign born Asians are concentrated in management and professional-related occupations. Professional, scientific, and management-related fields account for 19.7 percent of employment, and educational and health-related fields account for 20.2 percent. The median earnings for full-time, year-round workers were \$60,957 for men and \$45,353 for women. Men born in Western Asia, which includes Israel, Lebanon, and Turkey, had the highest median earnings at \$82,747. Women from South Eastern Asia, which includes the Philippines and Vietnam, had the lowest median earnings at \$36,266. The labor participation rate for Asians was 70.2 percent, and the unemployment rate was 4.5 percent.

Europe

Europeans are employed mostly in professional and sales/office-related occupations. Management, professional, and related occupations account for 56.3 percent of employment; sales and office occupations account for 20.3 percent of employment. Almost 50 percent of Europeans have at least a bachelor's degree, and only 12.5 percent have less than a high school diploma. Foreign born Europeans had a low labor participation rate of 59.9 percent; however, the unemployment rate was also low at 2.4 percent.

Latin America

Foreign born individuals from Latin America are concentrated in service and construction-related occupations, particularly immigrants from Mexico and Central America. Service-related occupations account for 29.0 percent of employment for Mexicans and 33.5 percent for Central Americans; whereas construction-related occupations account for 41.0 percent of employment for Mexicans and 32.7 percent for Central Americans. The median earnings for the foreign born from this region were \$31,998 for men and \$27,869 for women; however, the amounts were lower for immigrants from Mexico and Central America. For foreign born Mexicans, median earnings were \$26,506 for men and \$21,322 for women. For the foreign born from Central America, median earnings were \$30,135 for men and \$21,938 for women. While the labor participation rate was 79.2 percent for all foreign born from Latin America, the rate was 86.9 percent for Mexicans and 81.2 percent for people from Central America.

Part II. Business and Economic Impact

- Chapter 3. Labor Market and Wage Effects
- Chapter 4. Labor and Employment Law

Chapter 3. Labor Market and Wage Effects

Maryland's economy is heavily dependent on immigrant labor. Foreign born workers comprise approximately 15 percent of the State's civilian labor force, of which 46 percent are naturalized U.S. citizens and 54 percent are non-U.S. citizens. The strong work ethic of Maryland's immigrant community is demonstrated by high labor participation rates and low unemployment rates. Almost 75 percent of foreign born individuals age 16 and older are currently employed compared to less than 70 percent of native born individuals. In addition, unemployment rates for foreign born workers who are U.S. citizens are lower than for native born workers. Foreign born workers, particularly those who are non-U.S. citizens, are more likely to be employed in construction and service-related occupations that tend to have lower annual salaries. Consequently, the annual income of native born workers is typically higher than foreign born workers; however, foreign born workers who are naturalized citizens have a higher annual income than native born workers. **Exhibit 3.1** provides a snapshot of selected economic statistics for Maryland's native born and foreign born population in 2006.

Exhibit 3.1 Economic Characteristics of Maryland's Immigrant Community

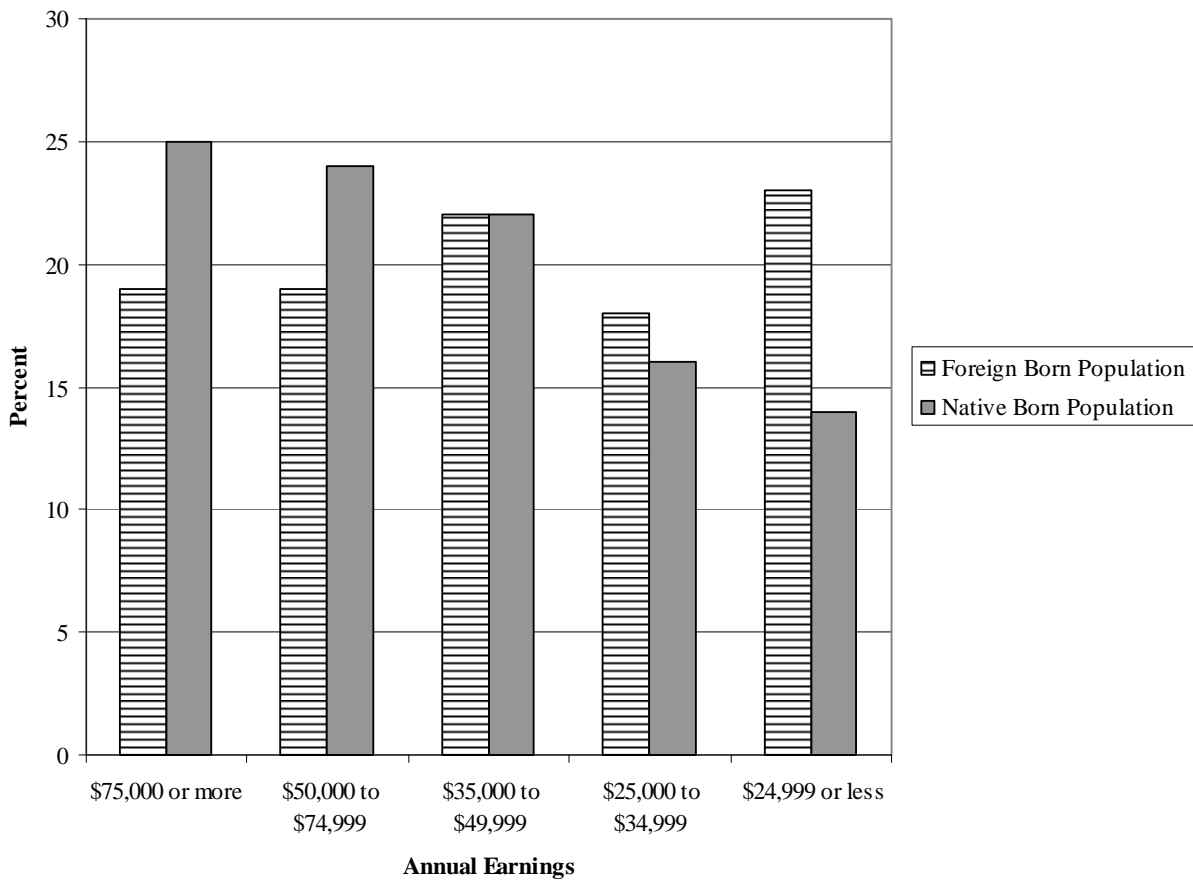
	<u>Native Born</u>	<u>Foreign Born U.S. Citizen</u>	<u>Foreign Born Non-U.S. Citizen</u>
Median Household Income	\$65,441	\$73,326	\$52,723
Below 100% of Poverty Level	7.7%	5.5%	10.7%
Workers per Household	1.29	1.52	1.73
In Civilian Labor Force	67.9%	73.0%	74.5%
In Professional Occupations	42.9%	50.7%	31.8%
In Sales/Office Occupations	26.3%	19.7%	15.8%
In Service Occupations	14.2%	16.5%	24.4%
In Construction Occupations	8.3%	5.8%	18.4%
Unemployment Rate	5.4%	3.3%	5.9%

Source: 2006 American Community Survey, U.S. Census Bureau

In 2006, foreign born households had average annual earnings of \$81,545, and native born households had average annual earnings of \$83,521 or 2.4 percent greater than foreign born households. However, the average annual earnings for naturalized citizens (\$94,989) were considerably higher than for native born households; whereas non-U.S. citizens had significantly lower average annual earnings (\$67,444).

Of foreign born individuals who were full-time, year-round workers in 2006, 18.8 percent earned \$75,000 or more, and 18.8 percent earned between \$50,000 and \$74,999. This compares with 24.5 percent of native born workers who earned \$75,000 or more in 2006 and 23.9 percent who earned between \$50,000 and \$74,999. In addition, 22.5 percent of the foreign born workers earned \$24,999 or less. This compares with 14.0 percent of native born workers who earned \$24,999 or less. **Exhibit 3.2** compares average annual earnings for native born and foreign born households. **Exhibit 3.3** shows average annual earnings for native born households and the two types of foreign born households.

Exhibit 3.2
Earnings of Foreign Born and Native Born Populations in Maryland in 2006



Source: U.S. Census Bureau

Exhibit 3.3
Average Annual Earnings in 2006
Percent of Households in Maryland

<u>Income Level</u>	<u>Native Born</u>	<u>Total</u>	<u>Foreign Born Population</u>	
			<u>U.S. Citizen</u>	<u>Non-U.S. Citizen</u>
\$1-\$24,999	14.0%	22.5%	13.1%	31.5%
\$25,000-\$49,999	37.6%	39.9%	38.3%	41.4%
\$50,000-\$74,999	23.9%	18.8%	22.8%	14.9%
\$75,000 or more	24.5%	18.8%	25.8%	12.0%

Source: 2006 American Community Survey, U.S. Census Bureau

Effect on Wages and Other Labor Market Conditions

Immigration can affect many aspects of the labor market for native workers, including wages, employment levels, participation in the labor force, and number of hours worked. Many economic studies examine wages, specifically, whether an increase in immigrants pushes down the wage levels for native workers.

Economists Disagree on Wage Effects

Economists do not agree on the effect of immigration on wages. There is agreement, however, that any effect would most likely be felt by native workers with the lowest levels of education, usually defined as a high school education or less. Harvard economist George Borjas contends that the wages of native high school dropouts are indeed reduced by inflows of low-skill workers. It does not matter whether immigrants have legal or undocumented status, are permanent or temporary; it is the presence of additional workers that creates the effect. Borjas' position reflects what classical economics would predict – an increase in supply results in lower prices, which in this case are the wages paid to workers.

Among other findings, Borjas found that between 1980 and 2000 immigration reduced the average annual earnings of native born men by about \$1,700, or about 4 percent. The effect was more pronounced among those without a high school education, accounting for a 7.4 percent wage reduction. Some economists assert that young, native minority men and foreign born

minority men already in the workforce experience the greatest negative wage effects from new immigrant inflows.

Other economists argue that native worker wages are not significantly affected by immigration. David Card, an economist at the University of California-Berkeley, cites evidence that the wages of native high school dropouts relative to native high school graduates remained fairly steady from 1980 to 2000. The increased supply of low-skill labor resulting from immigration has not lowered the wages of high school dropouts as might be expected. To explain this result, Card argues that industries change their methods of production to employ the increased supply of low-skill foreign workers. Specifically, businesses may decide not to adopt certain labor saving technologies and instead carefully calibrate their production to take advantage of low-skill, low-wage labor.

Card also explains that a study of the 175 largest U.S. cities in 2000 shows that there is no relationship between the relative supply of high school dropouts – considering native and immigrant workers together – and the relative wages for this group. In other words, an increase in supply does not necessarily lead to lower wages. However, Card states that an increase in the relative supply of high school dropouts results in slightly lower employment levels for this group. Several international studies also find that immigrant inflows have a much smaller effect on native wages than would be expected.

Effect of Competition in Labor Market

Many factors, including whether native workers relocated in response to competition, may make it difficult to detect a significant wage effect. In addition to Card's explanation that industries find ways to employ more low-skill labor, several factors could explain why many studies do not detect a significant statistical effect of immigration on native wages. Labor markets are open, and so native workers may move to a different area in response to increased competition from immigrants. Studies that look at metropolitan areas with high historic immigration levels may not be large enough in scope to capture this kind of movement. Borjas avoids this pitfall by looking at national data, but other economists argue in turn that the national level is too broad. Furthermore, some studies have attempted to follow any movement of native workers in response to immigration and have not found a definitive effect.

Native workers may leave the workforce altogether in response to increased competition from immigrants; or they may pursue education and job training to improve their employment prospects, moving out of job categories where proportionately more immigrants are found. Seen from the employers' perspective, immigration may not affect native workers because there may be a stronger need for seasonal workers than the local labor market can provide. In other cases, workers in the local labor market may not have the skills that employers seek. In these cases, native workers may not be available at the wages offered, and they may or may not be available at higher wages, as stated by Gerald Mayer of the Congressional Research Service (CRS). Yet if there is a shortage of native workers, then wages for jobs often held by immigrants should be rising and they are not, as stated by Ruth Ellen Wasem of CRS.

Even cultural reasons may play a role. Steven Camarota of the Center for Immigration Studies argues that immigrants depress the wages of native workers, and this may happen partly because of employer perceptions and preferences. Wasem reports that some economists believe employers prefer immigrant workers because they demand less in terms of wages and working conditions. In the end, many factors can influence whether and how immigration affects native workers' wages; it may be difficult to design the right empirical test to detect an indisputable effect.

Labor Force Participation and Employment Rates

Labor force participation and employment rates are other important aspects of the labor market. As with wages, it is difficult to identify definitive effects of immigration on these aspects. A March 2007 Urban Institute study illustrates that between 2000 and 2005, the labor force of native workers with less than a high school diploma dropped by 1.2 million. Opponents of immigration use this as evidence of native workers' displacement by immigrants. In another troubling finding, the unemployment rate grew for native workers with less than a high school diploma from 2000 to 2005.

The study authors point out several trends that help explain these outcomes. On the positive side, the educational attainment of native workers, particularly women, grew. However, larger shares of native low-skill workers – both men and women – were unemployed or not in the labor force in 2005 than in 2000. Slow growth in the U.S. economy may account for some of this effect, since native as well as immigrant workers had declining labor force participation during this time. The study authors state that immigration may have had some effect on the outcomes, since the least educated immigrants were more likely to participate in the labor force than their native born counterparts in 2000 and 2005, but they contend that the data are not definitive.

Immigration has implications for aspects of the labor market besides native low-skill workers, as articulated by Linda Levine of CRS. For instance, how does immigration affect skilled native workers? How does it affect those who own capital resources of production? How does it affect the prices that consumers pay? How might immigrants positively affect the national economy to the extent that they represent new consumers of U.S. goods and services, and this consumption may in turn increase economic output and the demand for labor beyond the immigrants' own employment? Investigation of these questions would add to consideration of the larger economic role immigrants have in the U.S. economy.

Growth of Low-skill Workers

Despite growing numbers of immigrants, the size of the low-skill, low-wage workforce is declining. Overall, the number of low-skill and low-wage workers declined from 2000 to 2005. Native workers account for the decrease. Immigrants, particularly undocumented immigrants, increased – but not enough to fully offset the decrease in native low-skill, low-wage workers.

The number of native workers without high school degrees fell by 1.2 million from 2000 to 2005. At the same time, the number of immigrants rose by about 900,000, with about 800,000 of those being undocumented immigrants, as reported in a March 2007 Urban Institute study. The trend is mirrored when looking at low-wage workers as a group – the number of low-wage native workers fell by about 1.8 million from 2000 to 2005. At the same time, the number of low-wage immigrants rose by 620,000, primarily due to undocumented immigrants.

Summary Remarks

In summary, it is not clear how much immigrant inflows affect the wages of native workers, particularly low-skill workers who would most likely experience an effect. Some adverse effect on native low-skill worker employment levels appears in the research. In any case, a number of factors may describe the dynamics of how the labor market responds to increased immigration. Despite growing numbers of immigrants, the size of the low-skill, low-wage labor force overall is declining.

Chapter 4. Labor and Employment Law

Federal Laws and Regulations

The Immigration Reform and Control Act of 1986 (IRCA) is the primary federal law governing employment of foreign born persons. Before IRCA, it was illegal to harbor someone who was not in the country legally; but due to the so-called Texas Proviso adopted in the 1950s, employment was not considered harboring. IRCA and related regulations establish procedures that employers must use to verify that a person is authorized to work, as well as the types of documents that must be presented to the employer to prove both identity and eligibility to work. Employers face civil or criminal sanctions for knowingly hiring someone who is not eligible to work or for failing to keep records. The law also prohibits employers with four or more employees from discriminating on the basis of citizenship status (*e.g.*, not hiring an applicant who is a legal resident and eligible to work because the individual is from another country).

Sanctions

IRCA makes it illegal to “hire, or to recruit, or refer for a fee. . . an alien, knowing the alien is an unauthorized alien.” An employer is subject to a civil fine of between \$250 and \$2,000 for each alien hired, referred, or recruited. The fine increases to \$2,000 to \$5,000 per alien for a second offense and \$5,000 to \$10,000 per alien for a third offense. The same penalty schedule applies if the employer is convicted of engaging in discriminatory practices. Any person or business that repeatedly engages in hiring or recruiting undocumented immigrants faces a criminal penalty of up to \$3,000 per violation or six months imprisonment or both. IRCA does provide employers with a “good faith” defense. If an employer has verified that an applicant can be lawfully employed upon examination of a document that “reasonably appears on its face to be genuine,” the employer is deemed to be in compliance.

Employment Verification

Implementation of federal laws against hiring an undocumented worker pivots on one key challenge – verifying a job applicant’s status at the time of hiring. In 2005, the U.S. Government Accountability Office (GAO) reported several weaknesses in the employment verification process, including vulnerability to fraud. Undocumented workers may use a variety of methods to avoid detection of their identity or residence status, including the use of a false Social Security number and other false identity documents. Maryland law makes it a criminal offense to own or display an altered or fictitious form of government identification, including federal IDs such as Social Security cards and State identification such as driver’s licenses (Chapter 288 of 2004).

Fraud can sometimes thwart work authorization programs that were designed to help employers comply. The U.S. Department of Homeland Security (DHS) administers an Electronic Employment Verification System known as EEVS or the Basic Pilot Program, which

is an automated system linked to both DHS' and the Social Security Agency's (SSA) databases that allows employers to quickly verify whether an employee is allowed to work in the United States. An employer who participates in the program is notified electronically whether an individual is authorized to work based on information provided by the employee (*e.g.*, name, Social Security number). If an employer receives a tentative nonconfirmation of work authorization, the employer must notify the employee, who can contest the finding within eight days. The employer may not take adverse action while the finding is being contested.

While GAO states that while the program enhances work authorization, if an undocumented employee presented valid documentation that belongs to another person who is authorized to work, Basic Pilot would likely confirm the employee as being authorized to work. Basic Pilot also potentially faces the problem of overuse. Only a fraction of employers (22,000 nationwide) participate in the program now, but if it became mandatory, as proposed in federal legislation and increasingly required by states, the system could overload, GAO warned. Basic Pilot requires a manual, secondary verification if the system cannot match the employee's information with the databases.

Employers who hire an undocumented worker and do not participate in the verification program may receive a "no-match" letter from SSA. Every year, SSA sends no-match letters to employers with 10 or more employees if there is a discrepancy between the number submitted by the employer as part of the employee's W-2 and the one on the agency's file. (Approximately 2,400 no-match letters were sent to employers in Maryland in 2006.) DHS issued a final rule that was to become effective September 14, 2007, but has been halted by an injunction, following a lawsuit filed in U.S. District Court in northern California by the AFL-CIO and business groups. The plaintiffs contend that the rule would foster unjustified termination of employees as discrepancies often occur for reasons unrelated to work authorization.

The rule would have altered procedures for employers to follow if they receive a no-match letter and established deadlines for resolving the discrepancy. Under the rule, an employer who receives a no-match letter would have to confirm (in 30 days) that the no-match was not caused by his or her clerical error; if the employee's status could not be authorized within 90 days, the employer must re-verify the employee within 3 days. The employer could not use any documents containing the questionable Social Security number when repeating the verification. Employers would be liable for sanctions if they failed to comply with the rule.

Immigration Reform in Congress

Since 2005, the U.S. Congress has debated comprehensive legislation that would fundamentally alter federal immigration employment law. Senate Bill 1348 of 2007, the comprehensive federal immigration reform legislation, would have allowed currently undocumented workers to remain working in the United States, subject to time limits. The key employment provisions of the bill include:

- Requiring employers, including governments, to participate in an expanded version of the Basic Pilot or EEVS. Employers must verify new hires or those with expired authorizations through EEVS within 18 months of date of enactment and all employees who have not already been verified within three years.
- Increasing fines on employers who hire undocumented immigrants (\$5,000 civil fine for first offense, up to \$75,000 for repeated offenses) and establishing stiff criminal penalties for visa and labor documentation fraud.
- Creating a guest-worker program that would allow workers to work in the country temporarily under a new “Y” visa. Workers must provide proof of employment and no tax liability, and employers must pay a fee. Employers of Y visa holders would be required to first recruit U.S. residents for the position.
- Increasing the cap on family-sponsored and H-1B visas.

Immigration Reforms in Various States

A few trends have emerged in state legislation aimed at curbing the employment of undocumented workers. One is to exclude undocumented workers from the definition of an employee who is entitled by law to certain employment benefits, such as unemployment insurance. In the last few years, some states have leaned toward sanctions against employers who are found to hire someone lacking legal documentation. For example, under Georgia’s law, enacted in 2006, a company cannot deduct employee compensation as a business expense if the employee is not authorized to work in the United States.

Also on the rise are proposals to require employers and/or state contractors to participate in the federal EEVS as a condition of obtaining a business license or winning a state contract. Pennsylvania, for example, prohibits the use of undocumented labor for projects that are financed with state loans or grants. A few states go farther and impose sanctions or ban further contract awards if a contractor is found to be violating the law. Highlighted below are the various approaches adopted in 2007 by Arizona, Illinois, and Oklahoma regarding employment verification. All of these laws have been challenged in court. The cases in Arizona and Illinois are still pending.

Arizona – New Law Prompts Lawsuits, Ballot Initiatives

The Legal Arizona Workers Act, signed into law in July 2007, requires every employer in the state to verify an employee’s eligibility to work in the United States using the Basic Pilot Program. It also directs the county or state attorney to accept and investigate complaints that a business is employing undocumented workers. After December 31, 2007, a judge may suspend,

for up to 10 days, any license issued to an employer who is determined to be knowingly employing an undocumented worker – the license(s) will remain suspended until the employer files a sworn affidavit with the county attorney stating that he or she has terminated the employment of all unauthorized workers. Upon a second violation, the employer's license(s) will be permanently revoked. The law also creates a legislative study committee to examine and report, by December 31, 2008, on the effect of these provisions, and whether they are being fairly applied and properly implemented.

Following enactment of the law, several industry groups, led by the Arizona Contractors Association, filed suit in U.S. District Court (*Arizona Contractors Association, et al. v. Janet Napolitano, et al.*), arguing that it is preempted by, and conflicts with, federal law. The complaint also contends that the procedure for suspending or revoking a business license violates due process. In addition, two groups have started two separate petition drives to put questions on the 2008 ballot that, if approved, would change the new law. The first petition, called Support Legal Arizona Workers, would allow judges to permanently revoke the license of a business for a single violation of hiring an undocumented worker. The second initiative, named Stop Illegal Hiring, is backed by business groups and aimed at easing some of the new law's provisions. It would prohibit suspension or revocation of incorporation documents and sales tax licenses, give more discretion to prosecutors on whether to investigate complaints, and require that a complaint against an employer be written and signed.

Oklahoma Law Survives First Challenge

Oklahoma passed a comprehensive law known as the Oklahoma Taxpayer and Citizen Protection Act of 2007 that affects employment in several ways: (1) it requires all public employers to participate in the Basic Pilot Program; (2) it prohibits awarding a state or local contract for physical performance of services after July 1, 2008, to a contractor that is not participating in the Basic Pilot Program; (3) if a contractor fails to provide documentation that verifies work authorization, the contractor's income is subject to the top marginal state income tax rate; and (4) it enables a discharged employee to sue an employer who retains an undocumented worker.

The law, which has prompted substantial controversy, also has several nonemployment provisions, such as barring public benefits to nonlegal residents and making it a felony to transport an undocumented immigrant. In December 2007, an Oklahoma District Court judge dismissed a lawsuit filed by a religious organization in October of that year (*National Coalition of Latino Clergy, et al. v. Henry, et al.*) because the plaintiffs lacked standing and the law had not taken effect, but the court did not rule on the law's merits, raising the possibility of a new challenge.

Illinois Law Challenged by Federal Government

Illinois adopted a dramatically different approach by passing a law that effectively prohibits all employers in the state from participating in the Basic Pilot Program. The Privacy in the Workplace Act requires that the program be able to confirm an employee's status for 99 percent of the tentative nonconfirmation notices issued to employees within three days. The standard is aimed at speeding up the verification process to address a longstanding complaint about the program. Under the law, employers must also post notices of their participation in the program and receive training on its usage. A separate law, also passed in 2007, makes it a civil rights violation for an employer to take any adverse action against an employee for whom the Basic Pilot has issued a "tentative nonconfirmation" of employment eligibility.

Currently, federal law requires the program to issue confirmation or tentative confirmation within three working days of the initial inquiry by the employer. If the tentative nonconfirmation is challenged, the law provides for a secondary verification process and a final confirmation or nonconfirmation within 10 working days.

DHS filed a complaint in U.S. District Court (*United States of America v. State of Illinois*) requesting a permanent injunction against the law, which was to take effect January 1, 2008. DHS argues that Illinois lacks the constitutional authority to impose state standards on a federal program. In its complaint, DHS notes that the enabling legislation intended the program for all states, but particularly for the five states with the highest populations of undocumented residents which includes Illinois, and therefore, the law would conflict with congressional intent. Approximately 750 Illinois employers participate or have agreed to participate in the program.

Employment Benefits and Protections

While federal law clearly outlaws the employment of an undocumented individual, it does not provide clear guidance on whether those individuals who work anyway are entitled to labor benefits or protections. In some areas, such as workers' compensation, the courts have consistently granted coverage to an undocumented worker, though the scope of coverage varies somewhat by state. However, courts have differed sharply in determining the rights of an undocumented laborer to seek redress for employer violations of labor laws such as failing to pay prevailing wage or wrongful termination for filing a harassment complaint. Below is a description of those benefits and relevant state and federal law or court rulings regarding the provision of employment benefits.

Unemployment Insurance (UI)

An individual who is a full-time employee and not considered an independent contractor may file a claim for unemployment compensation if discharged or laid off by the employer (unless the discharge was for gross or aggravated misconduct). Claimants are entitled to weekly

compensation of up to \$380 for up to 26 weeks. Federal and state taxes paid by the employer on the employee's earnings finance the UI system. Employers pay different tax rates depending on several factors, including their experience, *i.e.*, the frequency of layoffs or discharges that result in a claim: the more claims charged to an employer's account, the higher the tax rate paid by the employer.

Maryland law expressly disallows unemployment benefits for workers who cannot provide proof of legal residence. In addition, to be eligible for UI, a claimant must prove he or she is available for work, which would not apply to an undocumented worker. Employers who hire undocumented workers either pay cash "under the table" to the worker to avoid the payment of UI taxes or they comply and pay UI taxes on that worker's earnings. As the undocumented employee cannot file a claim if terminated or laid off, no benefits are charged to the employer's account; therefore, the employer's tax rate does not increase unless the employer terminates authorized workers.

An increasing number of other states are proposing or enacting laws to exclude undocumented persons from the definition of an employee who is entitled to UI. In 2007, Colorado, Kansas, Maine, Minnesota, Montana, New Mexico, and Utah enacted laws that restricted eligibility for unemployment benefits.

Workers' Compensation

Under Maryland law, an employee who files a claim for workers' compensation is entitled to medical payments for work-related injuries, if approved by the Workers' Compensation Commission (WCC). He or she may also receive indemnity (disability payments) if the recovery results in lost time and income, as well as vocational rehabilitation if the injury is serious enough to prevent returning to the same position or industry. If a worker is not covered for workers' compensation, the worker has the right to sue the employer.

Traditionally, undocumented workers in Maryland who are injured on the job have been eligible for medical payments and lost income, though the State statute is silent on the subject. Now, they are specifically allowed those benefits following a court ruling. In 2005, both the circuit court of Montgomery County and the Court of Appeals ruled that a worker does not have to be legally employed to be eligible for workers' compensation if the injury otherwise meets the test for compensation. The courts agreed with WCC that State law broadly defines a covered employee to include undocumented residents. The appeals decision (*Design Kitchen & Baths v. Lagos*) prompted legislation that would have either barred benefits for undocumented workers (HB 37 of 2006) or restricted eligibility for vocational rehabilitation benefits (SB 712 of 2007). Neither bill passed.

While the *Design Kitchen & Bath* case largely settled the issue of coverage for medical bills and lost income, the debate over restricting vocational rehabilitation benefits continues, both in Maryland and elsewhere. Vocational rehabilitation is provided to an employee who is too injured to return to the original position and, under State law, includes vocational evaluation, job

counseling, job training, or job development. Benefits are provided until the worker can obtain “suitable gainful employment.” Maryland law does not specifically bar undocumented workers from receiving vocational benefits, but statistics are not available as to whether any are granted. However, as some of these activities could be construed as referring or aiding employment of an undocumented person and therefore contrary to federal law, the workers are generally denied vocational rehabilitation, according to WCC. No State court case or ruling has emerged to clarify this issue.

Courts in other states have handed down mixed rulings. A North Carolina court declared in *Gayton v. Gage Carolina Metals, Inc.* (2002) that an employer must provide vocational benefits until demonstrating that a worker would be employed in a suitable position “but for” the individual’s work authorization. Another court in Nevada supported benefits only if used to gear a worker toward employment outside the United States. However, an appeals court in California held that an award of rehabilitation benefits to retrain a worker for employment outside the United States violated the Equal Protection Clause because it provides an undocumented worker with more extensive and costly benefits than those offered to a legal resident (*Foodmaker, Inc. v. Workers’ Comp. Appeals Board*, 1998).

Employment Protections

Employees in Maryland are covered by a range of federal and State laws that provide certain protections in areas such as overtime or equal pay, workplace safety, union organizing, discrimination, and family and medical leave. The laws generally have broad definitions of an employee and do not include or exclude workers who are not legal residents, which has created a patchwork of court rulings across the United States. (Migrant and seasonal agricultural workers are accorded workplace safety and civil rights protections under a federal law described in the next section.) In the absence of specific exclusion or language requiring that a person be legally employed, Assistant Attorney General Katherine Rowe believes that Maryland statutes for labor protections, as well as their intended remedies, are intended to apply to undocumented workers. “However,” she added, “that application may be preempted in some instances under the reasoning of *Hoffman Plastic Compounds*.”

The landmark U.S. Supreme Court case, *Hoffman Plastic Compounds v. NLRB*, is considered by some to have started a trend in state courts to deny damages (*e.g.*, compensation for lost future earnings) that would otherwise be granted in tort and workers’ compensation cases. In *Hoffman*, the National Labor Relations Board (NLRB) ordered an employer to provide back pay to Jose Castro, a worker who had been fired for assisting with a union organizing campaign. However, the Court overruled NLRB, stating that Castro was not entitled to back pay because the pay had been earned in violation of federal law and that NLRB’s remedy conflicted with a federal policy outside NLRB’s jurisdiction.

In cases that followed *Hoffman*, federal and state courts have limited pay remedies for undocumented workers. For example, a security officer who was fired after filing a sexual harassment claim was denied back pay (*Escobar v. Spartan Security Services, Inc.*) that would

otherwise be available under the Civil Rights Act, though a federal court did not rule out other possible remedies. In 2003, a Michigan court limited workers' compensation benefits to the date that the worker's undocumented status was discovered (*Sanchez v. Eagle Alloy, Inc.*). Yet, some undocumented workers seeking redress for violations of labor laws have prevailed when seeking pay for work that was actually performed, rather than back pay for work that would have been performed if they had not been fired (*Pineda v. Kel-Tech Construction*, 2007).

Seasonal Workers

In fiscal 2006, the U.S. State Department issued over 3.0 million nonimmigrant visas that authorize temporary admission into the country. Some of these visas are employment related and issued for professionals with certain specialties or exceptional ability, trainees, religious workers such as ministers, and workers in occupations experiencing labor shortages. Of those 3.0 million visas, 1.7 million were provided for temporary workers including 27,000 visas issued for workers in Maryland. (The remaining visas are mostly issued to relatives, diplomats, students, and refugees.)

Over half of the employment visas issued nationally fall under the labor shortage category and apply to seasonal agricultural (H-2A) and seasonal nonagricultural (H-2B) workers. An employer seeking seasonal workers must certify to the U.S. Department of Labor that there is an insufficient workforce available or that employment of an immigrant worker will not adversely affect wages.

Federal and state laws regulate the contracting and employment of seasonal workers to require sanitary housing conditions and other occupational safeguards. The Migrant and Seasonal Agricultural Worker Protection Act protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and record keeping. The Act requires farm labor contractors to register with the U.S. Department of Labor before recruiting, hiring, or transporting any migrant workers; contractors must be licensed by the State Commissioner of Labor and Industry as well. Workers must be provided a written disclosure of the terms and conditions of employment, including pay, in their native language; they are entitled to file a complaint regarding violations of this disclosure. Employers face a civil penalty of up to \$1,000 for each violation of the disclosure, loss of registration, and back pay assessments; repeated violations can incur criminal sanctions.

In Maryland, seasonal H-2B workers are viewed by some as the linchpin to maintaining certain industries that have had difficulty recruiting U.S. residents to fill jobs such as crab picking, harvesting, landscaping, or grooming horses. Others disagree, contending that it allows employers to continue offering lower wage jobs. Controversy over the H-2B visa has continued in the U.S. Congress over the last few years as the annual national cap (66,000) on the number of visas allowed is often met before all employers have been able to obtain workers. At publication time, a House-Senate panel in Congress was considering a proposal from Maryland Senator Barbara Mikulski to extend the H-2B visa program for another year. Generally, a worker who

has previously been hired under the H-2B visa in the last three fiscal years is not counted toward the cap and can be rehired. However, that provision expired in September.

Part III. Government Services

- Chapter 5. State and Local Spending
- Chapter 6. Education Programs
- Chapter 7. Health and Social Services
- Chapter 8. Law Enforcement Services
- Chapter 9. Courts and Criminal Justice

Chapter 5. State and Local Spending

Considerable research has been conducted over the past two decades relating to the fiscal impact that immigration has on various units of government. In December 2007, the Congressional Budget Office (CBO) released a report titled *The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments*. This analysis involved the review of 29 reports published over the last 15 years relating to the impact of undocumented immigration on state and local governments. In its review, CBO concludes that, in aggregate and over the long term, immigrants (both legal and undocumented) pay more in taxes (federal, state, and local) than they use in government services. However, the impact of undocumented immigrants on the federal government differs from the effect on state and local governments.

While most undocumented immigrants are ineligible for many federal programs (*i.e.*, Social Security, food stamps, Medicaid (other than emergency services), and Temporary Assistance for Needy Families), state and local governments are limited in their ability to deny services to immigrants, including those who are undocumented. State and local governments must provide certain services (*i.e.*, public education, health care, and law enforcement) to individuals regardless of their immigration status. Consequently, while the federal government receives a net benefit from undocumented immigrants, state and local governments realize a net loss with undocumented immigrants paying less in state and local taxes than the cost to provide services to that population. This is due partly to the fact that undocumented immigrants typically earn less than native born residents and thus pay a smaller portion of their income in taxes. **Exhibit 5.1** lists the major findings from the CBO report.

Exhibit 5.1

Summary of Findings in CBO Report on Undocumented Immigrants

- State and local governments incur costs for providing services to undocumented immigrants and have limited options for avoiding or minimizing those costs.
- The amount that state and local governments spend on services for undocumented immigrants represents a small percentage of the total amount spent by those governments to provide such services to residents in their jurisdictions.
- The tax revenues that undocumented immigrants generate for state and local governments do not offset the total cost of services provided to those immigrants.
- Federal aid programs offer resources to state and local governments that provide services to undocumented immigrants, but those funds do not fully cover the costs incurred by those governments.

Source: Congressional Budget Office

State and Local Spending

The costs associated with providing services to undocumented immigrants ranged from a few million dollars in states with small undocumented populations to tens of billions of dollars in California, which has the largest population of undocumented immigrants. Costs were concentrated in three areas – education, health care, and law enforcement. In most states, spending on undocumented immigrants accounted for less than 5 percent of total state and local spending for those services. Spending for undocumented immigrants in certain jurisdictions in California was higher but still represented less than 10 percent of total spending for those services. Several factors affect the cost to provide government services to undocumented immigrants: (1) undocumented immigrants are less likely to have health insurance; (2) children from immigrant families may require additional educational services due to their lack of English proficiency; and (3) undocumented immigrants convicted of crimes are not deported immediately by the federal government.

Health Care

Since undocumented immigrants are less likely to have health insurance, they rely more heavily on emergency rooms and public clinics for health care. Hospitals that receive federal assistance are required to provide a certain level of service to residents, regardless of their ability to pay or their immigration status. CBO indicates that the cost of uncompensated care in many states is growing because more undocumented immigrants are using emergency room services for their health care needs.

Education

It is estimated that approximately 5 million children from families with undocumented immigration status attend public schools in the United States. This includes 2 million children who are themselves undocumented immigrants and 3 million children who are U.S. citizens born to undocumented immigrants. These children account for about 10 percent of the nation's school-age population. In some states, the number of these children is growing very rapidly, thus increasing budgetary pressures.

State and local governments are restricted in their ability to constrain costs related to providing educational services to undocumented immigrants. Due to a 1982 U.S. Supreme Court ruling, children cannot be denied a public education due to their immigration status. In addition, the federal No Child Left Behind Act requires all states to set academic performance standards, measure students' progress toward meeting the standards, and have 100 percent of students at proficiency by the 2013-2014 school year. Students must be assessed annually in grades three through eight and again in high school, and performance must be disaggregated into eight subgroups of students, including limited English proficiency. Failure by local school systems to adequately prepare immigrant children and other children who may be limited English proficient for the annual assessment tests could result in federal and state sanctions.

Children from immigrant families may require additional educational services due to their lack of English proficiency, which is more costly to provide than regular academic programs.

Law Enforcement

The federal government does not immediately deport undocumented immigrants who commit crimes in this country. Instead, they are processed through the state and local criminal justice system. State and local governments are responsible for the costs to investigate, prosecute, and incarcerate undocumented immigrants. According to CBO, the federal government may take custody of criminal immigrants once they have completed their sentence. Fortunately, according to researchers from Rutgers University, immigrants are generally less likely than native born citizens to be incarcerated. However, CBO indicates that the number of undocumented immigrants in some state and local criminal justice systems adds significantly to law enforcement costs, particular in the border states of California, Arizona, New Mexico, and Texas.

Tax Compliance

Even though undocumented immigrants pay taxes and other fees to state and local governments, the revenues only offset a portion of the cost to provide services relating to education, health care, and law enforcement. This is attributable to two primary factors: (1) undocumented immigrants typically earn less than do native born citizens and other immigrant groups and thereby pay a smaller portion of their income in taxes; and (2) many undocumented immigrants fail to pay income and related taxes.

The Pew Hispanic Center estimates that undocumented families typically earn about 40 percent less than the families of both native born residents and legal immigrants. In 2004, the average annual income for undocumented immigrants was \$27,400 compared with \$47,800 for legal immigrant families and \$47,700 for native born families. The CBO study also indicates that between 50 and 75 percent of undocumented immigrants pay federal, state, and local taxes. This estimate is based on the following prior research:

- The Social Security Administration assumes that about one-half of undocumented immigrants pay Social Security taxes. This is based on a report issued in December 2005 titled *The Impact of Immigration on Social Security and the National Economy*.
- The Institute for Taxation and Economic Policy in developing a model to determine state and local taxes paid by undocumented immigrants assumes a 50 percent compliance rate for income and payroll taxes.

- Researchers from the Urban Institute, the Migration Policy Institute, the Pew Hispanic Center, and the Center for Immigration Studies have assumed a 55 percent compliance rate for income, Social Security, and Medicaid taxes.
- The Center for Comparative Immigration Studies at the University of California at San Diego conducted a survey of undocumented immigrants and concluded that, in 2006, 75 percent had taxes withheld from their pay checks, filed tax returns, or both.

Chapter 6. Education Programs

Education-related services comprise the largest portion of local budgets in most counties in Maryland, accounting for over 50 percent of total spending. In fiscal 2007, county governments provided over \$4.9 billion to local school systems, and the State provided an additional \$4.5 billion. Together with federal funding, local school systems in Maryland received approximately \$10 billion in fiscal 2007 to provide instructional and other supporting services to Maryland public school children. This funding averages over \$12,000 per student. While a portion of these costs is related to children of undocumented immigrants, the State is obligated by federal law to provide a free public education to all children regardless of their immigration status.

Access to Public Education for Undocumented Immigrants

In *Plyler v. Doe*, the U.S. Supreme Court held in a five-to-four decision that states and local school systems could not deny access to free public primary and secondary education to undocumented immigrant children residing within their borders. The decision gave undocumented immigrant children residing within a school district the same right to a public education as children residing in the district who are U.S. citizens or legal immigrants. Many states have interpreted *Plyler v. Doe* as prohibiting school systems from inquiring into the immigration status of parents or students or requiring proof of lawful immigration from parents or students. More detailed information on equal access to education programs is provided in **Appendix 6**.

The Maryland State Department of Education (MSDE) advises that schools are not supposed to inquire about the immigration status of a student, nor are they supposed to request a student or student's family to produce documentation of immigration status at the time of registration. However, schools do ask if a student has an F-1 visa. Students on an F-1 visa are permitted to attend a public secondary school for up to 12 months and are required to reimburse the local school system for the cost of their education. F-1 visas are issued to students who are enrolled in an academic or English language program. The requirements for public school enrollment vary by county; however, all local school systems in Maryland require proof of county residency (deed, lease, utility bill, etc.), documented evidence of birth (birth certificate, baptismal/church certificate, etc.), and immunization records.

Programs in Maryland Schools

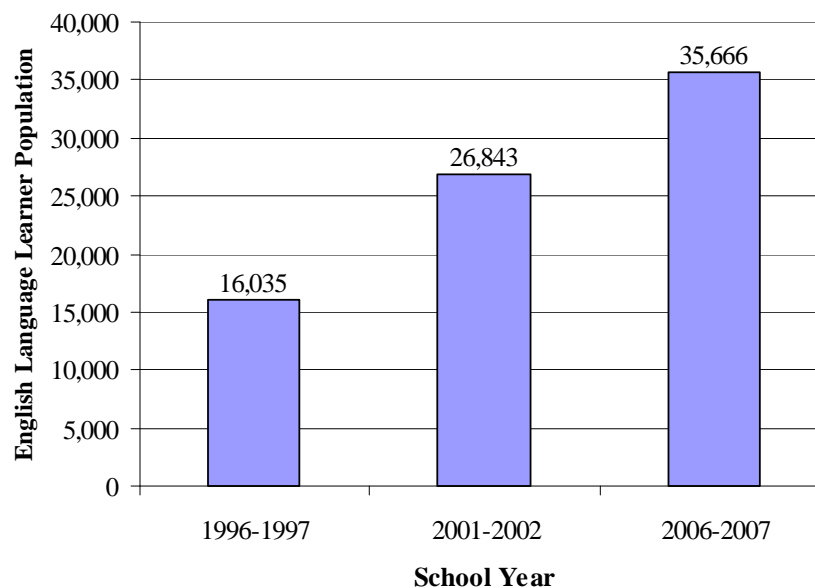
MSDE advises that there are no programs in Maryland public schools offered specifically for immigrant children. However, Maryland schools do offer programs for English Language Learners (ELLs). ELLs are students who have been identified as having limited English proficiency (LEP). Though Maryland schools do not collect data on the immigration status of students, MSDE advises that a significant portion, if not most, of the ELLs in Maryland public

schools were born in the United States. This is particularly true with elementary school students. Many of these students were born in the United States but come from families where another language is spoken in the home. MSDE advises that many parents of ELLs emphasize the home language with the idea that the child will pick up English once the child enters school. Support for programs to assist ELLs comes from a variety of sources.

Identification of English Language Learners

Prior to enrollment, local school systems assess the English language proficiency of students who meet certain criteria. Based on the student's results on the diagnostic test, a student may or may not be referred to English for Speakers of Other Languages (ESOL) services. If a student is eligible for ESOL services, the parent/guardian receives a notification letter describing the types of ESOL services available to the student and a permission slip for the student to receive the recommended services. Though children with a variety of immigration backgrounds participate in K-12 public education in the United States, not all children enter school with the same needs. In an effort to provide all students with a complete education, public schools have implemented programs to address the unique needs of specific populations. **Exhibit 6.1** charts the growth in Maryland's ELL population over the last 10 years.

Exhibit 6.1
English Language Learner Population in Maryland Public Schools
1997 to 2007



Source: Maryland State Department of Education

Most students identified as LEP attend public schools in Montgomery and Prince George's counties. Montgomery County Public Schools account for 40.2 percent of the students identified as LEP, and Prince George's County Public Schools account for 29.1 percent. In addition, LEP students account for a higher share of the student enrollment in the two school systems; LEP students are 10.6 percent of the total enrollment in Montgomery County and 8.3 percent in Prince George's County. In seven local school systems, LEP students account for less than 1 percent of total enrollment. **Exhibit 6.2** shows the number of students attending public schools in Maryland who are LEP.

Many local school systems in Maryland are experiencing a significant increase in the number of LEP students. Over a six-year period beginning in 2000, the number of LEP students has grown by more than 49 percent statewide, with five local school systems experiencing growth rates that exceed 100 percent. This growth can have a profound effect on local school communities – resulting in the need for additional resources, such as certified ESOL teachers, bilingual instructional aides, and bilingual office staff.

One local school community that has seen a rapid increase in the number of LEP students is Annapolis in Anne Arundel County. Over the last 10 years, there has been a major demographic shift for schools in the Annapolis attendance area (**Exhibit 6.3**). For example, in 1996 only 1.8 percent of students attending public schools in the Annapolis area were LEP; however, by 2007, nearly 10 percent of students were LEP. At three elementary schools (Germantown, Mills-Parole, and Tyler Heights), almost 20 percent of the students are LEP.

Federal Funding for Limited English Proficiency Programs

Title III of the No Child Left Behind (NCLB) Act of 2001 provides federal financial support to states and local school systems to help ensure that children who are determined to be LEP, including immigrant children and youth, attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging state academic content and student academic achievement standards as all children in the state are expected to meet. Title III is designed to meet the needs of all children and youth who are ELLs, including those who were born in the United States and those who immigrated with their parents. Title III does not discriminate between legal and illegal residents. Title III defines immigrant students as individuals who (1) are age 3 through 21; (2) were not born in any state; and (3) have not been attending one or more schools in any one or more states for more than three full academic years.

Title III funds are provided through a formula grant and are not competitive. Federal aid funds are allocated on the basis of the number of ELLs reported in a local school system. Local school systems are required to make a formal application for the funds available in this formula grant according to required and allowable activities delineated in Title III. This application is conducted through the Master Plan process. The federal government allocates funds to the state education agency, which then distributes the funds to local school systems. In fiscal 2007, local school systems in Maryland received \$7.1 million.

Exhibit 6.2
Student Enrollment – Limited English Proficient Students

Number of LEP Students						Ranking by Number of LEP Students			Ranking by Percent of Enrollment		
County	2000	2005	2006	% Change 2005-2006	% Change 2000-2006	County	2006	County	2006	County	2006
Allegany	12	7	14	100.0%	16.7%	1.	Montgomery	14,342	1.	Montgomery	10.6%
Anne Arundel	896	1,330	1,485	11.7%	65.7%	2.	Prince George's	10,374	2.	Prince George's	8.3%
Baltimore City	877	1,358	1,321	-2.7%	50.6%	3.	Baltimore	2,962	3.	Talbot	3.9%
Baltimore	1,848	2,514	2,962	17.8%	60.3%	4.	Howard	1,595	4.	Howard	3.3%
Calvert	31	121	135	11.6%	335.5%	5.	Anne Arundel	1,485	5.	Baltimore	2.9%
Caroline	109	107	118	10.3%	8.3%	6.	Baltimore City	1,321	6.	Kent	2.8%
Carroll	97	128	158	23.4%	62.9%	7.	Frederick	1,108	7.	Frederick	2.8%
Cecil	96	110	102	-7.3%	6.3%	8.	Harford	395	8.	Somerset	2.7%
Charles	97	133	161	21.1%	66.0%	9.	Washington	357	9.	Worcester	2.7%
Dorchester	54	80	81	1.3%	50.0%	10.	Wicomico	274	10.	Caroline	2.2%
Frederick	496	893	1,108	24.1%	123.4%	11.	Worcester	175	11.	Anne Arundel	2.1%
Garrett	0	0	0	n/a	n/a	12.	Talbot	165	12.	Wicomico	1.9%
Harford	277	376	395	5.1%	42.6%	13.	Charles	161	13.	Dorchester	1.8%
Howard	1,408	1,499	1,595	6.4%	13.3%	14.	Carroll	158	14.	Washington	1.7%
Kent	33	75	63	-16.0%	90.9%	15.	Calvert	135	15.	Baltimore City	1.6%
Montgomery	10,290	13,228	14,342	8.4%	39.4%	16.	Caroline	118	16.	Queen Anne's	1.3%
Prince George's	6,542	8,303	10,374	24.9%	58.6%	17.	St. Mary's	106	17.	Harford	1.0%
Queen Anne's	26	91	99	8.8%	280.8%	18.	Cecil	102	18.	Calvert	0.8%
St. Mary's	134	101	106	5.0%	-20.9%	19.	Queen Anne's	99	19.	St. Mary's	0.7%
Somerset	54	60	76	26.7%	40.7%	20.	Dorchester	81	20.	Cecil	0.6%
Talbot	88	153	165	7.8%	87.5%	21.	Somerset	76	21.	Charles	0.6%
Washington	139	270	357	32.2%	156.8%	22.	Kent	63	22.	Carroll	0.6%
Wicomico	247	311	274	-11.9%	10.9%	23.	Allegany	14	23.	Allegany	0.2%
Worcester	64	181	175	-3.3%	173.4%	24.	Garrett	0	24.	Garrett	0.0%
Maryland	23,915	31,429	35,666	13.5%	49.1%					State Average	4.3%

Source: Maryland State Department of Education

Exhibit 6.3
Student Enrollment – Annapolis Area Public Schools
Change in Demographic Composition

<u>School</u>	September 1996				September 2007				
	<u>Limited English</u>	<u>White</u>	<u>African American</u>	<u>Latino-Hispanic</u>	<u>Limited English</u>	<u>Meals Program</u>	<u>White</u>	<u>African American</u>	<u>Latino-Hispanic</u>
Annapolis High School	1.3%	50.7%	46.3%	1.3%	10.6%	27.0%	41.3%	42.1%	13.5%
Annapolis Middle School	0.6%	32.2%	65.6%	1.2%	5.2%	47.2%	27.8%	54.7%	13.9%
Eastport Elementary	1.7%	69.3%	28.9%	0.4%	10.9%	74.8%	14.4%	65.1%	19.0%
Georgetown East Elementary	0.2%	42.9%	54.0%	1.6%	5.7%	62.9%	12.4%	74.8%	11.1%
Hillsmere Elementary	0.6%	55.0%	40.3%	2.4%	1.9%	24.3%	61.6%	32.2%	3.5%
Tyler Heights Elementary	3.6%	16.8%	78.1%	3.8%	17.2%	70.0%	4.6%	56.0%	38.3%
Bates Middle School	2.8%	52.3%	43.0%	2.2%	7.5%	45.1%	30.2%	51.1%	15.3%
Annapolis Elementary	5.5%	46.0%	48.4%	3.5%	6.0%	54.7%	38.7%	45.4%	13.9%
Germantown Elementary	0.5%	33.2%	64.6%	1.1%	17.1%	60.4%	20.2%	43.8%	34.1%
Mills-Parole Elementary	7.2%	13.7%	78.4%	6.2%	17.3%	70.2%	3.0%	65.9%	29.1%
Rolling Knolls Elementary	0.0%	53.7%	43.8%	0.3%	5.0%	20.7%	69.7%	17.1%	9.1%
West Annapolis Elementary	0.4%	68.0%	31.2%	0.0%	0.0%	11.6%	74.3%	16.2%	4.5%
Annapolis Feeder System	1.8%	44.5%	52.0%	1.8%	9.9%	44.2%	34.7%	46.1%	16.4%
Anne Arundel County Systemwide	0.6%	78.7%	17.5%	1.4%	2.1%	19.2%	68.4%	22.2%	5.4%

Source: Maryland State Department of Education

Title III Program-related Support Provided by MSDE

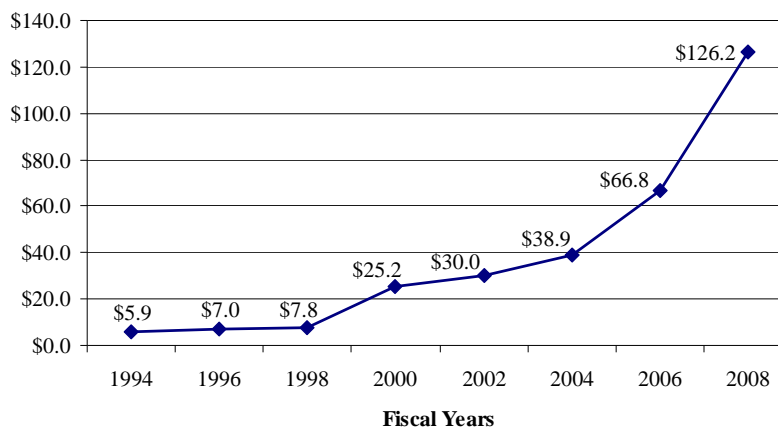
MSDE provides an extensive amount of Title III program-related support to local school systems. The following is a list of some of the support provided by MSDE:

- development of a system for diagnostic evaluation of language proficiency and an English language proficiency assessment;
- ESOL instruction and support through onsite monitoring;
- briefings for supervisors of local ESOL programs to improve programs and provide updated information on accountability requirements;
- professional development, including training, workshops, and collaboration with institutions of higher education to provide pathways to teacher certification; and
- technical assistance in data collection and program administration.

State Funding for Limited English Proficiency Programs

State funding based on the number of LEP students first began in fiscal 1994 when local school systems received \$5.9 million. Since that time, State funding tied to the number of LEP students has increased to \$126.2 million in fiscal 2008. **Exhibit 6.4** shows the growth in State funding since fiscal 1994. **Exhibit 6.5** shows the distribution of funding for local school systems since fiscal 2002.

Exhibit 6.4
Limited English Proficiency Grants
(\$ in Millions)



Source: Department of Legislative Services

Exhibit 6.5
State Funding Based on LEP Students in Public Schools
Fiscal 2002 through 2008

County	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Allegany	\$12,150	\$16,200	\$22,081	\$35,178	\$30,133	\$32,567	\$87,438
Anne Arundel	1,012,500	1,250,100	1,617,672	2,122,460	2,098,815	3,003,245	3,937,032
Baltimore City	1,035,450	1,264,950	1,736,286	3,363,491	5,010,430	6,715,318	8,486,781
Baltimore	2,310,300	2,539,800	2,901,559	3,986,639	5,092,171	6,736,293	9,731,013
Calvert	28,350	41,850	105,593	201,465	277,382	375,175	518,244
Caroline	121,450	151,150	185,112	264,953	296,643	482,460	676,174
Carroll	116,300	141,950	146,739	154,162	266,166	409,835	623,443
Cecil	94,300	132,100	140,198	222,885	338,292	394,483	459,355
Charles	157,550	135,950	237,476	388,770	415,650	463,687	704,414
Dorchester	59,500	78,400	111,294	183,658	200,118	268,692	354,844
Frederick	408,850	672,100	821,110	1,059,050	1,617,583	2,772,602	4,288,469
Garrett	0	0	0	0	0	0	0
Harford	333,750	358,050	382,715	581,004	845,498	1,234,167	1,602,977
Howard	1,607,550	1,938,300	2,118,165	2,384,183	2,925,298	3,618,550	4,641,181
Kent	48,050	48,050	69,619	98,248	110,018	162,973	167,026
Montgomery	13,686,700	15,020,500	16,167,868	18,609,484	22,671,734	28,356,068	38,023,510
Prince George's	7,945,850	9,297,200	10,789,149	15,864,151	21,905,449	30,078,840	46,809,732
Queen Anne's	37,450	36,100	68,349	88,111	144,148	222,676	283,521
St. Mary's	153,150	186,900	256,686	284,937	313,920	343,413	446,840
Somerset	72,850	76,900	82,815	118,841	217,236	265,264	411,820
Talbot	85,350	121,800	165,884	177,837	224,053	327,977	437,448
Washington	205,350	202,650	218,178	320,707	574,639	944,584	1,608,725
Wicomico	323,250	352,950	404,743	619,184	912,104	1,237,175	1,410,746
Worcester	108,600	92,400	114,192	191,877	287,668	387,999	463,960
Total	\$29,964,600	\$34,156,350	\$38,863,483	\$51,321,275	\$66,775,148	\$88,834,043	\$126,174,693

Source: Department of Legislative Services

Funding for this program was established in statute in 1994 with local school systems receiving \$500 per LEP student. The number of LEP students in each county was determined by a count as of May 15 of the second preceding school year, and no student could be included in the count for more than two years. In 1998, the School Accountability Funding for Excellence legislation increased the per student grant to \$1,350, and the two-year limit was removed. In 2002, the Bridge to Excellence in Public Schools Act (Thornton legislation) established a new funding mechanism that significantly increased funding based on LEP students and local wealth. Local school systems have considerable flexibility in how they expend the funds; however, the funding formula was influenced heavily by an adequacy study, which determined that local school systems needed additional funding to adequately educate a student with LEP. The study concluded that the cost to educate ELLs is double the cost to educate students without any special needs. In fiscal 2008, the additional statewide per pupil funding amount needed to meet the estimated costs totaled \$6,627, resulting in a combined State and local cost of \$236.4 million for all LEP students. The formula amount increases with the per pupil foundation amount, which is required funding per full-time equivalent student that is shared between the State and counties.

Instructors in English for Speakers of Other Languages Programs

Maryland public schools employ a variety of instructors to provide ESOL programs. **Exhibit 6.6** lists the number of ESOL teachers and instructors in Maryland public schools. MSDE advises that generally there is not a shortage of ESOL teachers in Maryland. However, some smaller districts may have more difficulty finding certified ESOL teachers than the larger districts in the Baltimore/Washington, DC corridor.

Exhibit 6.6

ESOL and Related Instructors in Maryland Public Schools

<u>Type of Instructor</u>	<u>Number in Maryland Public Schools</u>
Certified ESOL Teachers	1,210
Uncertified ESOL Teachers	149
ESOL Instructional Aides	117
ESOL Tutors	63
Bilingual Aides/Tutors	9
Instructional Bilingual Assistants	22
Noninstructional Bilingual Assistants	97
Estimated Additional Certified Teachers	857
Total	2,524

Source: Maryland State Department of Education

English for Speakers of Other Languages Program Instruction

The types of ESOL instruction provided may vary depending on the needs of the student and other factors. Some of the types of ESOL programming in Maryland public schools are listed below.

- ***Pull Out:*** In this program of instruction, separate ESOL classes are provided and students are “pulled out” of their classes to receive special English language instruction based on a core curriculum.
- ***Push In/Inclusion:*** In this program model, the ESOL teacher goes into the students’ classes to work with ELL students.
- ***Sheltered English:*** Sheltered English is an instructional approach used to make academic instruction in English understandable to ELLs. The objective is to help them acquire proficiency in English while at the same time achieve in content areas.

Assessments and Adequate Yearly Progress

Title III requires states to establish standards and benchmarks for raising the level of English proficiency and ensuring that LEP students meet standards that are aligned with state achievement standards. NCLB also requires that states administer assessments to determine if schools are making Adequate Yearly Progress (AYP). Schools are required to meet annual AYP goals for all students and for students in specific subgroups, including LEP.

In Maryland, two types of assessments are administered: the Maryland School Assessment (MSA) and the High School Assessment (HSA). Currently, the MSA tests students in grades three through eight in reading and math. The HSAs are a series of four tests (English 2, algebra/data analysis, biology, and government) administered to a student upon completion of specific high school coursework. All students who receive instruction through ESOL programs are required to participate in State assessment tests. Each school’s LEP team determines what accommodations are needed for an LEP student to participate in State tests. **Exhibit 6.7** details which AYP goals the State met in 2007 for all students and LEP students. **Exhibit 6.8** lists the MSA and HSA passing rates for all test takers and LEP test takers.

Exhibit 6.7
2007 Adequate Yearly Progress Status by Grade Level
for All Students and Limited English Proficiency Students in Maryland

	<u>All Students</u> <u>(Percent Proficient)</u>	<u>LEP Students</u> <u>(Percent Proficient)</u>
Grades 3-5		
Reading	Met	Met
Mathematics	Met	Met
Grades 6-8		
Reading	Met	Not Met
Mathematics	Met	Not Met
Grades 9-12		
Reading	Met	Not Met
Mathematics	Met	Met

Source: 2007 Maryland Report Card

Exhibit 6.8
Assessment Results for All Maryland Students Compared to
Limited English Proficiency Students

	<u>All Test Takers</u> <u>(Percent Passing)</u>	<u>LEP Test Takers</u> <u>(Percent Passing)</u>
Grade 3 Reading	80.5	63.9
Grade 3 Math	78.6	62.1
Grade 4 Reading	86.0	68.8
Grade 4 Math	86.0	69.2
Grade 5 Reading	76.7	42.3
Grade 5 Math	78.3	54.4
Grade 6 Reading	76.6	43.1
Grade 6 Math	71.9	44.5
Grade 7 Reading	70.2	25.7
Grade 7 Math	61.3	29.4
Grade 8 Reading	68.3	22.6
Grade 8 Math	56.7	28.4
Algebra HSA	63.5	46.6
Biology HSA	70.3	39.1
English 2 HSA	70.9	22.7
Government HSA	73.5	51.0

Source: 2007 Maryland Report Card

In-state College Tuition for Undocumented Immigrants

Because of their immigration status, undocumented immigrants who do well in high school may face steeper economic challenges to attending college than the typical college applicant in the United States. Federal law prohibits states from offering in-state tuition based on state residency to undocumented immigrants if the state does not make the same offer to all U.S. citizens. Since 2001, 10 states have passed legislation to offer in-state tuition to undocumented immigrants (**Exhibit 6.9**). In order to comply with federal law, many of these states crafted legislation offering in-state tuition to undocumented immigrants contingent on criteria other than state residence. All of these states require students to have attended a high school in the state for a specified number of years, graduated from a high school in the state, and sign an affidavit stating that they have applied to legalize their status or will do so as soon as they are eligible.

Supporters of these efforts argue that these young people plan to stay in the United States and should not be denied an opportunity to attend college based on the actions of their parents. Also, due to the increasingly global economy, a college degree would provide these young people and future generations of their families with better economic opportunities, thus potentially reducing future demands on social services. Opponents of these measures argue that offering in-state tuition to undocumented immigrants gives them access to a service that is partially funded with tax dollars and may result in undocumented immigrants taking slots in higher education away from legal U.S. residents.

Exhibit 6.9

States Providing In-state Tuition to Undocumented Immigrants

California	New York
Illinois	Oklahoma
Kansas	Texas
Nebraska	Utah
New Mexico	Washington

Source: National Conference of State Legislatures; Department of Legislative Services

Federal DREAM Act

Regardless of their academic achievement, lack of lawful immigration status presents a significant barrier to success for young people brought illegally to the United States as children. Legislation that would provide a method of obtaining lawful immigration status for immigrants who were brought to the United States illegally as young children has been introduced in the

U.S. Congress since 2001. The latest version of this legislation was the Development, Relief, and Education Act for Alien Minors Act, commonly referred to as the DREAM Act. (The American Dream Act is the House version of the bill.) Introduced in the U.S. Senate in March 2007, the DREAM Act would have provided young people brought illegally to the United States as children the opportunity to obtain U.S. citizenship by meeting certain criteria. The bill applies to individuals who:

- have entered the United States before his/her sixteenth birthday;
- have been physically present in the United States for at least five years continuously preceding the date of enactment;
- have not reached 30 years of age by the date of enactment (Senate version only);
- be a person of good moral character;
- not be inadmissible or deportable under certain provisions of the Immigration and Nationality Act; and
- have earned a high school diploma or a General Equivalency Degree (GED) in the United States.

Under the DREAM Act, an individual who meets the requirements listed above would be permitted to apply for conditional permanent resident status. This conditional status is valid for up to six years, during which an individual must:

- earn a two-year degree from an institution of higher education or have completed at least two years of a bachelor's degree or higher degree program; or
- have served for at least two years in the uniformed services and, if discharged, have received an honorable discharge.

Following the conditional period, an individual may petition for and be granted permanent resident status (green card holder) if the student has met these requirements and continues to be of good moral character. Permanent residents are usually eligible to apply for citizenship after five years.

The House version, also known as the “American Dream Act” (H.R. 1275) would have also repealed a provision of federal law that prohibits states from offering in-state tuition based on residence to undocumented immigrants if the state does not make the same offer to all U.S. citizens or nationals. Former versions of the DREAM Act would have also repealed this section of federal law. The 2007 version of the DREAM Act does not contain this provision. On October 24, 2007, the DREAM Act was unable to proceed through the Senate due to the failure of a procedural motion.

According to some estimates, approximately 360,000 individuals would have been immediately eligible for relief under the DREAM Act upon enactment. Following this group of

immediately eligible students, experts project that 55,000 to 65,000 U.S. raised high school graduates would qualify for relief under the DREAM Act each year.

The DREAM Act addresses the ambiguous territory of U.S. immigration law faced by thousands of children each year. Unless they are U.S. born citizens, children traditionally obtain their immigration status through their parents. However, this is not an option for children born in other countries who have parents residing in the United States illegally. These children are raised in the United States, obtain an education in the United States to which they are entitled, but then are left with no avenues through which they can obtain legal resident status. Many of these students also find it difficult to pursue a college education, since they are not eligible for federal student financial aid and cannot obtain in-state tuition in most states.

Thus far, the U.S. Congress has not passed the DREAM Act or legislation similar to it. In its *Statement of Administrative Policy*, the Bush Administration expressed its opposition to the DREAM Act due to concerns over the Act creating a preferential path to citizenship, possibly creating an incentive for the recurrence of illegal conduct, potential loopholes in the bill, and providing assistance without comprehensive immigration reform.

Chapter 7. Health and Social Services

Programs related to health and social services account for approximately one-third of the State's budget. In fiscal 2008, the State is projected to spend over \$8.9 billion in total funds (general, special, and federal) on health and social programs with Medicaid accounting for \$4.8 billion and assistance payments accounting for \$0.5 billion (**Exhibit 7.1**). The share of costs related to immigrants is relatively small. Direct costs related to both legal and undocumented immigrants are estimated at \$78.1 million; however, this amount does not include the cost for legal immigrants who have resided in the State for more than five years. A considerable portion of health care costs for undocumented immigrants is covered as uncompensated care at hospitals and is paid mostly through hospital rates. Since hospitals do not collect information on an individual's immigration status, uncompensated care costs related to undocumented immigrants are not available.

Undocumented immigrants have limited equal access rights to government services and programs. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) severely reduced undocumented immigrant access to federal and state programs. For the most part, undocumented immigrants are not entitled to equal access to government benefits. However, certain fundamental services, most notably emergency medical services and public elementary and secondary education, are available to undocumented immigrants. Although undocumented immigrants in Maryland do not qualify for State and federal health care programs with the exception of emergency Medicaid services, children of undocumented immigrants who are born in the United States may qualify for Medicaid or the Maryland Children's Health Program (MCHP) based on household income. Qualified children of undocumented immigrants can enroll in these programs if the children's citizenship can be documented.

Exhibit 7.1
State Expenditures for Health and Social Programs
All Funds
(\$ in Millions)

	<u>FY 2007</u>	<u>FY 2008</u>	<u>\$ Difference</u>	<u>% Difference</u>
Foster Care	\$344.1	\$351.1	\$7.0	2.0%
Assistance Payments	488.9	486.6	-2.3	-0.5%
Medicaid	4,677.0	4,819.6	142.6	3.0%
DHMH	2,312.0	2,413.6	101.6	4.4%
DHR	824.4	877.2	52.8	6.4%
Subtotal	\$8,646.4	\$8,948.1	\$301.7	3.5%
State Budget	\$25,936.3	\$27,667.1	\$1,730.8	6.7%
Percent – Health/Social	33.3%	32.3%	17.4%	

Note: DHMH = Department of Health and Mental Hygiene; DHR = Department of Human Resources.
Source: Department of Legislative Services

Access to Health Care and Social Services

Access to adequate health care and other social programs is limited to many people within immigrant communities. Immigrants, including legal and undocumented, are less likely to have health insurance coverage than native born residents. As a result, immigrants are more likely to rely on emergency rooms or public clinics for health care. In addition, most undocumented immigrants are prohibited from receiving assistance through Social Security and other federal need-based programs such as food stamps, Medicaid (other than emergency services), and Temporary Assistance for Needy Families. As shown in **Exhibit 7.2**, compared to native born residents, noncitizens (which includes undocumented immigrants) are less likely to receive income from Social Security, Supplemental Security Income (SSI), cash assistance programs, and food stamps even though noncitizens have lower incomes and are more likely to live in poverty.

Exhibit 7.2
Utilization of Social Security and Public Assistance Programs
by Maryland Residents
Percent Receiving Public Assistance

<u>Program</u>	<u>Native Born Residents</u>	<u>Foreign Born Residents</u>	
		<u>Naturalized Citizens</u>	<u>Noncitizens</u>
Social Security	25.1%	22.1%	5.9%
Supplemental Security Income	3.0%	4.0%	0.7%
Cash Assistance	2.1%	1.6%	1.0%
Food Stamps	5.0%	4.3%	2.8%
Poverty Rate	7.7%	5.5%	10.7%
Median Household Income	\$65,441	\$73,326	\$52,723

Source: 2006 American Survey, U.S. Census Bureau

Health Insurance Coverage of Noncitizens

Access to affordable health care remains a concern for many families in Maryland, including immigrants. In 2007, the average annual cost of health insurance for an individual through an employer plan was \$4,479, while the average cost for a family policy was \$12,106. Since legal and undocumented immigrants have less access to employment-based health insurance and are not typically eligible for most government funded programs, the ability to obtain adequate health care coverage is severely constrained. According to the Maryland Health Care Commission, non-U.S. citizens (including legal and undocumented immigrants) account for 27 percent of the State's 780,000 uninsured residents. Between 41 and 43 percent of

non-U.S. citizens in Maryland (about 180,000 individuals) reported having employment-based health insurance; however, 46 to 50 percent remain uninsured, the highest uninsured rates of any demographic group in the State (**Exhibit 7.3**). In comparison, 15.8 percent of the State's non-elderly population are uninsured. Of non-U.S. citizens in Maryland who are uninsured, the majority (57 percent) had been residents since 1996 or earlier.

Exhibit 7.3
Health Insurance Coverage of Non-U.S. Citizens
2004-2005

	<u>Employment- based</u>	<u>Direct Purchase</u>	<u>Medicaid & Other Public</u>	<u>Uninsured</u>
Resident Since Before 1996	43%	5%	6%	46%
Resident Since 1996 or Later	41%	3%	7%	50%

Note: Data include individuals younger than 65.

Source: *Health Insurance Coverage in Maryland through 2005*, Maryland Health Care Commission

Federal Guidelines on Access to Public Entitlements

Prior to 1996, all legal residents regardless of citizenship were eligible for public entitlement programs such as Medicaid. The federal PRWORA altered this policy, thus making legal immigrants ineligible for five years after entry into the country. PRWORA also required that the income of an immigrant's sponsor be counted in determining eligibility for public benefits and stated that a sponsor could be held financially liable for any benefits used by immigrants. Undocumented immigrants are not eligible for Medicaid, except in limited situations.

Eligibility for Federal Programs

According to the Congressional Research Service, undocumented immigrants are not eligible for most federal benefits. Following the passage of PRWORA, benefits were widely denied to undocumented immigrants including retirement, welfare, health, disability, housing, food stamps, unemployment, and postsecondary education. In addition, undocumented immigrants are not eligible for the Earned Income Tax Credit, Social Services Block Grants, federal grants, contracts, loans, licenses, and services through migrant health centers. PRWORA does include certain exemptions from these exclusions as shown in **Exhibit 7.4**.

Exhibit 7.4

Federal Programs Available to Undocumented Immigrants

- Medicaid-funded emergency medical care (does not include organ transplants).
 - Short-term, in-kind emergency disaster relief.
 - Immunizations and testing for and treatment of communicable diseases.
 - Services or assistance (including food delivery, crisis counseling and intervention, and short-term shelters) designated by the Attorney General as delivering in-kind services at the community level, providing assistance without individual determinations of each recipient's needs, and being necessary for the protection of life and safety.
 - To the extent that an alien was receiving assistance on the date of enactment, programs administered by the Secretary of Housing and Urban Development, programs under Title V of the Housing Act of 1949, and assistance under Section 306C of the Consolidated Farm and Rural Development Act.
-

PRWORA also provides that undocumented immigrants eligible for free public education benefits under state and local law would remain eligible to receive school lunch and school breakfast services. PRWORA does not prohibit or require a state to provide undocumented immigrants with other benefits under the National School Lunch Act, the Child Nutrition Act, the Emergency Food Assistance Act, Section 4 of the Agriculture and Consumer Protection Act, or the Food Distribution Program on Indian Reservations under the Food Stamp Act.

Eligibility for State Programs

PRWORA expressly bars undocumented immigrants from most state and locally funded benefits. Undocumented immigrants are generally barred from state and local government contracts, licenses, grants, loans, and assistance. Exceptions to this general rule mirror the federal exceptions listed in Exhibit 7.4. The law explicitly states that it does not address eligibility for basic public education. The law allows states, through enactment of new state laws, to provide undocumented immigrants with state and local funded benefits that are otherwise restricted.

In addition, the federal Deficit Reduction Act of 2006 required all U.S. citizens covered by or applying for Medicaid to prove their citizenship by submitting a birth certificate or passport (or a limited set of other documents) as a condition of coverage. This mandate,

effective July 1, 2006, affects most new applicants and current recipients, although individuals who receive SSI or Medicare, refugees, asylees, and other qualified immigrants are exempt.

Access to Medical Entitlement Programs in Maryland

In Maryland, an adult may qualify for Medicaid if the adult is aged, blind, or disabled; a pregnant woman; or in a family where one parent is absent, disabled, unemployed, or underemployed. Adults must also have very low incomes to qualify for Medicaid which equals about 46 percent of federal poverty guidelines (FPG). MCHP covers children with family incomes up to 300 percent FPG and pregnant women with incomes up to 250 percent FPG. Maryland's Primary Adult Care Program provides primary care, pharmacy, and outpatient mental health benefits to individuals aged 19 and older with incomes up to 116 percent FPG. **Exhibit 7.5** shows income amount under FPG.

Exhibit 7.5 Income Levels for Federal Poverty Guidelines

<u>Family Size</u>	<u>100% FPG</u>
1	\$10,210
2	113,690
3	17,170
4	20,650
5	24,130

Source: *Federal Register*, Vol. 72, No. 15, Wednesday, January 24, 2007

Proof of citizenship is required to enroll or remain enrolled in these programs. Citizenship eligibility verification began in Maryland in September 2006. To date, Maryland has spent more than \$10.1 million (general and federal funds) to implement the citizenship requirement. Since September 2006, Maryland Medicaid has experienced a 2 to 4 percent increase in application denials and terminations at renewal. According to the Department of Health and Mental Hygiene (DHMH), these declines are attributable to the citizenship documentation requirement.

State-only Services for Pregnant Women and Children

Prior to 1996 and PRWORA, legal immigrant pregnant women and children were eligible for Medicaid. Services to this population were funded with general and federal funds. PRWORA restricted immigrant eligibility for Medicaid and the State Children's Health Insurance Program (MCHP in Maryland) prompting Maryland, along with other states, to

establish a State-only Medicaid program to serve these individuals. Maryland provided State-only funded coverage to about 4,000 legal immigrant children and pregnant women annually until fiscal 2006 when funds were not included in the Governor's proposed budget. Coverage was restored in November 2006 following a court ruling that the Governor's action violated the Maryland Constitution. For fiscal 2008, the State-only Medicaid program for legal immigrant pregnant women and children is funded with \$6.0 million in general funds.

Emergency Services for Other Immigrant Populations

In addition to providing services to legal immigrant pregnant women and children, the Maryland Medicaid program funds emergency care to immigrants who would otherwise qualify for Medicaid. Under § 1903(v) of the Social Security Act, Maryland receives federal matching funds for care and services, with the exception of organ transplant procedures, that are necessary for the treatment of an emergency medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment of bodily functions, or serious dysfunction of any bodily organ or part.

In fiscal 2007, DHMH spent \$1.7 million in general funds on care for legal qualified immigrants who have resided in the United States for less than five years and \$70.4 million (in general and federal funds) on emergency services for nonqualified legal and undocumented immigrants. Nearly two-thirds of these expenditures (63 percent) were on emergency labor and delivery charges.

Access to Hospital Services

The Federal Emergency Medical Treatment and Labor Act

In 1986, the U.S. Congress passed the Emergency Medical Treatment and Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening examination when a request is made for examination or treatment for an emergency medical condition, including active labor, regardless of an individual's ability to pay. Hospitals are then required to provide stabilizing treatment for patients with emergency medical conditions. Thus, EMTALA requires Maryland hospitals to provide treatment to individuals who present in an emergency room regardless of their citizenship or insurance status. According to the Maryland Hospital Association, hospitals do not collect data on citizenship status upon admission.

Uncompensated Care at Hospitals

The Health Services Cost Review Commission (HSCRC) uses its hospital rate setting authority to account for much of the uncompensated care hospitals incur. An uncompensated care component is built into each hospital's rates. Therefore, all payors of hospital care, including Medicare, Medicaid, commercial payors, and others finance uncompensated care when they pay for hospital services. Costs for commercial payors are passed along to consumers and businesses in private health insurance premiums.

Certain hospitals with high levels of uncompensated care receive additional funding from the State through HSCRC's Uncompensated Care Fund. These funds are collected from a revenue neutral assessment imposed on top of hospital rates and redistributed to hospitals based on their proportional share of uninsured individuals treated. In fiscal 2007, hospitals received \$700 million for uncompensated care through rates and \$78 million from the fund. **Exhibit 7.6** shows the 10 hospitals with the highest proportion of uncompensated care in fiscal 2007. The statewide average was 7.8 percent.

Exhibit 7.6 Top 10 Highest Uncompensated Care Hospitals Fiscal 2007

<u>Hospital</u>	<u>Jurisdiction</u>	<u>% Uncompensated Care</u>
Prince George's Hospital	Prince George's	14.60%
Bon Secours	Baltimore City	13.43%
Bayview	Baltimore City	11.34%
Maryland General	Baltimore City	11.19%
University of Maryland	Baltimore City	10.53%
Laurel Regional	Prince George's	10.16%
Fort Washington	Prince George's	9.06%
Harbor Hospital	Baltimore City	9.06%
Dorchester General	Dorchester	8.92%
Mercy Medical Center	Baltimore City	8.90%

Source: Health Services Cost Review Commission

According to HSCRC, demographic data are not kept on individuals who receive care at Maryland hospitals that is reimbursed through the Uncompensated Care Fund. Case mix data

submitted by hospitals to HSCRC do contain information such as age, gender, and diagnosis, but do not include information on income or citizenship status.

Hospitals may seek reimbursement for emergency services provided to qualifying immigrants under the Medicaid program; however, the timeframe for coverage is very short (typically only for immediate services), which increases uncompensated care costs for hospitals that provide treatment for chronic conditions such as cancer or kidney disease. Medicaid reimbursement can also be delayed by up to one year before hospitals actually receive payment.

Community Services Provided by Hospitals

Several Maryland hospitals provide a range of preventive and primary health care services benefiting the immigrant community, particularly those hospitals in jurisdictions with the largest immigrant populations. Hospitals work with community partners to provide primary care services, address and eliminate barriers to care for culturally diverse populations, and provide other services such as cancer screenings and health and wellness classes.

Access to Other Health Services

DHMH supports several key public health services, including substance abuse treatment and mental health services. Both services are accessible to qualifying individuals regardless of their citizenship status. A spectrum of public health services is available through local health departments.

Baltimore City

The City of Baltimore provides a wide range of medical services to the immigrant community, both through public health services provided through the health department and through contracts with nonprofit organizations that perform outreach and provide medical services.

Montgomery County

Montgomery County, which has the largest immigrant population in the State, provides extensive services to both documented and undocumented immigrants. The county partners with three local hospitals to provide prenatal and labor and delivery care to immigrant women who do not have and are ineligible for other health insurance. The cost of prenatal care is split between the county and participating hospitals, while labor and delivery costs are covered by emergency Medicaid funding. In fiscal 2007, more than 2,300 women were served through the program. The county's Care for Kids Program provides primary health care for children based on income and county residency only and is therefore available to children regardless of citizenship status. A public-private partnership with safety net providers delivers primary care, prescriptions, and

some diagnostic, laboratory, and specialty services to low-income uninsured adults. Data on the immigration or citizenship status of individuals served by these programs are not collected.

Eastern Shore Counties

Resident immigrants and migrant workers are eligible for all local health department services including immunizations, reproductive health care services, and tuberculosis testing and treatment. No differentiation is made regarding citizenship status in the provision of services. Certain counties receive a Migrant Health Grant from DHMH's Tuberculosis Control Program to screen and test for tuberculosis and other communicable diseases in the migrant worker community.

Access to Social Services

Temporary Cash Assistance

As one of the components of the Family Investment Program, Temporary Cash Assistance (TCA) provides monetary help to needy families with dependent children when available resources do not fully address family needs. Families needing only short-term assistance may receive a one-time welfare avoidance grant equivalent to three months of TCA benefits.

TCA benefits are available to Maryland residents who are U.S. citizens or qualified immigrants, generally defined as those lawfully admitted for permanent residence or meeting other requirements of the Immigration and Nationality Act. Legal immigrants who arrived in the United States before August 22, 1996, are eligible for federally funded benefits. Qualified immigrants who arrived after that date are eligible for benefits provided with State-only funds. A Social Security number must be provided for each eligible member of the household's assistance unit; the local department of social services is required to verify noncitizen applicants' immigration status.

Undocumented immigrants are not eligible for assistance and may not be used to determine the size of a household assistance unit.

Food Stamp Program

The Food Stamp Program provides nutrition assistance to help eligible low-income households buy the food they need. Food stamp benefits are available to U.S. citizens and eligible immigrants, generally those lawfully admitted for permanent residence or meeting other specified criteria. Immigration status must be verified by the local department of social services before a household is eligible for benefits. Social Security numbers are required at initial

application. Undocumented immigrants are not eligible for assistance and may not be used to determine the size of a household assistance unit.

Energy Assistance Program

The Maryland Energy Assistance Program helps State households to pay their heating bills through a variety of means, including utility and fossil fuel payments, referrals to weatherization services, and other waivers and discounts.

Energy assistance is available to U.S. citizens and qualified immigrants, generally defined as those lawfully admitted for permanent residence or meeting other requirements of the Immigration and Nationality Act. Any member of the household who does not meet citizenship or qualified alien requirements is not counted as a member of the applicant's household, though that person's assets are considered in determining the household's eligibility for services. Each member of the household must supply his or her Social Security number to be considered for benefits; in addition, non-U.S. citizens must provide documents to verify immigration status. Undocumented immigrants are not eligible for assistance and may not be counted as a member of the applicant's household.

Chapter 8. Law Enforcement Services

While the ways in which state and local law enforcement agencies handle situations involving undocumented immigrants have long been the subject of some concern, the terrorist attacks of September 11, 2001, focused more attention on immigration-related issues than had been seen in recent times. Until recently, situations involving undocumented immigrants were confined mostly to border states like California, Texas and coastal states like Florida, New Jersey, and New York. Today, since more immigrants are dispersing across the country, law enforcement officials are having to deal with public safety issues involving both legal and undocumented immigrants. In an effort to improve federal enforcement, the U.S. Department of Homeland Security (DHS) and the U.S. Immigration, Customs, and Enforcement Division (ICE) have begun to look to state and local police departments as allies and additional resources.

Role of Federal Immigration Authorities

ICE is the primary federal agency charged with enforcement of federal immigration laws. ICE is the largest bureau within DHS. ICE has 24 field offices throughout the country, including offices in Baltimore and Washington, DC. Within ICE are four operational divisions that address enforcement:

- ***Detention Management:*** focuses on the detention of undocumented immigrants found to be in the country;
- ***Removal Management:*** focuses on the removal of undocumented immigrants out of this country and returning them to their countries of origin;
- ***Criminal Alien Division:*** focuses on the completion of deportation proceedings against undocumented immigrants who have been convicted and incarcerated for crimes before they are released from jail or prison; and
- ***Compliance Enforcement Program:*** focuses on the removal of those people who have stayed in the country beyond the terms of their visas.

According to ICE, a number of initiatives have been launched to increase security at the nation's borders and find and deport criminals. Section 287(g) of the Immigration and Naturalization Act authorizes the Secretary of Homeland Security to enter into written agreements to delegate limited immigration enforcement authority to state and local law enforcement officers. As of July 2006, 7 local law enforcement departments from across the country were participants in this program, and another 11 departments had applied for participation. Under this program, ICE has also trained at least 160 state and local law

enforcement officers across the country. ICE also has a program called ACCESS – Agreements of Cooperation in Communities to Enhance Safety and Security. ACCESS offers local law enforcement agencies the opportunity to team with ICE to combat specific immigration challenges at the local level. According to ICE, an important goal is to improve enforcement of immigration laws by developing lasting partnerships with local law enforcement.

State and Local Cooperation with Federal Immigration Authorities

Federal law does not mandate that state and local law enforcement agencies become involved in immigration efforts. According to the International Association of Chiefs of Police (IACP), the local law enforcement response to immigration has been inconsistent. For example, in one large city, the police department launched an initiative to improve outreach to immigrant communities at the same time that the sheriff's department cross-deputized its officers to step up pursuit and arrest of undocumented immigrants. In addition, local law enforcement faces significant challenges in protecting immigrants from criminals who seek out immigrants because of their reluctance to report crimes to police. Significant challenges exist in addressing language and cultural differences and in determining the difference between legal and undocumented status.

The U.S. Supreme Court has ruled that state and local law enforcement officers may question criminal suspects about their immigration status. However, most immigration violations are civil infractions; there is no general agreement about whether state and local law officials have the authority to detain people for federal civil immigration offenses. Even for criminal immigration violations, state and local officers must be authorized by local law to make arrests for those federal crimes.

Law Enforcement Support Center

ICE administers the Law Enforcement Support Center (LESC) located in Williston, Vermont, 24 hours a day. LESG provides assistance to state and local officers who need information about undocumented immigrants. These officers have immediate access to information about undocumented immigrants through the National Crime Information Center (NCIC). About 100 million records are maintained by NCIC, and the entries are both civil and criminal. As a result, state and local officers must determine the nature of the underlying offense which generated the NCIC entry. An NCIC entry does not, by itself, guarantee that a state or local officer has the right to take the person into custody. To further complicate matters, a federal immigration warrant may be administratively or judicially issued. State and local officers must verify whether the federal warrant has been issued for a civil or criminal violation.

The ICE office in Baltimore covers the entire state of Maryland. According to the special agent in charge of that office, Maryland has been online with LESG since 2001. In fiscal 2007, LESG received and responded to 4,651 electronic queries from Maryland State and local law

enforcement officials. Also in fiscal 2007, 621 immigration detainees were placed with officials in Maryland (an average of about 50 detainees per month). The states of California, Florida, Arizona, Texas, and Connecticut are the most frequent users of LESC; and Maryland is the nineteenth most frequent user. ICE also established the Document and Benefit Fraud Task Force in Baltimore on April 25, 2007. The task force was created to detect, deter, and dismantle major criminal organizations and individuals that pose a threat to national security through the perpetration of identity fraud. According to ICE, this task force had identified, investigated, and prosecuted immigration, visa, and identity document fraud schemes.

Concerns Raised Over Enforcing Immigration Laws

The Major Cities Chiefs Association (MCCA) comprises the chiefs of the 64 largest police departments in the United States and Canada. In the summer of 2006, the Immigration Committee of MCCA prepared a position statement evaluating the impact of local police enforcement of federal immigration laws which echoes the concerns raised by IACP but in greater detail. The statement addresses the complexities, jurisdictional, training, and resource issues that confront state and local law enforcement when becoming involved with enforcement of immigration laws or dealing with victims and witnesses who are undocumented immigrants.

The position statement outlines a variety of concerns with the local enforcement of federal immigration laws. First, MCCA emphasizes that significant immigrant communities exist throughout the major urban areas, with immigrants comprising 50 to 60 percent of the population in some locations. It is imperative to build relationships with immigrant communities to encourage immigrants to press criminal charges and provide information when they are the victim of or witness to a crime. Developing relationships with these communities is also crucial to strengthening homeland security, as they may have intelligence that can be used to prevent future terrorist attacks. If local law enforcement began to actively enforce federal immigration laws, undocumented immigrants would likely avoid contact with the police for fear of deportation. Even immigrants who are in the country legally may avoid contact for fear that their family members who may be undocumented would be investigated.

MCCA stated that local law enforcement agencies lack the resources to enforce federal immigration laws. The aftermath of September 11, specifically the establishment of DHS, led to a reduction of federal funding for many major city police departments. At the same time, local law enforcement agencies were given more responsibility in areas that were traditionally handled by the Federal Bureau of Investigation (FBI), such as white collar crime and bank robberies. Local law enforcement agencies already struggle to meet existing policing duties within current budgets and cannot bear the added burden of immigration enforcement unless federal funding and assistance are provided.

The MCCA position is that local law enforcement agencies do not currently have the training or experience to properly handle the complexities involved in enforcing federal immigration laws. Immigration laws have criminal and civil components, and the violations differ from the criminal offenses that patrol officers typically face. The federal government and

its designated agencies, not local patrol officers, are in the best position to ascertain whether or not a particular person is in violation of a federal immigration law.

MCCA also expressed concerns that local law enforcement agencies may face civil liability if they choose to enforce federal immigration laws. They referred to the Katy, Texas police department that participated in an immigration raid with federal agents in 1994 as an example. After some of the individuals detained by the police were eventually determined to be citizens or legal immigrants, the department faced suits and eventually settled their claims out of court. As there is no clear authority for local law enforcement to enforce complex immigration laws, MCCA believes it likely that local law enforcement involvement with federal immigration civil infractions will increase the risk of civil liability and litigation.

Sanctuary Policies

Local officials in many communities across the nation have adopted “sanctuary” policies that generally prohibit city employees and police officers from asking individuals about their citizenship or immigration status. In these communities, public services are provided to individuals regardless of their immigration status; local officials, including law enforcement officers, are not permitted to assist the federal government with enforcing immigration laws. According to the Congressional Research Service, two states (Alaska and Oregon) and several cities (Albuquerque, Austin, Detroit, Houston, Los Angeles, Minneapolis, New York, San Diego, San Francisco, and Seattle) have adopted sanctuary policies. In Maryland, two jurisdictions have adopted sanctuary policies: Baltimore City and Takoma Park.

Baltimore City Policy

Baltimore City is the only large jurisdiction in Maryland that has adopted a sanctuary-type resolution (Resolution #030998) that specifically urges the city police department to refrain from enforcing federal immigration laws. In addition, the resolution states that no city service will be denied based on citizenship. The resolution, a criticism of the broader surveillance powers granted to law enforcement by the U.S. Patriot Act, was adopted in May 2003.

Takoma Park Policy

Takoma Park, located in Montgomery County, enacted a sanctuary law in 1985 to protect numerous refugees from El Salvador and Guatemala from being deported to their homelands, which were in a state of civil war at the time. Three main components of the city’s sanctuary law include (1) prohibiting city officials from enforcing federal immigration laws; (2) prohibiting inquiries into an individual’s citizenship status; and (3) prohibiting the release of information pertaining to an individual’s citizenship status. In October 2007, the city’s sanctuary law was unanimously reaffirmed by the city council.

According to city officials, the Takoma Park police department neither inquires nor records information about an individual's immigration status. Police officers do not serve federal immigration orders, detainers, or warrants for violations of immigration or naturalization laws. Police officers, however, are not restricted from arresting someone who is suspected of criminal activity or who is subject to an outstanding nonimmigration-related criminal warrant. The city's sanctuary law, however, is not binding on State or county police officers. The Montgomery County police department advises that it closely coordinates investigations with the city police department and provides assistance when requested. If a county level investigation requires county police officers to enter Takoma Park, the county department has the authority to do so and to conduct the investigation in a way that is consistent with county policy, as well as State and federal law.

Taneytown Policy

The debate over establishing sanctuary policies for undocumented immigrants came to Carroll County in 2007 when a resolution was introduced that would have designated the city as a nonsanctuary community. The resolution was designed to make undocumented immigrants unwelcomed within the community. At present, the city is not a destination for immigrants or other minorities, with minorities comprising less than 5 percent of the city's population.

Specifically, the resolution stated that the City of Taneytown is not a sanctuary city for undocumented immigrants and called upon all officials and personnel of the city to assist residents to support the enforcement of immigration and nationality laws by government officials. The Taneytown City Council voted down the resolution in January 2008.

How the Maryland State Police Addresses Immigration Issues

The Maryland State Police does not inquire about the citizenship status of an individual when addressing law enforcement situations, unless the status is brought to its attention by the federal government through criminal background checks and processing of an arrestee. The State Police contends that enforcement of immigration laws should be left to federal immigration officials. Members of immigrant communities and crime victims may fail to report crime if they fear deportation due to their interaction with the State Police, thereby making communities across the State less safe. For example, the State Police reports of specific problems with immigrants being targeted by criminals due to their immigrant status. In the Prince George's County communities of Langley Park and Hyattsville, the Mara Salvatrucha gang (also known as MS-13) has extorted business owners because they know the crimes will not be reported. The State Police reports that one of the biggest challenges for troopers is the language barrier and the unavailability of additional foreign language training. However, the State Police does ensure that each trooper receives mandatory cultural diversity training.

How Local Police Departments Address Immigration Issues

The Department of Legislative Services (DLS) either interviewed or requested interviews with representatives of police departments of the seven largest jurisdictions in Maryland (Baltimore City and Anne Arundel, Baltimore, Harford, Howard, Montgomery, and Prince George’s counties). The Baltimore City police department declined to be interviewed for this project. Prince George’s County is in the process of revising its policies and, while they did not provide information for this project, the police department offered to provide information at a later date. More detailed information on local responses to the DLS survey is provided in **Appendix 7**.

Inclusion of Civil Detainers in NCIC System

Although local law enforcement officers are clearly authorized to enforce criminal laws, immigration laws include both civil and criminal proceedings to address violations. Determining whether a particular violation would result in criminal charges or a civil process is often difficult for local law enforcement. The federal practice of including civil detainers on NCIC is one example of the conflict between the criminal authority of the local police and the civil nature of some immigration violations. The NCIC system was once only used for criminal matters, and the inclusion of civil detainers has created confusion for local law enforcement.

A detainer is a notice issued by federal law enforcement requesting the detention of an individual to insure the individual’s availability for any additional federal proceedings. Detainers may be issued for both civil and criminal immigration violations. For example, violations that would result in a civil detainer include being illegally present in the United States and the failure to depart after expiration of a visa or a grant of voluntary deportation. Violations that would result in a criminal detainer include illegally reentering the United States, alien smuggling, and “willfully” disobeying an order of removal.

While federal officers are specifically empowered to act upon civil detainers and take civil violators into custody, state and local enforcement do not necessarily have corresponding authority. Some local and state law enforcement agencies enter into written agreements or 287(g) partnerships with ICE to delegate immigration enforcement authority to state and local law enforcement officers.

Although national organizations such as MCCA have stated that the inclusion of civil detainers is confusing for local law enforcement, the Maryland State Police does not have a preference regarding the inclusion of civil detainers in the NCIC database. This is also true for the police departments in Anne Arundel and Baltimore counties and the Harford County sheriff’s office. However, for Montgomery County, the inclusion of civil detainers in the NCIC system is problematic. The Montgomery County police department would prefer that civil detainers be removed from the NCIC database as they can be confusing to line officers, and there is no consistency among counties as to how civil detainers are processed. Many NCIC civil detainers

are for people who entered the country legally but overstayed the limitations on their visas. According to the Montgomery County police department, using local resources to go after these people siphons resources from individuals who are committing serious crimes. If civil detainees must remain in the NCIC database, Montgomery County would prefer that clear authority be established to define local participation in the execution of these detainees.

Anne Arundel County

At this time, the police department has an informal policy regarding detention and arrest involving undocumented immigrants. A formal policy is being developed. If an undocumented immigrant is arrested, the police ask for the Social Security number (SSN) and where the person was born. If citizenship status cannot be verified, the police contact ICE to query the person's status through the NCIC database. The person arrested goes through the arrest process, but if that person appears to be undocumented, ICE is also asked if a detainer for that person will be issued. If ICE issues a detainer, then the person is held until ICE can take custody. If ICE does not issue a detainer, then the police department completes the arrest of the person.

The Anne Arundel County police department is concerned that initiatives for local law enforcement to become more active in enforcing immigration laws will drive a greater wedge between police and immigrant communities. The challenge has always been to achieve a proper balance between policing responsibilities and the need to build trust in communities to encourage cooperation with law enforcement efforts. For example, a few years ago, there was a noticeable increase in street robberies against Hispanic/Latino victims. Anne Arundel County officers met with the Hispanic/Latino community to provide safety tips and encourage reporting of these crimes. With community cooperation, the police were able to put together patterns of activity that eventually led to arrests.

The police department finds that officers encounter general distrust which presents a hindrance to law enforcement efforts. In many of the countries where immigrants come from, the police are viewed as repressive and corrupt. To alter this perception, the police department conducts outreach to community and religious groups. The police department also works with CASA of Maryland. Local police officials attend community events and health fairs and provide crime prevention literature in Spanish.

Baltimore County

The Baltimore County police department has no formal or informal policy regarding the apprehension of undocumented immigrants. The established practice is not to conduct proactive immigration enforcement; however, the department does cooperate with ICE when requested and will provide perimeter security and transportation for any operations ICE is conducting within the county. When a person is arrested, officers routinely ask for an SSN and compare the SSN against prior arrest reports. Officers do not routinely ask the person under arrest for citizenship status. However, if there is probable cause to believe the person is an undocumented immigrant,

an officer may inquire about status and request information from the NCIC database. If the person under arrest is not a citizen or the SSN is not valid and there is any type of warrant in the NCIC database, the person is taken into custody. If ICE declines to issue a detainer, then the person is released unless the person should be held on other criminal charges.

According to the Baltimore County police department, the perception that local police are immigration enforcers could have a detrimental impact when working with immigrant communities. With this in mind, the Baltimore County police department does not routinely ask the citizenship status of crime victims or witnesses to a crime. The police department has noted an increasing problem with burglaries of legal immigrants who are business owners. Police officials also find that the cultural differences in immigrant communities present law enforcement challenges. In addition to Hispanic/Latino populations, Baltimore County also has large Russian and Middle Eastern communities where members may not speak English.

The Baltimore County police department does engage in outreach to immigrant communities. There are 17 officers who are fluent in Spanish, but they may not always be the first responders to a crime scene. Recently, the county hosted a Hispanic/Latino forum to discuss how county agencies, businesses, and residents could work together to serve the diverse populations in the county. Baltimore County also has a full-time Hispanic/Latino liaison officer who engages in community outreach and education, recruits bilingual volunteers, provides officer training and assists with criminal investigations.

Harford County

The Harford County sheriff's office has no formal policies regarding the apprehension of undocumented immigrants. In practice, if an officer encounters an undocumented immigrant, federal immigration authorities (ICE) are contacted. This policy applies to individuals arrested as well as to victims and witnesses of crimes. For crime victims who appear to be undocumented, the sheriff's office makes sure that other needs are addressed (such as counseling); however, eventually ICE is contacted.

For those persons arrested or detained, officers routinely ask for the SSN and citizenship status. If the information provided seems suspect in any way, ICE is contacted. Information is generally cross-checked against the Maryland Interstate Law Enforcement System (MILES) and the NCIC database. If a person under arrest appears to be undocumented, the sheriff's office continues processing the charges at the local level, but also determines if ICE wants to issue a detainer. If the person arrested is not being charged at the local level, or was charged but would otherwise have been released, the person is held at the precinct until ICE can respond. If ICE wants to take custody but there is a significant delay, the sheriff's office does not hold that person unless ICE can provide paperwork authorizing continued detention. The sheriff's office notes that there have been cases where ICE could not be contacted immediately. The sheriff's office contacted judges who issued holding orders for the detainees until ICE could be consulted.

The sheriff's office reports that initiatives for greater involvement in immigration by the local police would escalate the general distrust that many immigrant groups have of the police and would make the civil service responsibilities of the sheriff's office even harder to accomplish. Since the immigrant population in Harford County is somewhat limited, there have not been any specific problems with the targeting of immigrants as victims. The language differences are a barrier to effective law enforcement, so the office offers tuition reimbursement for employees who take Spanish language classes. In-service training to teach basic Spanish is also offered. The sheriff's office does have Spanish-speaking officers. A group of Hispanic/Latino community leaders provides advice about community concerns. A member of the sheriff's office is also on the county Human Relations Commission.

Howard County

The Howard County police department reports that, outside of normal police procedures, no policies regarding the apprehension of undocumented immigrants have been established. If a person is detained by an officer, the officer is expected to follow established procedures to obtain the information that will assist the investigation. No specific policies dictate or require that ICE be contacted, outside of what is consistent with normal police procedures.

Montgomery County

The Montgomery County police department developed specific guidelines regarding the apprehension of undocumented immigrants that became effective in 2000. These guidelines are being updated and a new policy is expected in 2008. Until the new policy is issued, the guidelines issued in 2000 remain effective.

Police guidelines state that officers will not indiscriminately question foreign nationals about their citizenship status without a reasonable basis for suspicion that the person committed a crime or traffic violation. Officers will not check the status of persons, including victims, witnesses, or complainants solely for the purposes of immigration violations. An officer may ask a person being detained for an SSN as a way of determining whether there are outstanding criminal warrants against the person. The SSN is verified only if the person is wanted on criminal charges. A person being detained as a suspect is taken to the Central Processing Unit in Montgomery County, which is managed by the corrections system. Line officers are generally not responsible for intake information. The verification of the SSN takes place through MILES, NCIC, and federal agencies such as the Social Security Administration. If the person being detained appears to be undocumented or the SSN is invalid, the person is processed at the local level and released unless there is reason to believe the person is a violent criminal offender, a known gang member, or involved in human trafficking. If the crime is a minor one, however, even if it appears that the person is in the country illegally, the person is processed and released like anyone else, and ICE is not contacted.

The initiatives for local police to become more involved in immigration enforcement, such as the policies more prevalent in some counties in Northern Virginia, most notably Prince William County, would make it difficult to secure the trust of the immigrant community. This trust is necessary to find out about crimes and to find the perpetrators. The police department believes that immigrants would become even more distrustful of the police than they already are if they thought that every encounter would lead to an investigation of citizenship status. In a recent sexual assault case, the victim, who was an undocumented immigrant, was uncooperative until a Spanish-speaking officer was able to assure her that the officers were there to help and were not concerned with her immigration status. An additional challenge confronting this department is an increasing criminal trend called “amigo shopping.” This occurs when Latino persons are specifically targeted for crimes because they are thought to carry cash rather than use banks and be reluctant to report crimes to the police.

To improve outreach to immigrant and other communities, the police chief holds separate meetings every month with leaders from the African American, Latino, and Asian communities. Each of the six police districts within the county has a community advisory board. The police department also participates in various community programs and conducts outreach at the Gilcrest Center for Cultural Diversity. The media department has a full-time employee who communicates with the Latino community through television, radio, and newspapers. The police department strives to increase cultural, ethnic, and racial diversity in the police department. The police chief advocates eliminating the U.S citizenship requirement for police officers as a way to increase the number of officers from immigrant communities.

Chapter 9. Courts and Criminal Justice

Limited English Proficient Individuals and the American Court System

The United States has a long legislative history of addressing the rights of linguistic minorities. Title VI of the Civil Rights Act of 1964 is considered the key law governing access to public services by limited English proficient (LEP) persons. Section 601 of Title VI specifically states that no person shall “on the grounds of race, color, or national origin, be excluded from participation in, denied the benefits, or be subjected to discrimination under any program or activity receiving federal financial assistance.” National origin has been interpreted to include discrimination on the basis of language.

Although the U.S. Constitution does not mention the right to an interpreter in court, critics argue that the rights and liberties of residents under the Fourth, Fifth, Sixth, Eighth, and Fourteenth amendments are, in effect meaningless for non-English proficient or LEP individuals unless interpretation is provided. Additionally, the Court Interpreters Act of 1978 requires federal courts to provide interpreters for criminal cases and in civil cases where the United States is the plaintiff.

Most, if not all, state court systems receive, either directly or through individual subunits, federal financial assistance from the U.S. Department of Justice (DOJ) or another federal agency. Recipients of such federal financial assistance must comply with various civil rights statutes, including Title VI of the Civil Rights Act of 1964. Under Executive Order 13166, federal agencies that extend financial assistance, such as DOJ, are required to issue guidance clarifying the obligation of financial aid recipients to ensure meaningful access by LEP persons to federally assisted programs and activities.

America’s courts discharge a wide range of important duties and offer critical services both inside and outside the courtroom. Examples range from contact with a clerk’s office in a *pro se* matter to testifying at trial. According to DOJ, where those participants are also LEP persons, “the provision of reasonable and appropriate language assistance may be necessary to ensure full access to courts, and to preserve the importance and value of the judicial process.”

Maryland’s Court Interpreter Program

The goal of the Maryland Judiciary through its Court Interpreter Program is to bridge the gap between the court system and any LEP individual, regardless of citizenship status. According to the Judiciary, interpreter services are available to anyone seeking “access to justice” and, consequently, immigration status is not considered when providing interpreter services. Thus, while many recipients of interpretation services may be undocumented immigrants, this type of data is not collected by the Judiciary and therefore cannot be quantified.

According to the Judiciary, court interpreters are provided to an individual during all steps of the criminal process as well as in civil cases. The Judiciary’s policy toward providing interpreter services is guided by the Maryland Rules of Court. According to Maryland Rule 16-819(a)(5), court interpreter services are provided to any “... party or witness who is deaf or unable adequately to understand or express himself or herself in spoken or written English.” This rule applies to proceedings in both the District Court and circuit courts.

To determine whether a spoken language interpreter is needed, the court, on request or its own initiative, must examine a party or witness on the record. The court must appoint a spoken language interpreter if the court determines (1) the party does not understand English well enough to participate fully in the proceedings and to assist counsel; or (2) the party or a witness does not speak English well enough to be understood by counsel, the court, and the jury.

A person who needs an interpreter may apply to the court for the appointment of an interpreter. When practical, an application for the appointment of an interpreter must be submitted no more than five days before the proceeding in which an interpreter is requested. According to the Judiciary, with the exception of the Prince George’s and Montgomery County District Court, which employs nine contractual Spanish interpreters on a part-time basis, interpreters are hired as freelancers on an as-needed basis in both the District Court and circuit courts.

Exhibit 9.1 shows Judiciary expenditures for freelance interpreters (including American Sign Language interpreters) since fiscal 2002. The fiscal 2008 appropriation includes approximately \$2.8 million for interpreter fees, a 117 percent increase above fiscal 2002 actual expenditures. According to the Judiciary, approximately 17 percent of the overall cost for court interpreter services is attributed to sign language interpreters. Applying this percentage to the total cost for interpreter fees would result in a fiscal 2008 appropriation of approximately \$2.3 million for language interpreters. As previously mentioned, the Judiciary does not quantify the costs of undocumented immigrants. According to the Judiciary, this information is not gathered during any part of the process in which interpreters participate.

Exhibit 9.1
Cost of Freelance Interpreters in Maryland Courts
Fiscal 2002-2008

	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
District Court	\$815,887	\$1,040,525	\$1,023,071	\$942,786	\$1,127,706	\$1,464,068	\$1,350,000
Circuit Court	487,377	565,475	669,878	728,731	934,110	1,347,958	1,476,530
Total	\$1,303,264	\$1,606,000	\$1,692,949	\$1,671,517	\$2,061,816	\$2,812,026	\$2,826,530

Source: Maryland Judiciary

The Office of the Public Defender

Another key aspect of documenting the costs associated with undocumented immigrants as it pertains to the Maryland court system includes the expenditures of the Office of the Public Defender (OPD). OPD provides counsel and related services to indigent persons. Representation is provided in criminal trials, appeals, juvenile cases, post-conviction proceedings, parole and probation revocations, and involuntary commitments to mental institutions. According to OPD, legal representation is provided to any indigent person charged with an incarcerable offense irrespective of whether the person is an undocumented immigrant or an individual with LEP. OPD does not track clients' immigration status nor the costs associated with representing undocumented immigrants.

OPD's policy for acquiring interpreters varies by jurisdiction. According to the agency, each office is authorized to retain interpreters on an as-needed basis. While some district offices utilize Spanish speaking employees to communicate with clients, all offices are advised to retain an interpreter if a client is an individual of LEP. Similar to the Judiciary, OPD's expenditures for interpreter services also include sign language interpreters. However, the Department of Legislative Services (DLS) was advised that OPD is unable to identify the percentage of the overall cost for interpreter fees associated with foreign and sign language interpreters. OPD reports that the percentage of costs associated with sign language interpreters is likely to be less than the 17 percent. **Exhibit 9.2** shows OPD's annual expenditures for interpreter services (including sign language interpreters) since fiscal 1999.

Exhibit 9.2
Cost of Interpreters at the Office of the Public Defender
Fiscal 1999-2008

<u>Fiscal Year</u>	<u>Expenditure</u>	<u>Fiscal Year</u>	<u>Expenditure</u>
1999	\$16,412	2004	\$32,361
2000	22,348	2005	44,614
2001	15,036	2006	50,891
2002	26,950	2007	70,047
2003	35,911	2008	47,750

Source: Office of the Public Defender

Maryland State’s Attorney Offices

Another key component of Maryland’s court system includes the prosecutorial function of local State’s Attorney offices. State’s Attorney offices represent the State of Maryland in all criminal prosecutions that result from crimes charged by local law enforcement agencies. In addition to criminal prosecutions, State’s Attorney offices provide information, assistance, and support to crime victims and witnesses. In an effort to gain greater insight into local State’s Attorney offices’ policies toward identifying and prosecuting undocumented immigrants, DLS interviewed several State’s Attorneys. The results of those interviews are summarized below with more detailed survey responses provided in **Exhibit 9.3**.

Immigration and Customs Enforcement (ICE)

Survey responses indicate that communication with ICE regarding the identification of undocumented immigrants differs within each jurisdiction. For example, in Prince George’s County, the State’s Attorney Office reported that communications with ICE regarding a defendant’s immigration status were rare. By contrast, in Anne Arundel and Harford counties, the State’s Attorney offices reported more routine communications with ICE regarding defendants’ immigration status and federal detainers.

Citizenship Status Inquiries

Survey responses indicate that local State’s Attorney offices rarely inquire as to the citizenship status of a defendant. Most offices report that citizenship status is typically provided by local law enforcement and that no further inquiries are made regarding a defendant’s citizenship status.

Criminal Prosecutions

Most State’s Attorney offices prosecute any defendant accused of committing a crime irrespective of immigration status or the type of crime committed. However, in some instances, local State’s Attorney offices have agreed to dismiss charges against undocumented immigrants for minor offenses when ICE has agreed to deportation.

DLS discussions with the Judiciary and various court-related agencies indicate that additional research is warranted to ascertain the financial implications of providing court services to undocumented immigrants. The Maryland Judiciary, which comes into contact with every individual charged with committing an offense, may be in the best position to capture this type of data on a statewide basis.

Exhibit 9.3
Summary of Department of Legislative Services Survey

State's Attorney Office	Does the S. A. office make specific inquiries as to immigration status? What, if any, communications does the S.A. office have with ICE?	How does the S.A. office proceed with a case upon discovering that a defendant is an undocumented immigrant?	What impact, if any, would a request for a detainer by ICE have on whether the case proceeds?
Anne Arundel County	Generally, the S.A. office receives a rap sheet from local law enforcement that contains an individual's citizenship status. If this information is blank, the S.A. office contacts ICE for citizenship information. In rare instances, ICE requests a detainer on the defendant before the S.A. office proceeds with the case.	The S.A. office prosecutes all criminal defendants irrespective of citizenship status. Typically, the S.A. office contacts ICE once the defendant has been convicted.	Minimal; the S.A. office typically prosecutes all cases and informs ICE of the status of the case upon conclusion.
Baltimore City	N/A		
Baltimore County	The S.A. office has limited contact with defendants. At times, law enforcement provides the citizenship status of defendants. The S.A. office contacts ICE if and when the citizenship status of a defendant is made available.	The S.A. office evaluates each case on a case-by-case basis. If the case is a serious felony that is provable, the S.A. office typically prosecutes the case irrespective of immigration status. If the case is a misdemeanor, the S.A. office may dismiss the case in favor of deportation. Every case is judged on its unique set of facts.	The S.A. office honors all of ICE's detainers. While the severity of the case is an important factor, every case is evaluated on a case-by-case basis.

Harford County

Citizenship status is usually provided to the S.A. office by local law enforcement. If the defendant is a foreign citizen or an undocumented immigrant, the S.A. office notifies ICE to see if the offense affects a defendant's citizenship status and whether ICE wants to request a detainer.

Typically, the S.A. office requests a higher bail amount for undocumented immigrants because their connection with the State is limited, which results in a higher flight risk. If ICE requests deportation and the criminal offense charged is relatively minor (*i.e.*, a misdemeanor), the S.A. office dismisses the charges and allows ICE to deport the defendant. However, if the defendant is accused of committing a serious crime (*i.e.*, a felony), the S.A. office proceeds with the case and allows ICE to request a detainer with the prison system.

Request for detainer/deportation by ICE is considered in light of the severity of the offense charged.

Howard County

Inquiries regarding citizenship status are typically made by local law enforcement; however, the S.A. office inquires regarding citizenship status if there is reason to suspect that a defendant may not be a U.S. citizen.

The S.A. office contacts ICE upon discovering that a defendant is an undocumented immigrant and coordinates its prosecution efforts with ICE. The S.A. office evaluates each case on a case-by-case basis. If the case is a serious offense or a crime against a person, the S.A. office typically prosecutes the case irrespective of immigration status. However, if the case is a misdemeanor or a crime against property, the S.A. office may dismiss the case in favor of deportation.

Typically, the S.A. office coordinates prosecution efforts, including requests for detainees with ICE.

Montgomery County

N/A

**Prince
George's
County**

The S.A. office is unaware of whether a defendant is an undocumented immigrant in most cases. At no point prior to prosecuting the case is the S.A. office provided information regarding a defendant's citizenship status. The S.A. office reports that there is no routine mechanism for contacting ICE. The S.A. office has only had contact with ICE once during the current S.A.'s tenure.

The S.A. office prosecutes all criminal defendants irrespective of citizenship status.

None; to date, the S.A. office has had minimal contact with ICE.

Role of Corrections Agencies – Maryland

To replicate the Virginia analysis of incarcerated undocumented immigrants in Maryland would require significant fiscal and staff resources. At this time, there exists no standard or coordinated reporting or tracking mechanism in Maryland to verify the entire criminal alien population in both State and local facilities. The state of Virginia requires the state prisons and the local jails to comply with uniform data collection and reporting requirements. Because the data collection is automated and standardized, Virginia's staff can focus on the analysis of the available information. In Maryland, significant resources would have to be allocated to setting up a data collection system and collecting intake data from the local jails as well as the State prison system. A statewide network that would enable local jails and State prisons to transfer data to the Department of Public Safety and Correctional Services (DPSCS) would also have to be established.

DPSCS attempts to identify citizenship status for any individual sentenced to the Division of Correction (DOC) during the intake process at the Maryland Reception, Diagnostic, and Classification Center (MRDCC). ICE is notified via fax when foreign birth (not illegal citizenship status) is suspected by way of an inmate's own admission, criminal history check, and/or interviewer suspicion. Upon notification, ICE agents (1) come to the facility to interview the inmate; (2) indicate, without seeing the inmate, if a detainer will be lodged; or (3) wait to dispose of the case once the inmate is transferred to a designated institution, primarily the Maryland Correctional Institution, Hagerstown for males or the Maryland Correctional Institution for Women in Jessup. DOC attempts to house all criminal aliens at either of these facilities because of the proximity to federal judges responsible for hearings regarding immigration issues. In most cases, ICE lodges a detainer against the undocumented immigrant and, once the inmate's sentence has been completed or the inmate is paroled, ICE takes custody of the inmate.

While in DOC custody, policies, procedures, and treatment for criminal aliens once in an institution are the same as for any other sentenced inmate except that this population is not eligible for the Work Release Program. There is no cost difference in housing undocumented offenders, since they are treated as any other DOC committed inmate. There can be some costs associated with language interpretation for those inmates who do not speak English; however, these costs are relatively small, and it is not possible to determine what portion of the department's interpreter costs are due to undocumented immigrants.

According to DPSCS, the number of undocumented immigrants in State facilities has increased since fiscal 2003, as seen in **Exhibit 9.4**. These data were gathered by DPSCS at the request of DLS through hand counts of the record system.

Exhibit 9.4
Number of Undocumented Immigrants in State Correctional Facilities
Fiscal 2003-2006

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Undocumented Immigrants	617	642	642	674
Percent of Correctional Population	2.6%	2.7%	2.8%	3.0%

Source: Department of Public Safety and Correctional Services

A “criminal alien” is a noncitizen who is residing in the United States legally or illegally and is convicted of a crime. Criminal aliens are eligible for removal from the United States because criminal activity violates immigration law. However, if a criminal alien goes through a trial and receives a sentence, that individual is in the custody of the sentencing jurisdiction until the sentence has been completed.

The State Criminal Alien Assistance Program (SCAAP) is perhaps the most reliable and consistent source of criminal alien data for both the state and local detention centers. SCAAP is a DOJ, Bureau of Justice Assistance program that partially reimburses state and local jurisdictions annually for the cost of incarcerating some, but not all, criminal aliens illegally in the country. Eligible inmates are those who were validated by the U.S. Department of Homeland Security (DHS) as having been:

- born outside the United States or one of its territories and having had no reported or documented claim to U.S. citizenship;
- in the applicant’s custody for four or more consecutive days; and
- convicted of a felony or second misdemeanor.

Applicant jurisdictions are also partially reimbursed for a percentage of the “unknown inmate” population, or those inmates who do not have a direct record in the ICE databases.

To be eligible for reimbursement, inmates must have been convicted of a felony or second misdemeanor and housed for four consecutive days. Once these criteria are met, all pretrial and post-conviction time served during the 365-day reporting period can be reimbursed. Unless otherwise covered by a cost reimbursement agreement, inmates who are ready for release and who are temporarily held in the applicant facility due to warrants or detainers are also SCAAP eligible. Only juvenile offenders who are convicted as adults and who still meet standard SCAAP criteria are eligible for reimbursement. Once an alien has met the criteria, that individual is always eligible to be claimed by DOC or a local jurisdiction for reimbursement. For example, if an undocumented immigrant was convicted of a felony several years ago and is

being held in pretrial detention on new charges, that individual's pretrial days would be eligible for reimbursement based on the prior felony conviction once the four-day minimum is met regardless of the outcome of the current charges.

State and local jurisdictions apply for reimbursement. To determine reimbursement, the program gathers actual inmate population, cost, and facility data from applicant jurisdictions. Payments are determined using a formula that provides a relative share of funding to jurisdictions that apply and is based on the number of eligible criminal aliens as determined by DHS and correctional officer salaries.

Exhibit 9.5 shows the number of eligible and unknown inmates for State and local jurisdictions in Maryland from fiscal 2001 through 2005, the most complete information available. **Exhibit 9.6** shows the amount of funding received by State and local jurisdictions in Maryland since fiscal 2000.

Exhibit 9.5
State Criminal Alien Assistance Program (SCAAP)
Number of Eligible and Unknown Inmate Cases

<u>Jurisdiction</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>
Anne Arundel	-	-	-	14	41
Baltimore	-	-	-	-	-
Carroll	-	14	6	8	2
Charles	-	-	-	9	8
Frederick	-	-	29	42	38
Garrett	-	-	1	-	-
Montgomery	725	885	927	1,077	810
Prince George's	71	84	80	41	40
Washington	34	26	13	21	14
State DOC	446	443	496	518	535

Eligible Inmate = Confirmed through ICE data vetting as undocumented alien.

Unknown Inmate = No direct record of inmate in ICE databases.

Source: Immigration and Customs Enforcement, State Criminal Alien Assistance Program

Exhibit 9.6
State Criminal Alien Assistance Program (SCAAP) Funding

<u>Jurisdiction</u>	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>
Anne Arundel	-	-	-	-	\$7,287	\$36,607	\$31,369
Baltimore	-	-	-	-	-	-	22,948
Carroll	-	-	\$25,469	\$5,025	10,019	2,733	7,956
Charles	\$2,188	-	-	-	2,778	4,693	11,769
Frederick	-	-	-	18,345	42,616	27,527	32,048
Garrett	-	-	-	144	-	-	-
Montgomery	-	\$710,318	1,102,029	1,022,244	1,356,919	964,401	1,313,737
Prince George's	190,666	74,421	82,808	69,165	44,772	64,396	-
Washington	30,233	24,915	26,337	7,465	10,561	5,197	17,557
State DOC	\$878,257	\$1,744,509	\$1,641,909	\$949,327	\$1,122,300	\$985,416	\$1,295,749

Source: Immigration and Customs Enforcement, State Criminal Alien Assistance Program

It is important to note that there are some caveats to using SCAAP data when assessing population statistics for undocumented immigrants. First, it is the option of the local jurisdiction to apply for SCAAP reimbursement. If a jurisdiction chooses not to apply, the criminal alien population is not captured. In addition, since only criminal aliens meeting certain criteria are eligible to receive SCAAP funding, additional criminal aliens could exist within the correctional system, yet would not be included in the reported records for validation. However, SCAAP data currently exist as the best method for attempting to capture the criminal alien population in a standard format.

According to the data reported by DPSCS, there were 642 undocumented immigrants in DOC for fiscal 2004. However, according to SCAAP data, only 518 were eligible or classified as unknown in the ICE databases. If the DPSCS figures are used, total undocumented immigrants accounted for approximately 3 percent of the State's prison population (2.2 percent with the SCAAP data). The State received approximately \$1.1 million in SCAAP funding. Even comparing eligible inmate days to total inmate days, eligible criminal aliens accounted for 0.9 percent of all inmate days in fiscal 2004, yet the State was reimbursed for less than 0.6 percent of total correctional officer salary costs.

Similarly on the local level, for Prince George's County, in fiscal 2004, undocumented immigrants accounted for nearly 4 percent of the total detention center population.

Because SCAAP only factors correctional officer salary into the reimbursement formula and undocumented inmates must meet certain criteria to be eligible for reimbursement, not all costs for incarcerating criminal aliens are recouped through SCAAP. Any costs related to

incarcerating criminal aliens not reimbursed by the federal government are borne by the State or local government. These include any costs for undocumented immigrants sentenced for a single misdemeanor which include, in addition to any incarceration costs beyond correctional officer salaries and wages, facility operations, clothing, food, and medical costs, among other items.

It is important to note that these criminal aliens are incarcerated in the State or local correctional system because of violations of State or local law; these inmates, whether undocumented or not, are viewed as the sentencing jurisdiction's responsibility. Since they are in custody because they committed a crime and therefore are a cost to the criminal justice system regardless of their citizenship status, the SCAAP program is viewed as an assistance program rather than a full cost recovery program.

In addition to receiving SCAAP funding, DPSCS and most counties in Maryland contract with the U.S. Marshals Service to house federal detainees for a per diem reimbursement. Frederick and St. Mary's counties contract specifically to house ICE detainees; although due to overcrowding issues in St. Mary's County, no federal inmates have been held there since February 2006.

Part IV. Legislative Actions

- Chapter 10. Federal Legislation
- Chapter 11. State Legislation
- Chapter 12. Local Legislation
- Chapter 13. Driver's Licenses
- Chapter 14. English Language Designation

Chapter 10. Federal Legislation

Overview

The U.S. Congress has been debating immigration reform over the last few years but has been unable to reach agreement. Proposals to allow undocumented immigrants to remain in the United States for a specified period of time as guest workers have drawn considerable opposition. During May and June 2007, the Senate considered legislation that would have allowed guest workers; however, even after substantial changes to the bill, attempts to limit debate and bring it to a vote failed repeatedly. At publication time, no further action had been taken. The volatile subject has surfaced many times in the presidential campaign, and leaders may wait until the election is over to craft a final reform bill, particularly as some opponents of the current Senate bill are not seeking re-election.

The House did not pass any reform measures during the past session of Congress – the last bill to pass (the Border Protection, Anti-terrorism, and Illegal Control Act of 2005 – H.R. 4437) focused mainly on expanded border security and also increased penalties on employers who hire undocumented workers. Given the change in congressional leadership, such a bill is not likely to be considered without some form of legalization or guest worker component. Several House bills aimed at immigration reform were introduced in 2007, and it is unclear which one will emerge as the final product. The Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act (H.R. 1645), which has bipartisan support, is a possible contender as it contains elements sought by both parties, such as increased border security and steps for undocumented residents to earn citizenship. Similar to the Senate bill that died, it requires that border security benchmarks be met before a guest worker program can be initiated. STRIVE and other reform proposals also require employers to use the federal electronic employment verification system (EEVS) that is currently voluntary.

Highlights of the Senate bill (the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007 – S. 1348) as it was last deliberated in June 2007 follow.

Provisions of Federal Legislation

Security

- Authorizes enhanced border security measures, including the addition of a 370-mile, triple layer fence along the border, as well as increased personnel. Also provides for 20 additional detention facilities to be constructed. Establishes procedures and safeguards for detention.

- Establishes a funding source to meet specified security benchmarks and requires that those benchmarks be met before the legalization and guest worker program can be implemented.
- Bars those convicted of felonies or three misdemeanors from becoming legal residents or citizens. Also provides for criminal penalties and imprisonment of those caught trying to enter the country.
- Provides stiff criminal penalties for visa and labor documentation fraud.

Employer Requirements

- Requires employers, including governments, to participate in the Employment Eligibility Verification System (EEVS). Employers must verify new hires or those with expired authorizations through EEVS within 18 months of date of enactment and all employees who have not already been verified within three years. Also establishes employee safeguards and appeals procedures related to EEVS.
- Increases fines on employers who hire undocumented immigrants (\$5,000 civil fine for first offense, up to \$75,000 for repeated offenses). Also authorizes fines up to \$15,000 for recordkeeping violations.
- Requires employers of “Y” visa holders to first recruit U.S. residents for the position.

Guest Workers

- Creates a guest worker program that would allow workers to work in the country temporarily through a new “Y” visa. Workers must provide proof of employment and no tax liability, and employer must pay fee. There are three types of the Y visa:
 - (1) The Y-1 (nonseasonal) visa can be renewed twice for a total of six years of authorized work, but the holder has to return to the country of origin in between authorized work visits. The number of these visas would be limited to 200,000 per year.
 - (2) A Y-2B visa would be issued to seasonal workers to work for up to 10 months at a time. These visas can be renewed indefinitely. The initial cap on Y-2B visas is 100,000 and can increase to 200,000 based on the number issued in the previous year.

- (3) A Y-3 visa allows a guest worker to bring a spouse and children to the United States if he or she has health insurance for them and meets certain income requirements.
- Increases cap on family sponsored and H-1B visas and revises procedures for administering other types of temporary visas, particularly the agricultural H-2A visas.

Legalization

- **General:** Undocumented immigrants who have been in the United States continuously since January 1, 2007, and who are employed may receive a Z-1 visa upon payment of fees (including a \$500 state impact fee), penalty (\$1,000), back taxes, and completion of background check. If eligible for a Z-1, the holder's spouse is eligible for a Z-2 and their dependent child for a Z-3 visa.
- **Agricultural:** Undocumented farm workers who worked for at least 863 work hours or 150 work days, whichever is less, between a certain time period would be granted permanent resident status through a Z-A visa, upon payment of a fine and other requirements. They would not be eligible for means-tested federal benefits for five years and cannot claim the Earned Income Tax Credit.
- **Students:** Undocumented high school graduates or high school students admitted to a higher education institution who (1) have lived in the United States for at least 5 years; (2) are younger than age 30 when bill is enacted; and (3) were younger than 16 when they entered the United States can receive conditional lawful permanent residence (LPR) status. They would also be eligible for certain federal higher education assistance.

Aid to States/Local Governments

- Provides for procedures for detention and reimbursement to state or local authorities for costs of transporting a detainee taken into federal custody. Also provides \$2.5 billion over five years for the State Criminal Alien Assistance Program and reimbursement to state and locals for training related to law enforcement of immigration laws.
- Creates the State Impact Assistance Program under the U. S. Department of Health and Human Services (HHS) for health and education services – 20 percent of the funds would go to the states with the 20 percent highest growth rate (that should include Maryland), and 80 percent would be distributed so that each state receives \$5 million or an amount determined by its noncitizen population, whichever is greater.

- Creates the State Records Improvement Grant Program to help comply with REAL-ID costs, including technology, operational costs, and personnel. Only states that certify intention to comply with this law or those that submit an acceptable plan would be eligible. States with employment verification systems that are compliant per REAL-ID get priority.
- Establishes grants for states and municipalities from the federal Office of Citizenship and Integration for “effective integration of immigrants into American society through creation of New Americans Integration Councils.”

Miscellaneous

- Declares English the “national” language of the United States. Also states that, unless specifically provided by statute, no person has a right, entitlement, or claim to have the federal government provide services or provide materials in any language other than English.
- Directs federal agencies to establish various programs addressing integration and employment. For example, the Secretary of Education must develop an electronic English learning program.
- Establishes study of wartime treatment of certain people.

Fiscal Impact

The bill would affect states’ economies in several ways (positive and negative) and impose certain intergovernmental mandates, as defined by federal law. Along with the private sector, State and local governments would be required to verify work eligibility of their employees through EEVS, a federal system that uses various government databases to confirm someone is lawfully present. The bill also would impose new requirements on those governments if they seek to hire certain foreign workers. The Congressional Budget Office cannot determine what the cost of this eligibility verification would be until regulations are promulgated.

The bill also would create or increase grants to states and local governments for costs associated with undocumented immigrants, including detention and health care, as well as a competitive grant program for REAL-ID compliance. The legalization of undocumented immigrants would likely increase the number of people who are eligible for certain mandated benefits, as well as optional benefits (higher education assistance), but the impact could be mixed.

Chapter 11. State Legislation

Overview

As federal immigration legislation has stalled, state legislatures are seeing an increase in immigration-related bills. States have enacted nearly three times the number of laws relating to immigration in 2007 as they did in 2006. More than 1,500 proposals on immigrants and immigration were introduced across the United States in the 2007 sessions as of November 16, 2007. Of these, 244 bills were enacted in 46 states. By comparison, 84 state immigration bills became law in 2006. The four states that did not enact legislation pertaining to immigration were Alaska, New Hampshire, New Jersey, and Wisconsin.

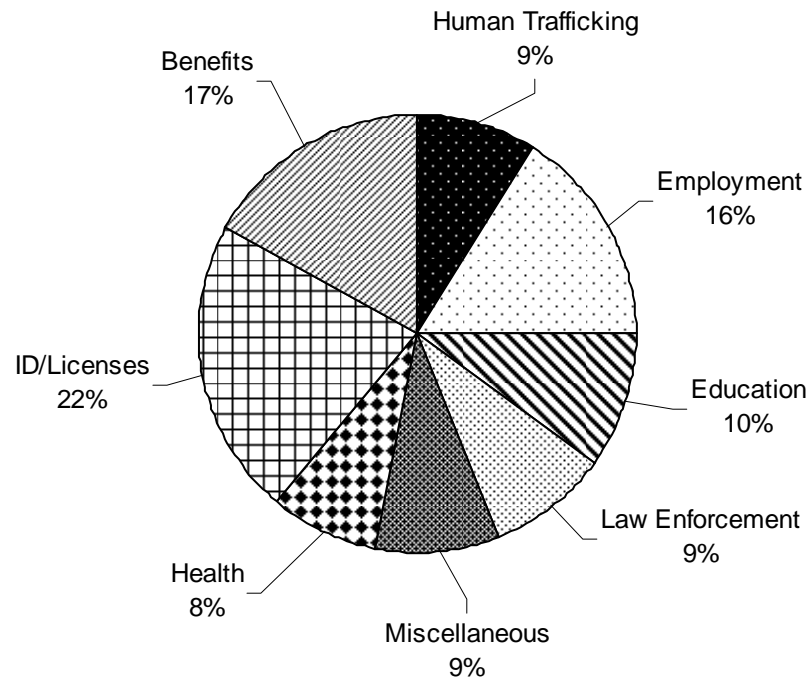
Legislation addressed identification, employment, public benefits, and human trafficking, among other concerns. **Exhibit 11.1** shows the number of bills relating to immigration that were introduced and enacted in 2007 by policy topic. **Exhibit 11.2** shows the distribution on a percentage basis. In the mid-Atlantic region, Virginia was the most active in 2007, adding eight new laws to the books. Maryland enacted five new laws, Pennsylvania had four, Delaware had three, and West Virginia had two. The laws in Maryland pertained to human trafficking, legal services, and public benefits.

Exhibit 11.1
State Immigration-related Legislation 2007
 As of November 16, 2007

<u>Policy Topic</u>	<u>Bills Introduced</u>	<u>States</u>	<u>Enacted Laws</u>	<u>States</u>
Identification/Driver's Licenses and Other Licenses	259	47	42	31
Resolutions	162	37	50	18
Employment	244	45	31	20
Public Benefits	153	40	32	19
Human Trafficking	83	29	18	13
Health	147	32	16	11
Law Enforcement	165	37	17	10
Education	131	34	20	17
Miscellaneous	116	34	14	11
Legal Services	20	12	3	3
Omnibus/Comprehensive Measures	29	8	1	1
Voting	53	23	0	0
Total	1,562	50	244	46

Source: *2007 Enacted State Legislation Related to Immigrants and Immigration*, November 16, 2007, National Conference of State Legislatures

Exhibit 11.2
Distribution of Immigration-related State Laws Enacted in 2007



Source: National Conference of State Legislatures

Identification and Documentation

Nationwide, the policy area with the most legislative activity was identification and documentation requirements, with 259 bills introduced among 47 states. Of these, 42 laws were enacted among 31 states. Many of these laws establish identity verification mechanisms, including determination of lawful status, before driver's licenses are issued to individuals or business licenses are issued to applicants.

Delaware enacted legislation that limits the expiration date on a driver's license or identification card issued to a temporary foreign national to the period of time that the individual is authorized to be in the United States. Georgia enacted legislation that permits the Governor to delay implementing the requirements of the REAL-ID Act until the Department of Homeland Security has issued regulations that the Governor finds will adequately protect the state's interest. Kentucky enacted legislation that requires applicants for driver's licenses to be

U.S. citizens, permanent residents, or of other lawful status. Montana and South Carolina passed legislation that denies the implementation of the REAL-ID Act if it includes definitions regarding citizenship and alien status in the United States.

Employment Policy

Employment policy had the next most legislative activity in 2007, with 244 bills introduced among 45 states and 31 laws enacted among 20 states. Many of these laws establish employment verification requirements for the employer and the employee. Several enactments focus on verifying employment eligibility for unemployment benefits and workers' compensation.

Arizona and West Virginia passed legislation that prohibits employers from hiring undocumented workers. Arkansas passed legislation that prohibits state agencies from contracting with businesses that employ undocumented immigrants. Texas enacted legislation that restricts the use of certain public subsidies to employ undocumented workers. Utah passed legislation that excludes those without legal status from receiving unemployment benefits.

Other Legislation

States also focused attention on health and public benefits with some states restricting eligibility while others extended benefits to new groups of immigrants. Illinois established a new prescription drug program for immigrants aged 65 and older. Arizona enacted legislation that requires citizenship, permanent residency, or lawful presence to receive state public benefits. Colorado requires proof of lawful residence in the United States for receipt of public benefits.

Legislative resolutions range from calling for further study of immigration issues to expressing concerns to the U.S. Congress on federal immigration laws, including the REAL-ID Act of 2005, to calling on the federal government to provide additional funds to states for dealing with the effects of immigration. Miscellaneous measures included Kansas and Idaho declaring English as the official language of the state and Oklahoma lowering the income tax rate for nonresident aliens. Oklahoma also enacted a comprehensive measure related to illegal immigration which restricts driver's licenses and other identification documents, restricts public benefits, and requires verification of employment eligibility, among other provisions.

Significant Employment-related Legislation

The debate in state capitols over the appropriate treatment of people who are not lawful residents of the United States arguably grows the loudest over employment law. The heightened activity in the states is fairly new, prompted by frustration with the level of federal enforcement

that is widely considered to be ineffective. Federal agents testified in 2006 to the U.S. Congress that “monetary fines [which] were routinely mitigated or ignored had little to no deterrent effect. Egregious violators of the law viewed the fines as just a cost of doing business.” In a 2005 report, the U.S. Government Accountability Office (GAO) observed a sharp decline in federal worksite enforcement – the national number of notices of intent to fine issued to employers who hired undocumented workers decreased from 417 to 3 between 1999 and 2004.

Yet states are somewhat limited in their ability to tighten immigration enforcement as federal law governing the employment of immigrants and undocumented residents largely preempts state law.¹ States are barred by the federal Immigration Reform and Control Act of 1986 (IRCA) from imposing additional civil or criminal sanctions on employers other than through “licensing and similar laws.” Accordingly, Maryland does not specifically prohibit or penalize the hiring of an undocumented worker.

While the Maryland General Assembly has only seen a handful of bills related to undocumented immigrants, legislators’ interest in this issue is steadily increasing. Only one bill was proposed in 2004 and two in 2005; and in 2006, legislators sponsored four bills. The goals of the bills varied and included creating a task force to study the impact of workers on the job market, elimination of workers’ compensation for undocumented workers, and sanctions against employers who fail to verify legal employment. In 2007, the Senate Finance Committee amended Senate Bill 712 to alter workers’ compensation rules to deny vocational rehabilitation services for injured undocumented workers but removed restrictions on eligibility for medical and income benefits. The Senate did not take action on the bill.

Two bills introduced in the special session of 2007 would have (1) denied specified public benefits and prohibited the issuance of a driver’s or professional license to anyone who entered the United States illegally and intended to stay indefinitely (Senate Bill 33); and (2) created a task force to study the financial impact that undocumented individuals have on the State (Senate Bill 34). Neither bill was acted on.

¹ Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, state and local governments may enter into a Memorandum of Understanding that permits state or local law enforcement officers to perform certain immigration functions, such as interrogation and transport of aliens, subject to federal training requirements.

Chapter 12. Local Legislation

In the absence of comprehensive federal immigration reform, many city and county governments are facing pressure from their constituents to deal with the issue locally. Several localities have contemplated or enacted ordinances aimed at alleviating perceived or real problems created by the presence of undocumented immigrants, such as overcrowded housing, noise violations, and loitering by day laborers. One method commonly used by local officials to limit the negative effects of undocumented immigration has been the use of zoning laws and code enforcement. Zoning laws are often used to regulate occupancy limits and prohibit housing overcrowding. While some advocates for undocumented immigrants complain that restrictive zoning laws are applied in a discriminatory fashion against minority populations, regardless of their legal status, proponents of such laws cite anecdotal evidence that undocumented immigrants create unsafe living conditions by violating of reasonable zoning restrictions.

Hazleton, Pennsylvania

In 2006, the City of Hazleton, located in northeastern Pennsylvania, enacted numerous ordinances targeting the rental housing and employment of undocumented immigrants. The ordinances were challenged by a coalition of plaintiffs, including lawful immigrants, undocumented immigrants, and various advocacy organizations. The plaintiffs alleged that the city's ordinances were illegal on multiple grounds, including federal preemption of state laws, violation of constitutional due process and equal protection guarantees, violation of the federal Fair Housing Act, violation of privacy rights, violation of state law under Pennsylvania's home rule charter, and landlord and tenant laws.

A federal court subsequently struck down various provisions of the ordinances. The court held that the provisions regulating the employment of undocumented immigrants were preempted by federal law, that the landlord/tenant provisions violated the due process rights of tenants and owner/landlords, and that the city could not prohibit undocumented immigrants from entering into leases. However, the court sustained a provision establishing penalties for those who employed or provided rental housing for undocumented persons in the city, holding that the ordinance did not violate equal protection guarantees.

Throughout the case, the court maintained a skeptical view of the city's attempts to construct an adequate procedural system to protect the plaintiffs against abuse of the city's regulations. Combined with the supremacy of the federal government in the field of immigration law, the city's ordinances had little chance of passing constitutional muster. The case illustrates the difficulty a state or local government would face in enacting legislation designed to address such a complicated topic, given the federal government's historical role as the originator and enforcer of immigration law. More detailed information relating to *Lozano v. City of Hazleton* is provided in **Appendix 8**.

Herndon, Virginia

Much like Hazelton, Pennsylvania, the town of Herndon, Virginia has become the focus of national attention due to its role in enacting local ordinances involving immigration policy. Herndon and Hazelton are municipalities of nearly identical population with a large and rapidly growing Hispanic community. But while Hazelton's experience with immigration policy has been the result of a precedent-setting legal contest, Herndon's story is representative of a much larger controversy throughout the Northern Virginia region – day laborers and whether government funds should be used to construct facilities serving undocumented immigrants. Herndon is located in Fairfax County, one of the most affluent and diverse communities in the nation. Fairfax, together with Loudoun and Prince William counties, is part of a region which has seen a considerable growth in Hispanic population in recent years. Hispanics comprise 12.9 percent of the population in Fairfax County in 2006 compared to 6.3 percent in 1990.

The epicenter of this controversy began several years ago at a 7-Eleven convenience store parking lot about a mile from the Dulles International Airport. There, on any given day, locals and prospective employers could find dozens of individuals willing to work in landscaping, construction, janitorial services, or a myriad of other tasks. It is believed that many of these individuals were undocumented. The Herndon and Fairfax County governments received numerous complaints regarding the day laborers. To alleviate the complaints and better serve the day laborers, the Herndon Town Council agreed in August 2005 to fund the establishment of a shelter for day laborers on town property. The shelter, operated by a community organization called Project Hope and Harmony, provided English language courses and other social services to the day laborer community.

Instead of stemming the tide of public complaints, the new site actually sparked greater local outrage with regional and national implications. Many individuals in Herndon did not support the use of public funds to build a center for day laborers since many of them were undocumented immigrants. The site was proposed less than three months before a major election and quickly became a flashpoint issue for local politicians and gubernatorial candidates alike. In May 2006, Herndon's mayor and two of its town council members were voted out of office in favor of candidates who not only opposed the day labor shelter but who supported immigration reform in Northern Virginia. By November, the newly constituted town council had prohibited undocumented residents from using the day labor shelter, a move that effectively rendered it obsolete.

The Herndon experience was only the beginning of what would become a dominant regionwide political issue. The City of Manassas is facing several lawsuits and is under investigation from the U.S. Department of Justice, and Prince William County is currently involved in the most prominent debate on immigration policy within the metropolitan Washington area.

Prince William County, Virginia

On July 10, 2007, the Prince William Board of County Supervisors voted in favor of a resolution that would alter many of the rights and benefits of undocumented county residents. The resolution requires local police to cooperate with the U.S. Department of Homeland Security in searching for undocumented residents and transferring them into federal custody. In addition, the board undertook to study what benefits the county would have discretion to deny undocumented residents.

The July resolution directed county staff to study the measures proposed in the resolution and return in 90 days to report its findings. With that report in hand, the county then passed another resolution October 16, 2007, implementing many of the actions proposed in July. A six-member Criminal Alien Unit was established within the county police department, and the county began altering the process of distributing benefits to exclude undocumented residents.

While the County Board of Supervisors faced very little internal opposition in their effort to pass the resolutions, that quickly changed following enactment. Not waiting for the county's 90-day report, several civil rights organizations and a Washington, DC law firm sued the county in federal court over its July resolution. The crux of the argument was that immigration control is a federal responsibility not to be interfered with by state or local governments. Before hearing the substance of this argument, however, the federal district judge dismissed the case on procedural grounds. The attorneys fighting the county stated that they will continue the fight once they find plaintiffs with proper standing to sue.

While officials in Prince William County are launching a crackdown on undocumented immigrants, other communities in Northern Virginia, including Arlington and Fairfax counties and the City of Alexandria, are standing firm in their commitment to provide services to all county residents regardless of their immigration status. Officials in Arlington and Fairfax counties publicly stated that county agencies will not target undocumented immigrants by denying services or asking questions about citizenship status. In Alexandria, the city council recently passed a resolution clarifying that employees will only question the citizenship of people applying for assistance when required to do so by state or federal law. This manner of dealing with undocumented immigrants is somewhat similar to the approach taken by other communities across the country that have adopted sanctuary policies.

Anne Arundel County, Maryland

In August 2007, the County Executive issued an executive order that requires all companies or individuals that wish to do business with the county to comply with federal laws that prohibit the employment of undocumented immigrants. The county purchasing department will add language to all future contracts and requests for proposals that specify the need for compliance. In addition, the County Executive announced that grants will no longer be issued to

organizations that provide services to undocumented immigrants. This policy is reflected in the county's fiscal 2008 budget, which was adopted by the county council.

Chapter 13. Driver's Licenses

One of the most active debates in immigration policy is whether or not to provide driver's licenses to undocumented immigrants. According to the National Conference of State Legislatures (NCSL), the licensing and documentation issue was second only to that of hiring and employment in terms of legislative activity for nationwide state immigration policy. Like so many policy issues, this one found its modern origin in the aftermath of the terrorist attacks of September 11, 2001. Many citizens and advocacy groups seeking a more secure border have found receptive audiences in state legislatures over the past six years. However, the most recent surge of activity in this policy area is probably due in large part to the U.S. Congress and its passage of the REAL-ID Act of 2005.

The REAL-ID Act, consistent with the growing majority of relevant state laws, would prohibit the issuance of driver's licenses and other identification cards to those who cannot prove lawful status in the United States. However, a minority of states have decided to allow undocumented immigrants to continue to obtain licensure and identification documents. Despite the position of the overwhelming majority of states and the U.S. Congress on this issue, there are still no clearly defined lines among national security or economic interest groups as to what is the most prudent policy. What follows is a brief background of how Maryland and other states have crafted documentation policy and reacted to the proposed regulations of the REAL-ID Act.

Issuing Driver's Licenses to Undocumented Immigrants

After September 11, 2001, many advocacy groups and families of the victims of the terrorist attacks pointed to the ease with which the terrorist hijackers were able to enter the United States and board aircraft. These groups demanded greater restrictions and oversight for foreigners traveling or residing in the country. Attention quickly turned to the large and growing population of undocumented individuals residing in the United States. It was considered impractical, if not impossible, to arrest and deport such a large and hidden population. Thus, most immigration policies focused on restricting the rights and benefits of foreigners in the country. Identifying the gateways to licensure, and closing off such access, thus became a logical starting point. In 2001, this sort of policy was not even being tracked by the joint NCSL and National Highway Traffic Safety Administration's Legislative Tracking Database. However, between 2003 and 2004, this database noted that states enacted 41 new laws on identification cards and driver's licenses for undocumented residents.

In 2005, President George Bush signed the REAL-ID Act into law, thereby partially addressing one of the key national security recommendations of the *9/11 Commission Report*. The Act is designed to bring uniformity among the states with regard to the issuance of driver's licenses and identification cards. Once implemented, any individual who could not prove lawful status could not be issued a state REAL-ID compliant card for access to commercial airlines or any other federal facility. This prohibition sparked controversy and has recently brought even

more attention to the debate over the documentation and licensure of immigrants. According to NCSL, in 2007, 45 states reviewed 227 bills and enacted 38 new laws clarifying their positions on this issue. The Maryland General Assembly has considered and passed several bills regarding the issuance of driver's licenses to undocumented immigrants since 2001. However, according to the National Immigration Law Center, as of January 10, 2008, Maryland remains one of six states to continue to issue driver's licenses to undocumented immigrants (**Exhibit 13.1**).

Exhibit 13.1
States That Issue Driver's Licenses to Undocumented Immigrants

Hawaii	Maryland	Utah
Maine	New Mexico	Washington

Note: These figures may no longer be accurate. Due to the controversial nature of this high-profile issue, these remaining states are reconsidering their stances. As of the date of publication of this report, Oregon had recently altered its official policy and is now requiring legal presence for driver's license applicants. Michigan has also indicated that it intends to require legal presence, and on January 16, 2008, Maryland Governor Martin O'Malley stated that he will require the Motor Vehicle Administration to check for legal presence of driver's license applicants, although this policy might not take effect until 2010 and may also be contingent on the fate of the REAL-ID Act.

Source: National Immigration Law Center

The New York Experience

The general trend on the issue of providing licensure to undocumented immigrants since 2001 has been overwhelmingly toward requiring lawful presence. In 2003, 28 states had a lawful presence requirement; in 2004 that number increased to 39 and, by January 2008, 44 states had such a requirement. The New York experience is interesting because it is one of only several states to have attempted to move against the trend by reconsidering its earlier restrictions in favor of licensing undocumented residents. Its experience is instructive because Maryland is another of those few states.

In September 2007, New York Governor Eliot Spitzer unveiled his plan to join Maryland and the six other states at that time that did not require applicants to prove their lawful presence. The Governor's plan quickly encountered strong resistance, not only statewide, but also at the national level. In an October 2007 poll of New Yorkers by Sienna College, 72 percent were opposed to the plan, while only 22 percent were in favor. Shortly after those survey results were released, the New York Senate passed a bill by a wide margin to oppose Governor Spitzer's plan.

Facing widespread criticism, Governor Spitzer looked to the U.S. Department of Homeland Security (DHS) and forged a compromise plan to create a three-tier system of driver's licenses. Under this system, two classes of New York licenses would be REAL-ID compliant, but a third noncompliant license would be available for undocumented residents. This compromise effort was hailed by officials in DHS, an agency struggling through its own controversy to implement REAL-ID. By working a compromise, both Governor Spitzer and DHS hoped to stem the mounting criticism of their respective licensure proposals. However, by mid-November, with the public still highly critical of each scheme, both Governor Spitzer and Department Secretary Chertoff found themselves backtracking again. Secretary Chertoff recognized the significant opposition from the states and stated that final regulations would be adjusted accordingly. As for New York, Governor Spitzer chose to cancel his driver's license plan altogether, stating "we also have an enormous agenda on other issues of great importance to New York State that was being stymied by the constant and almost singular focus on this issue."

The Maryland Experience

As demonstrated by the recent New York experience, the public's attitude regarding access to driver's licenses for undocumented immigrants has not changed much since 2001. The U.S. Congress and most state legislatures have moved, principally in the name of national security, to restrict the documentation and licensure of undocumented residents. Yet one of the lessons learned by both New York and Maryland in dealing with this issue is that the relationship between licensure and national security is more complex. In New York, Governor Spitzer held steadfast in support of his plan for as long as he did largely because of outspoken support from William J. Bratton and Richard A. Clarke, two of the nation's foremost experts in law enforcement and national security, respectively. In separate published statements, Bratton and Clarke explained that, by allowing undocumented residents to obtain driver's licenses, states would be able to bring large populations, essentially hidden from the government, within the purview of state and national law enforcement authorities. In theory, this should increase, not decrease, safety and national security; but, sound as this theory may be, it did little to sway the public's opinion and prevent the undoing of Governor Spitzer's plan.

This theory was also accepted by the Maryland General Assembly long before it was cited by Governor Spitzer and his law enforcement and national security allies in New York. In 2003, the General Assembly passed Chapter 452 (House Bill 838) which prohibits the Motor Vehicle Administration (MVA) from rejecting certain foreign identification documents, thereby ensuring that lawful status is not a requirement for obtaining a driver's license. The new law also created a Task Force to Study Driver Licensing Documentation. The task force's final report concluded in 2004 that no change to the new licensure laws would be necessary. In support of this policy recommendation was a host of law enforcement officers as well as several prominent experts on national security providing written testimony to the task force. Again, the theory being put forth was that providing driver's licenses to undocumented residents would not harm public safety or national security; rather, it would provide greater safety and security for Maryland.

National security was not the only issue focused upon by those providing testimony to the task force. The economic impact on Maryland and the welfare of undocumented residents were also well represented by those providing input to Maryland's task force. Eastern Shore business leaders suggested that further restrictions on the ability of immigrant workers to drive would vastly increase their cost of doing business. Several other individuals and organizational representatives offered testimony as to the cost to Maryland of accidents caused by unlicensed drivers. One noted that more and more undocumented immigrants are entering the United States and will continue to drive whether they are licensed or not. Another cited a study concluding that unlicensed drivers are five times more likely to get into an accident than licensed drivers. Because most unlicensed drivers are also uninsured, the cost of insurance for Marylanders would rise substantially if it were to place further hurdles to documentation. This theory was supported by additional testimony that cited a study of Utah motorists. This study revealed that the rate of uninsured drivers fell from 35 to 12 percent following a change in policy allowing undocumented residents to possess driver's licenses. Very similar statistics from New Mexico further strengthen this conclusion that licensure of undocumented residents will lower the number of accidents and the cost of automobile insurance for all Marylanders.

Recent State and Federal Activity Relating to Driver's Licenses

The following is a brief overview of recent state actions in Maryland relating to the issuance of driver's licenses to undocumented immigrants.

Chapter 452 of 2003

House Bill 838, as introduced in the 2003 session of the General Assembly, would have prohibited MVA from requiring a driver's license applicant to provide information on national origin or immigration status. Furthermore, the bill would have expanded the types of documents MVA could accept to verify an applicant's identity.

To address opposition that arose during the bill's consideration and meet federal child support enforcement requirements, the bill was amended heavily before its enactment as Chapter 452 of 2003. The amendments struck the bill's original provisions and established the Task Force on Driver Licensing Documentation to study driver licensing documentation and submit recommendations to the General Assembly by December 1, 2004. Chapter 452, as amended, also required an applicant to provide a Social Security number (SSN) or an affidavit that the applicant lacks an SSN.

2003 Opinion of the Attorney General

Before the task force issued its final report, the Attorney General issued an opinion on September 12, 2003, that stated MVA may not require an applicant for a driver's license to provide documentation that the applicant is legally present in the United States. However, the Attorney General stated that MVA may require an applicant to provide documents proving the

applicant's identity, and immigration-related documents may be among the type of documents required by MVA.

2004 Task Force Report

The task force submitted its report on December 1, 2004, without a specific recommendation for legislation. However, the report included the following recommendations:

- MVA continue its procedures and documentation requirements for persons possessing U.S. issued birth certificates;
- non-U.S. citizens continue to be required to provide proof of identity documents which have been issued or validated by a federal, state, or municipal authority in the United States;
- MVA consider accepting a number of foreign documents certified as acceptable by the U.S. government and other verifiable documents that reflect the varied economic status of applicants; and
- no revision of current law except as otherwise required by pending federal legislation.

2006 MVA Regulations

MVA proposed emergency regulations in August 2006 that would limit the type of documents that would be accepted for foreign nationals to obtain a driver's license or personal identification card. The regulations require religious and school documentation to come from entities in the United States and not from foreign countries. The General Assembly's Joint Committee on Administrative, Executive, and Legislative Review did not act on the regulations; therefore, the regulations went into effect in January 2007.

Other Legislative Proposals

During the course of the developments described above, several bills have been considered by the General Assembly to require an applicant for a driver's license to demonstrate the applicant's legal presence in the United States. None of these bills was enacted. Bills introduced in the 2007 session that would have required the State not to comply with the requirements of the REAL-ID Act also failed.

Federal REAL-ID Act

On May 11, 2005, President Bush signed into law the REAL-ID Act. The Act requires federal agencies to accept only compliant personal identification (ID) cards for official purposes (*e.g.*, boarding aircraft or entering federal facilities) on or after May 11, 2008. The legislation contains a number of provisions outlining broad requirements for the composition and issuance of ID cards, as well as the development of information technology systems to enhance document authentication and data verification capabilities. On March 9, 2007, DHS published proposed regulations for implementation of the REAL-ID Act.

Key Features of the Proposed Regulations

Major elements of the Act's provisions as amplified by the proposed regulations are set forth below.

Implementation

Recognizing the difficulties that states faced under the Act's time frames for compliance, the proposed regulations ease many of the deadlines. DHS now proposes to require the initial submission of a state certification package by February 11, 2008, for final approval by May 11, 2008. States would then be allowed to phase in the issuance of compliant ID cards over a five-year period for the convenience of drivers with recently renewed driver's licenses. The regulations would also allow for an extension of the initial certification submission deadline until December 31, 2009, upon a showing of adequate justification. Whether or not a state is granted an extension, the proposed regulations stipulate that REAL-ID compliant cards will be required for official use by federal facilities no later than May 11, 2013.

Lawful Presence

As part of the initial application process, all applicants would be required to establish their lawful presence in the United States through the production of one of the following documents: certified copy of birth certificate; consular report of birth abroad; U.S. certificate of citizenship; U.S. certificate of naturalization; or an unexpired passport, permanent resident card, employment authorization document, or foreign passport with a valid U.S. visa affixed. This proposed mandate would impose a new burden on applicants for driver's licenses in Maryland and would require a statutory change by the General Assembly.

REAL-ID Card Standards

DHS has proposed that each state's ID card consist of a uniform set of nine data elements and security features and has sought additional comment on the need for uniformity in design and color schemes for each state ID card.

Information Technology Systems Development

The proposed regulations state that the deployment of information technology systems is the highest priority of DHS for the implementation of the Act. Responding to privacy and security concerns, the proposed regulations also state that the majority of information that would be needed for implementation of the law is already being collected or exchanged by existing state and federal databases. Therefore, DHS emphasizes that its primary focus is only on the need for connectivity between state-to-state data exchanges and to a new federated querying service. The regulations favor state-created rules for the exchange of personal information rather than the collection and retention of data and source documents in a centralized, federal document repository. The proposed querying service would also streamline information requests by merging all information for an applicant into a single consolidated report. The efficiency of the system is predicated on allowing for only a short list of acceptable documents that would need to be authenticated and verified.

Security

Part of the proposed state certification process is the submission of a consolidated security plan. The plan would subject the MVA facilities to international security standards. MVA personnel would be required to undergo background checks of criminal and financial records. While MVA would have discretion to determine which employees would require background checks, DHS would retain control over what constitutes a disqualifying offense. Enabling background checks for MVA personnel would require revision of current law. Finally, the proposed regulations mandate minimum security features and independent adversarial security testing for the ID cards and consider the need for encryption technology to restrict the access of commercial entities to personal information contained in the bar code.

Economic Impact of Implementation

According to information provided in the proposed regulations, the most recent nationwide cost estimate for the implementation of the REAL-ID Act is approximately \$17.2 billion over 10 years. This includes approximately \$10.8 billion to the states, \$6.0 billion to individuals, and \$450 million to the federal government. The proposed regulations estimate that new customer services will total \$5.3 billion, or 48.8 percent, of total state costs; card production will total \$4.0 billion, or 36.9 percent, of state costs; and information technology systems will total \$1.1 billion, or 10.5 percent, of state costs. NCSL has estimated the cost of implementing REAL-ID at \$11.0 billion, but this estimate is for a five-year period. According to MVA, the most recent cost estimate for Maryland is between \$80 and \$100 million over a five-year period for a one-tier system, or between \$60 and \$80 million if MVA is allowed to continue to issue noncompliant ID cards to those who request them. MVA must assess the final regulations from DHS before it produces a final itemized cost estimate for Maryland.

State Actions

As of January 2008, 12 state legislatures have adopted laws rejecting compliance with REAL-ID or urging the U.S. Congress to repeal the Act. An additional 12 states have similar legislation currently pending. The other 26 states have either defeated such legislative proposals or have proceeded to study compliance and implementation of the law. The National Governors Association, NCSL, and the American Association of Motor Vehicle Administrators (AAMVA) have been collaborating for several years to study the Act's provisions and fiscal impacts and to make recommendations to DHS. Generally, this coalition of state groups has been opposed to the Act, although AAMVA continues to urge its members to move forward with implementation.

Final Regulations

The REAL-ID Act final regulations and refined cost estimates were released on January 11, 2008. At the time of publication of this report, the Maryland Department of Transportation advised that it would take several weeks to review the changes made in the final regulations. Among the most significant changes are extended compliance deadlines for the states and a drastic reduction in estimated costs to the states due to a more flexible bifurcated approach to state implementation. Individuals younger than age 50 would have until December 1, 2014, to obtain their REAL-ID cards, while people older than 50 would have until December 1, 2017.

Conclusion

The proposed regulations have provided guidance on many of the provisions of the REAL-ID Act, including a clearer division between state and federal responsibilities. Many of the concerns regarding feasibility of implementation by the states have been addressed through the extension of deadlines.

Chapter 14. English Language Designation

English is the language predominantly used in the United States. Immigrants who lack a basic command of English often encounter severe difficulty in dealing with government agencies and accessing public services. Accordingly, certain state and federal laws mandate the provision of alternative channels of communication to both U.S. citizens and immigrants who are limited English proficient (LEP). There is no common definition of LEP. For example, federal education law defines LEP as difficulty speaking, reading, writing, or understanding the English language to the extent that the lack of fluency negatively impacts the individual's ability to learn or "participate fully" in society. Maryland law defines limited English proficiency as the inability to adequately understand or express oneself in the spoken or written English language.

People are LEP for many reasons including the individual is not born in the United States; the individual is not a native English speaker; the individual comes from an environment where English is not the dominant language; the individual is a Native American, Alaskan Native, or other type of native, from an environment where use of another language has limited the individual's command of English. Assistance provided to LEP individuals in Maryland includes staff interpreters, bilingual staff, telephone interpreter programs, and private interpreter programs, as well as the translation of certain vital documents, including applications, informational materials, notices, and complaint forms offered by State departments, agencies, and programs. Federal and state laws mandate that government agencies provide LEP individuals with meaningful access to their programs and services. Failure to provide such access could be considered national origin discrimination.

Limited English Proficiency in Maryland

The U.S. Census Bureau indicates that 5.7 percent of Marylanders older than five cannot speak English very well, which indicates that the person is LEP (**Exhibit 14.1**). In Montgomery County, 14.2 percent of county residents are LEP, the highest percentage in the State. Spanish is the dominant language spoken by these individuals.

Exhibit 14.1
Percent of Residents – Limited English Proficient

<u>Jurisdiction</u>	<u>1990</u>	<u>2000</u>	<u>2006</u>
Montgomery County	8.6%	12.9%	14.2%
Maryland	3.3%	5.0%	5.7%
United States	6.1%	8.1%	8.7%

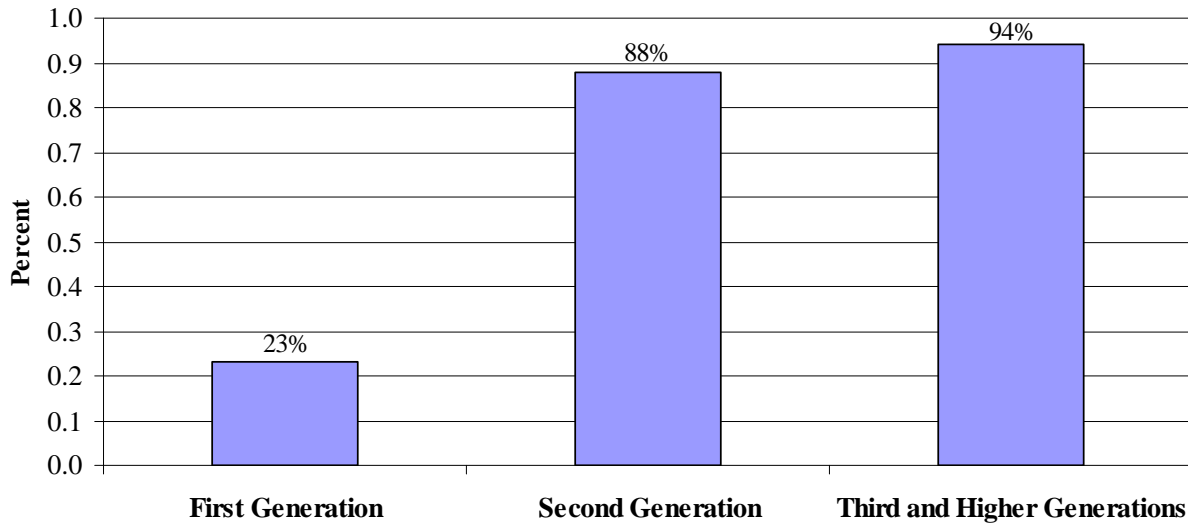
Source: U.S. Census Bureau

Opponents of efforts to accommodate LEP individuals often argue that providing translation for LEP individuals slows integration of LEP individuals into American society. These opponents believe that provision of materials and translation services for languages other than English encourages LEP individuals to remain apart from mainstream American society. Instead, opponents often propose “official English” laws. A common theme of these laws is a mandate that official government functions and documents be conducted and published in English.

Recent studies indicate that immigrants are willing to learn and speak English. A recent report by the Pew Hispanic Center indicates that the fluency in spoken English increases across generations of Hispanic families. For example, while 23 percent of first generation Hispanics are able to speak English very well, the percentage increases to 88 percent of second generation Hispanics and 94 percent of third and higher generation Hispanics (**Exhibit 14.2**). The study also indicates that the use of Spanish at home by Hispanics declines for each future generation:

- While 52 percent of foreign born Hispanics speak only Spanish at home, the percentage decreases to 11 percent for their adult children and 6 percent for the children of U.S. born Hispanics.
- While half of the adult children of Hispanic immigrants speak some Spanish at home, by the third and future generations, the percentage falls to one in four.

Exhibit 14.2
English Proficiency Across Hispanic Generations
Percent Who Speak English Very Well



Note: The estimates are derived from a combination of six national surveys of Hispanic adults conducted by the Pew Hispanic Center in 2002-2006.

Source: The Pew Hispanic Center

Official English Laws in Maryland

Since 1995, eight bills designating English as the official language of Maryland and two bills establishing such designations for Baltimore County have been brought before the General Assembly as shown in **Exhibit 14.3**.

Exhibit 14.3
Legislation Establishing English as the Official Language

<u>Year</u>	<u>Bill Number</u>
2007	Senate Bill 943, House Bill 885, House Bill 771*
2006	House Bill 1335, House Bill 1337*
2005	House Bill 1152
1998	Senate Bill 236, House Bill 443
1996	Senate Bill 632
1995	House Bill 657

*Designation applies only to Baltimore County.

Source: National Conference of State Legislatures; Department of Legislative Services

In 1995, the General Assembly approved legislation (HB 657) that would have established English as the official State language; however, Governor Schaefer vetoed the legislation for policy reasons. Since that time, most bills establishing English as an official language have been voted down by legislative committees. There have been a few exceptions including in 1998 when HB 443 received a favorable with amendments report from the House Commerce and Government Matters Committee and was approved by the House of Delegates; however, the bill was not reported out of the Senate Economic and Environmental Affairs Committee. Also in 1998, SB 236 received a favorable with amendments report from the Senate Economic and Environmental Affairs Committee, but the bill was recommitted to the committee with no subsequent action being taken.

Local governments have also considered adopting official English measures. In November 2006, the Taneytown City Council approved a nonbinding resolution establishing English as the official city language. The Taneytown resolution provided that all official municipal business should be conducted in English alone, unless otherwise required by federal or State laws. Taneytown, located in Carroll County, has a population of around 5,500 residents.

Other State Legislative Action

Twenty-nine states have laws making English their exclusive official language. In addition, Hawaii has established English and Hawaiian as its official languages, with English the “binding” language in the event of any “radical and irreconcilable difference” between the

English and Hawaiian laws of the state. Louisiana established English as its official language through its Enabling Act in 1811, and Massachusetts has recognized English as the official language through a court case. In 2007, according to the National Conference of State Legislatures, English language-related legislation had been proposed in 24 state legislatures. **Exhibit 14.4** lists the states that have enacted official English laws and the year in which the law was enacted.

Exhibit 14.4
States with Official English Laws

Alabama (1990)	Illinois (1969)	Nebraska (1920)
Alaska (1998)	Indiana (1984)	New Hampshire (1995)
Arizona (2006)	Iowa (2002)	North Carolina (1987)
Arkansas (1987)	Kansas (2007)	North Dakota (1987)
California (1986)	Kentucky (1984)	South Carolina (1987)
Colorado (1988)	Louisiana (1811)	South Dakota (1995)
Florida (1988)	Massachusetts (1975)	Tennessee (1984)
Georgia (1986,1996)	Mississippi (1987)	Utah (2000)
Hawaii (1978)	Missouri (1998)	Virginia (1981,1996)
Idaho (2007)	Montana (1995)	Wyoming (1996)

Source: Department of Legislative Services

Pending Federal Legislation

Four bills establishing English as the official national language have been introduced in the 110th Congress. Senator James Inhofe (R-OK) has introduced legislation to require the conduct of official government activities in English and specify that no individual has a right to have the government provide services or materials in a language other than English unless expressly provided by law. The bill also contains exemptions for the use of a foreign language for religious purposes, specified foreign language training programs, or interpreters for individuals older than age 62. The bill repeals provisions of the Voting Rights Act of 1965 regarding bilingual election requirements, congressional findings of voting discrimination against language minorities, prohibition of English-only elections, and other remedial language measures. The bill amends the Immigration and Nationality Act (INA) to require that all public

ceremonies in which the oath of allegiance is administered under the INA be conducted in English. The bill contains a clause specifying that it does not preempt any state law.

A companion bill is H.R. 769, sponsored by Representative Peter King, imposing substantially the same requirements. Two additional bills are H.R. 997 and H.R. 768. H.R. 997, the English Language Unity Act of 2007, requires official functions of the United States to be conducted in English, establishes certain English language testing requirements for the U.S. naturalization process, mandates that all naturalization ceremonies be conducted in English, and declares all English language requirements and workplace policies to be presumptively “consistent with the laws of the United States.” H.R. 768 seeks to invalidate Executive Order 13166, declaring the order to be void and prohibiting the use of funds for adoption or enforcement of any executive order creating an entitlement to services provided in a language other than English.

Finally, one amendment to a bill on federal immigration reform also targets Executive Order 13166. Senator Inhofe introduced Senate Amendment 1151, amending S. 1348, the Comprehensive Immigration Reform Act of 2007, a bill sponsored by Senator Harry Reid (D-NV). The amendment was successfully adopted on June 6, 2007, but the bill as a whole was withdrawn on June 7 after failing to achieve the necessary number of votes to survive a filibuster.

Legal Requirements Relating to LEP Individuals

Several federal laws and directives mandate language assistance to LEP individuals, many of whom are immigrants. These laws and directives are Title VI of the Civil Rights Act of 1964, the Voting Rights Act (VRA), and Executive Order 13166 signed in 2000. Collectively, these laws and directives attempt to provide meaningful language access to voting and government services and combat unlawful discrimination on the basis of national origin. National origin discrimination includes discrimination on the basis of LEP. Maryland enacted legislation in 2002 (SB 265/Chapter 141) that requires State agencies to take reasonable steps in providing equal access to public services for LEP individuals.

Civil Rights Act and Voting Rights Act

Title VI of the Civil Rights Act mandates that “[n]o person in the United States shall, on ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Failing to ensure that LEP individuals can effectively participate in or benefit from federally assisted programs and activities or imposing additional burdens on LEP individuals may constitute impermissible discrimination on the basis of national origin.

The language provisions of the VRA only apply to so-called “covered jurisdictions” determined by the U.S. Census Bureau after each census. Covered language minorities are limited to American Indians, Asian Americans, Alaskan Natives, and Spanish-heritage citizens. The VRA requires a covered state or political subdivision to ensure that all election information available in English also be available in the minority language. The provisions of Section 203 of the VRA are triggered if more than 10,000 or over 5 percent of the citizens of voting age in the covered jurisdiction are members of a single-language minority group who do not speak or understand English adequately enough to participate in the electoral process; or if, on an Indian reservation, the language group exceeds 5 percent of all reservation residents and the illiteracy rate of the group is higher than the national illiteracy rate. The U.S. Census Bureau director is responsible for determining which states and localities are subject to the minority language assistance provisions of the VRA. Montgomery County, the only jurisdiction in Maryland subject to the language assistance provisions of the VRA, must provide language assistance to Spanish-speaking individuals.

Federal Requirements under Executive Order 13166

In August 2000, the President signed Executive Order 13166 that stipulated that LEP individuals should have meaningful access to federal funded programs and activities. Executive Order 13166 requires each federal agency that provides financial assistance to nonfederal entities (state and local governments) to establish guidelines on how entities can provide meaningful access to LEP individuals in compliance with Title VI of the Civil Rights Act of 1964. Federal agencies must design and implement a plan to ensure such access is provided to LEP individuals. The U.S. Department of Justice submitted guidelines on January 16, 2001, that included a four-factor test that federal agencies and other entities can use in the determination of “meaningful access.” These factors include:

- the number or proportion of LEP individuals eligible to be served or likely to be encountered by the program;
- the frequency with which LEP individuals come in contact with the program;
- the nature and importance of the program, activity, or service provided by the program to individuals’ lives; and
- the resources available to the agency and costs.

The Federal Interagency Working Group on Limited English Proficiency was created in 2002 at the request of the Assistant Attorney General for Civil Rights and includes members representing over 35 federal agencies. The purpose of the federal working group is to build awareness of the need and methods to ensure that LEP individuals have meaningful access to important federal and federally assisted programs and to ensure implementation of language

access requirements under Title VI, the Title VI regulations, and Executive Order 13166 in a consistent and effective manner across agencies.

The federal working group has developed a publication titled *Know Your Rights* that outlines certain examples of possible discrimination by government agencies. The publication, which is available in 10 languages, states that “if you are mistreated because you are LEP, it may be national origin discrimination.” **Exhibit 14.5** lists examples of possible national origin discrimination by government agencies as cited in the publication and examples of good practices.

At a meeting before the federal working group in 2006, the U.S. Assistant Attorney General (U.S. Department of Justice Civil Rights Division) commented that, since most federal agencies have successfully completed work on their LEP guidance documents, they will be able to devote more time and attention to issues of compliance and enforcement.

Potential Federal Sanctions in Maryland

The federal government places a high level of attention on linguistic access to federal funded services, whether in a state or local government agency. Federal agencies are authorized to monitor any agency that receives federal funding. The Maryland Department of Human Resources (DHR) advises that adopting an official language could result in additional federal auditing and more intense scrutiny of linguistic access throughout the State by the regional civil rights offices of multiple federal agencies.

Exhibit 14.5
Examples of Possible Discrimination and Good Practices
By Government Agencies

Possible Discrimination

You call 911 to report a crime. The operator does not understand you and cannot help you.

Your child's school sends important information or a notice to you in English. The school knows you speak only Spanish. The school refuses to provide the information to you in Spanish and suggests instead that your child interpret the information for you.

You try to apply for food stamps. The application is in English. You do not understand the application. The food stamp office workers tell you to come back with your own interpreter.

Good Practices

The operator connects you quickly to an interpreter who helps you.

Your child's school has many Spanish-speaking parents. The school knows you only speak Spanish. You should receive the important information or notice in Spanish.

The food stamp office has an interpreter, or contacts a telephone interpreter, to help you. An application in your language is given to you.

Source: Federal Interagency Working Group on Limited English Proficiency

DHR was audited in fiscal 2005 for linguistic access to services at several local departments of social services by the Regional Office of Civil Rights of the U.S. Department of Health and Human Services. The local departments were found to be in compliance at that time. If DHR and local departments of social services had failed to provide access to their programs and services to LEP individuals, the federal government could declare the departments out of compliance with federal requirements thus jeopardizing federal funding for Temporary Assistance for Needy Families (TANF) grants and federal food stamps.

The U.S. Department of Justice indicates that state or local governments with English-only laws do not relieve an entity that receives federal funding from its responsibilities under federal antidiscrimination laws. Entities in states and localities with English-only laws are certainly not required to accept federal funding, but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

State Requirements

Chapter 141 of 2002 requires State agencies to take reasonable steps to provide equal access to public services for LEP individuals. Equal access is defined as the provision of oral language services for individuals who cannot adequately understand or express themselves in spoken or written English and the translation of vital documents ordinarily provided to the public into any language spoken by any LEP population that constitutes 3 percent of the overall State population within the geographic area served by a local office of a State program as measured by the U.S. Census Bureau.

Pursuant to this statute, 35 State agencies, departments, and commissions must take reasonable steps to provide LEP individuals equal access to public services. **Exhibit 14.6** lists the agencies and the time period during which they must comply with the equal access requirement. Other State departments, agencies, or programs not listed in the exhibit must monitor their operations to determine if reasonable steps are needed to achieve equal access to public services for LEP individuals.

Exhibit 14.6 Equal Access Compliance Deadline for State Agencies

<u>July 1, 2003</u>	<u>July 1, 2004</u>	<u>July 1, 2005</u>	<u>July 1, 2006</u>
Human Resources	Aging	Comptroller	Agriculture
Labor, Licensing, and Regulation	Public Safety and Correctional Services	Housing and Community Development	Business and Economic Development
Juvenile Justice	Transportation (MDOT)	Natural Resources	Veteran Affairs
Health and Mental Hygiene	Human Relations Commission	Maryland State Department of Education	5 independent agencies, boards, and commissions
Workers' Compensation Commission	State Police	Attorney General	Environment
	5 independent agencies, boards, and commissions	Maryland Transit Administration (MDOT)	
		5 independent agencies, boards, and commissions	

Constitutionality of Official English Laws

The U.S. Supreme Court has not rendered an opinion on the constitutionality of official English laws. However, the Court has taken one case that many observers of the Court believed would produce such a decision. In *Arizonans for Official English v. Arizona*, Maria Yniguez, a state employee engaged in handling medical malpractice claims against Arizona, challenged a 1997 amendment to the Arizona constitution declaring English “the official language of the State” of Arizona. Ms. Yniguez often communicated in Spanish in the course of her work and feared that the constitutional amendment would cause her to lose her job or face other sanctions if she did not cease to speak Spanish in the performance of her duties. The federal District Court found the constitutional provision overbroad and unconstitutional. The Ninth Circuit Court of Appeals agreed with the district court, striking down the provision. Supporters of the official English provision appealed, and the U.S. Supreme Court granted *certiorari*. Many observers expected the Supreme Court to issue a definitive decision on the constitutionality of official English laws.

However, when the decision was released, the Supreme Court’s opinion steered clear of any such pronouncement. Rather, Justice Ginsburg’s opinion vacated the Ninth Circuit’s determination that the statute was unconstitutional on narrow procedural grounds. The unanimous opinion stated bluntly that the Supreme Court expressed “no view on the correct interpretation of [the official English constitutional provision] or on the measure’s constitutionality.” The Supreme Court has not reviewed a case involving an official English law since *Arizonans for Official English*.

Consequently, the effects of establishing English as an official language would be mostly symbolic. The Congressional Research Service (CRS) has noted that a legislative declaration of English as the official language of the United States “would be a largely symbolic act of negligible legal effect.” CRS notes that:

such a pronouncement would not, of its own force, require or prohibit any particular action or policy by the government or private persons. Nor would it, without more, imply the repeal or modification of existing federal or state laws and regulations sanctioning the use of non-English for various purposes.

Appendix 1

Individuals Obtaining Legal Permanent Resident Status Fiscal 1820 to 2006

Time Period	Europe	Asia	Americas	Africa	Oceania	Unspecified	Total
1820 to 1829	99,272	34	9,655	15	3	19,523	128,502
1830 to 1839	422,771	55	31,905	50	7	83,593	538,381
1840 to 1849	1,369,259	121	50,516	61	14	7,366	1,427,337
1850 to 1859	2,619,680	36,080	84,145	84	166	74,399	2,814,554
1860 to 1869	1,877,726	54,408	130,292	407	187	18,241	2,081,261
1870 to 1879	2,251,878	134,128	345,010	371	9,996	754	2,742,137
1880 to 1889	4,638,677	71,151	524,826	763	12,361	790	5,248,568
1890 to 1899	3,576,411	61,285	37,350	432	4,704	14,112	3,694,294
1900 to 1909	7,572,569	299,836	277,809	6,326	12,355	33,493	8,202,388
1910 to 1919	4,985,411	269,736	1,070,539	8,867	12,339	488	6,347,380
1920 to 1929	2,560,340	126,740	1,591,278	6,362	9,860	930	4,295,510
1930 to 1939	444,399	19,231	230,319	2,120	3,306	0	699,375
1940 to 1949	472,524	34,532	328,435	6,720	14,262	135	856,608
1950 to 1959	1,404,973	135,844	921,610	13,016	11,353	12,472	2,499,268
1960 to 1969	1,133,443	358,605	1,674,172	23,780	23,630	119	3,213,749
1970 to 1979	825,590	1,406,544	1,904,355	71,408	39,980	326	4,248,203
1980 to 1989	668,866	2,391,356	2,695,329	141,990	41,432	305,406	6,244,379
1990 to 1999	1,348,612	2,859,899	5,137,743	346,416	56,800	25,928	9,775,398
2000 to 2006	1,073,726	2,265,696	3,037,122	446,792	47,087	138,899	7,009,322

Source: U.S. Department of Homeland Security

Appendix 2

International Migration – Net Average Annual Net Migration 2000-2005

<i>Leading Sending Nations</i>			<i>Leading Receiving Nations</i>		
Country	Net Migration	Rate per 1,000 Pop.	Country	Net Migration	Rate per 1,000 Pop.
1. Mexico	-400,000	-3.86	1. United States	1,160,000	3.98
2. China	-390,000	-0.30	2. Afghanistan	428,000	15.97
3. Pakistan	-362,000	-2.41	3. Spain	405,000	9.67
4. India	-280,000	-0.26	4. Germany	220,000	2.67
5. Iran	-276,000	-4.06	5. Canada	210,000	6.67
6. Indonesia	-200,000	-0.93	6. United Arab Emirates	192,000	49.59
7. Philippines	-180,000	-2.27	7. United Kingdom	137,000	2.32
8. Ukraine	-140,000	-2.93	8. Italy	120,000	2.07
9. Kazakhstan	-120,000	-8.04	9. Australia	100,000	5.10
10. Sudan	-104,000	-3.00	10. Sierra Leone	88,000	17.47
11. Egypt	-90,000	-1.27	11. Russia	80,000	0.55
12. Morocco	-80,000	-2.64	12. Hong Kong	60,000	8.77
13. Côte d'Ivoire	-74,000	-4.26	13. France	60,000	1.00
14. Bangladesh	-70,000	-0.52	14. Eritrea	56,000	14.07
15. Tanzania	-69,000	-1.89	15. Chad	54,000	6.03
16. Tajikistan	-69,000	-10.90	16. Japan	54,000	0.42
17. Congo	-64,000	-1.20	17. Saudi Arabia	50,000	2.17
18. Uzbekistan	-60,000	-2.34	18. Portugal	50,000	4.83
19. Guatemala	-60,000	-5.05	19. Iraq	48,000	1.78
20. Peru	-60,000	-2.23	20. Kuwait	48,000	19.53
21. Guinea	-60,000	-6.71	21. Singapore	40,000	9.59
22. Turkey	-50,000	-0.71	22. Ireland	39,000	9.76
23. Ecuador	-50,000	-3.92	23. Burundi	38,000	5.46
24. Georgia	-50,000	-10.79	24. Greece	36,000	3.24
25. Liberia	-49,000	-15.41	25. Somalia	34,000	4.46
26. Kenya	-42,000	-1.30	26. Israel	32,000	4.94
27. Viet Nam	-40,000	-0.49	27. Sweden	31,000	3.51
28. Colombia	-40,000	-0.91	28. Malaysia	30,000	1.24
29. Nigeria	-34,000	-0.27	29. Qatar	30,000	42.28
30. Oman	-32,000	-12.78	30. Netherlands	30,000	1.86
31. Cuba	-32,000	-2.86	31. Angola	29,000	1.95
32. Sri Lanka	-32,000	-1.57	32. Burkina Faso	20,000	1.63
33. Ethiopia	-30,000	-0.41	33. Jordan	20,000	3.75
34. Romania	-30,000	-1.37	34. Croatia	20,000	4.42
35. Dominican Republic	-28,000	-3.26	35. Austria	20,000	2.46

Source: United Nations

Appendix 3

Net International Migration for U.S. States

April 1, 2000 to July 1, 2006

State	7/1/2005 to 7/1/2006	Rank	4/1/2000 to 7/1/2006	Rank	State	7/1/2005 to 7/1/2006	Rank	4/1/2000 to 7/1/2006	Rank
Alabama	5,116	34	30,537	34	Montana	470	51	2,092	51
Alaska	1,612	44	4,654	46	Nebraska	4,252	35	26,224	36
Arizona	31,662	9	204,661	8	Nevada	12,488	21	80,482	21
Arkansas	4,189	37	26,467	35	New Hampshire	2,099	43	13,718	41
California	266,295	1	1,724,790	1	New Jersey	54,058	6	357,111	6
Colorado	21,587	14	133,930	14	New Mexico	5,443	33	32,967	31
Connecticut	14,292	17	92,635	17	New York	124,371	3	820,388	2
Delaware	2,177	42	13,394	42	North Carolina	31,907	8	180,986	10
Florida	99,754	4	642,188	4	North Dakota	836	46	3,664	49
Georgia	37,451	7	228,415	7	Ohio	14,151	18	92,101	18
Hawaii	6,720	30	31,092	32	Oklahoma	7,285	29	41,665	28
Idaho	2,770	40	17,266	40	Oregon	13,412	19	88,976	19
Illinois	61,461	5	402,257	5	Pennsylvania	19,087	16	126,007	16
Indiana	10,419	22	68,935	22	Rhode Island	3,595	39	23,086	38
Iowa	5,455	32	36,142	30	South Carolina	7,673	27	40,168	29
Kansas	7,453	28	44,847	27	South Dakota	810	47	4,333	48
Kentucky	5,648	31	30,889	33	Tennessee	9,719	23	59,385	24
Louisiana	4,231	36	22,244	39	Texas	125,770	2	801,576	3
Maine	1,017	45	5,616	44	Utah	9,375	24	60,944	23
Maryland	21,135	15	129,730	15	Vermont	780	48	5,295	45
Massachusetts	30,285	10	200,155	9	Virginia	29,688	11	151,748	12
Michigan	22,803	13	151,435	13	Washington	26,285	12	157,950	11
Minnesota	13,007	20	86,925	20	West Virginia	691	49	4,419	47
Mississippi	2,301	41	10,896	43	Wisconsin	8,420	25	56,557	25
Missouri	8,272	26	50,450	26	Wyoming	490	50	2,323	50
District of Columbia	3,900	38	24,795	37	United States	1,204,167		7,649,510	

Source: Maryland Department of Planning; U.S. Census Bureau

Appendix 4
International Immigration for Maryland Jurisdictions
April 1, 2000 to July 1, 2006

County	4/1/2000- 7/1/2000	7/1/2000- 7/1/2001	7/1/2001- 7/1/2002	7/1/2002- 7/1/2003	7/1/2003- 7/1/2004	7/1/2004- 7/1/2005	7/1/2005- 7/1/2006	4/1/2000- 7/1/2006
Allegany	8	26	24	16	20	21	22	137
Anne Arundel	382	644	39	-1,263	1,342	508	992	2,644
Baltimore City	403	1,429	1,404	1,170	1,130	1,195	1,212	7,943
Baltimore	630	2,287	2,252	1,890	1,853	1,921	1,949	12,782
Calvert	21	52	23	-43	83	42	65	243
Caroline	12	65	64	52	51	49	50	343
Carroll	25	88	80	54	76	73	78	474
Cecil	13	60	57	41	54	50	53	328
Charles	47	68	-40	-265	204	50	136	200
Dorchester	2	13	11	5	12	8	9	60
Frederick	103	343	290	140	344	285	327	1,832
Garrett	0	6	6	4	5	4	4	29
Harford	79	181	92	-108	266	148	218	876
Howard	327	1,250	1,196	918	1,062	1,048	1,091	6,892
Kent	4	31	31	27	29	29	29	180
Montgomery	2,910	11,202	11,029	9,383	9,109	9,428	9,566	62,627
Prince George's	1,502	5,373	5,020	3,677	4,732	4,507	4,791	29,602
Queen Anne's	14	49	46	36	43	45	47	280
St. Mary's	51	39	-99	-381	222	25	135	-8
Somerset	8	40	38	35	34	33	34	222
Talbot	7	39	39	29	30	30	30	204
Washington	22	93	84	51	82	74	81	487
Wicomico	44	175	168	135	152	152	157	983
Worcester	13	65	63	52	60	58	59	370
Maryland	6,627	23,618	21,917	15,655	20,995	19,783	21,135	129,730

Source: Maryland Department of Planning; U.S. Census Bureau

Appendix 5

Demographics – Limited English Proficient Individuals

Limited English Proficient Individuals

County	1990	2000	% Chg.
Allegany	435	585	34.5%
Anne Arundel	7,315	11,416	56.1%
Baltimore City	15,616	18,113	16.0%
Baltimore	16,158	25,526	58.0%
Calvert	371	774	108.6%
Caroline	213	614	188.3%
Carroll	937	1,737	85.4%
Cecil	652	862	32.2%
Charles	972	1,928	98.4%
Dorchester	403	419	4.0%
Frederick	1,378	2,939	113.3%
Garrett	328	276	-15.9%
Harford	2,426	3,413	40.7%
Howard	4,510	11,063	145.3%
Kent	462	367	-20.6%
Montgomery	60,308	105,001	74.1%
Prince George's	31,091	53,743	72.9%
Queen Anne's	307	562	83.1%
St. Mary's	1,381	1,525	10.4%
Somerset	288	333	15.6%
Talbot	303	591	95.0%
Washington	1,217	1,318	8.3%
Wicomico	924	2,324	151.5%
Worcester	498	858	72.3%
Maryland	148,493	246,287	65.9%
United States	13,982,502	21,320,407	52.5%

Ranking by Number of Individuals

<u>County</u>	<u>2000</u>
1. Montgomery	105,001
2. Prince George's	53,743
3. Baltimore	25,526
4. Baltimore City	18,113
5. Anne Arundel	11,416
6. Howard	11,063
7. Harford	3,413
8. Frederick	2,939
9. Wicomico	2,324
10. Charles	1,928
11. Carroll	1,737
12. St. Mary's	1,525
13. Washington	1,318
14. Cecil	862
15. Worcester	858
16. Calvert	774
17. Caroline	614
18. Talbot	591
19. Allegany	585
20. Queen Anne's	562
21. Dorchester	419
22. Kent	367
23. Somerset	333
24. Garrett	276

Ranking by Percent of Population

<u>County</u>	<u>2000</u>
1. Montgomery	12.9%
2. Prince George's	7.2%
3. Howard	4.8%
4. Baltimore	3.6%
5. Baltimore City	3.0%
6. Wicomico	2.9%
7. Anne Arundel	2.5%
8. Caroline	2.2%
9. Kent	2.0%
10. St. Mary's	1.9%
11. Worcester	1.9%
12. Talbot	1.8%
13. Charles	1.7%
14. Harford	1.7%
15. Frederick	1.6%
16. Queen Anne's	1.5%
17. Dorchester	1.4%
18. Somerset	1.4%
19. Carroll	1.2%
20. Calvert	1.1%
21. Cecil	1.1%
22. Washington	1.1%
23. Garrett	1.0%
24. Allegany	0.8%
Maryland	5.0%
United States	8.1%

Appendix 6. Equal Access to Education Programs

The U.S. Supreme Court has held that, under the Equal Protection Clause of the Fourteenth Amendment, undocumented immigrants must be allowed access to basic primary and secondary education. In *Plyler v. Doe* (1982), by a vote of five to four, the Supreme Court struck down a Texas statute permitting the state to withhold public education funds for educating children of undocumented immigrants from school districts. Writing for the majority, Justice William Brennan held that such children bore reduced responsibility for their undocumented status. Although persuasive arguments supported the state in withholding benefits from adult undocumented immigrants, it did not follow that the same arguments applied to undocumented immigrant children. Justice Brennan reasoned that parents were primarily culpable for their decision to enter the United States illegally with their children.

In addition, the Supreme Court distinguished public education from other forms of assistance provided by the government. Although not a right guaranteed to individuals by the Constitution, public education's "fundamental role in maintaining the fabric of [American] society" granted it special status. Given the importance of education and the fact that the personal culpability of such children was diminished, the relationship drawn by the state between its interests in deterring illegal immigration and reducing its negative impacts required a heightened level of scrutiny. Nevertheless, the presence of undocumented immigrants in the United States in violation of federal law was not a "constitutional irrelevancy" nor was education a "fundamental right" guaranteed to all minor children within the borders of the United States. Thus, the statute would not receive strict scrutiny, generally the most demanding form of judicial review.

Seeking to balance the important, but not fundamental value of providing an education against the undocumented status of the minor children, the Supreme Court applied the judicial standard of intermediate scrutiny to the statute. Under intermediate scrutiny, a statute must be substantially related to an important government interest. Justice Brennan viewed the state's interests in this case with a skeptical eye. The majority opinion noted three state interests in excluding undocumented immigrants from public schools. These interests were protecting the state from an influx of illegal immigrants; reducing the burden on state public schools; or, as Justice Brennan characterized the interest, "promoting the creation and perpetuation of a subclass of illiterates within our boundaries." Unlike other programs that might be conditioned on citizenship or legal residency with greater ease, the "enduring disability" inflicted upon a child denied an education made it "most difficult" for the Supreme Court to reconcile "the cost or the principle of a status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause." In the final analysis, a majority of the Supreme Court was unwilling to find a sufficiently substantial relationship between withholding public education funds and deterring or mitigating undocumented immigration. The Supreme Court invalidated the Texas statute, finding that the distinction between children legally resident and undocumented immigrant children constituted a type of punitive discrimination based on status that was impermissible under the Equal Protection Clause of the Fourteenth Amendment.

Various state and local jurisdictions have attempted to restrict the application of *Plyler*. State attempts, such as California's Proposition 187, were effectively preempted by the federal government's enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Local school boards have attempted to require Social Security numbers from students; schools have requested driver's licenses from parents of students, among other policies designed to identify student immigration status. These efforts to limit the effects of *Plyler* have generally been unsuccessful.

Appendix 7. County Responses to DLS Survey

The Department of Legislative Services (DLS) either interviewed or requested interviews with local officials from the seven largest jurisdictions in Maryland – Baltimore City and Anne Arundel, Baltimore, Harford, Howard, Montgomery, and Prince George’s counties. Local entities contacted included the county/city government, police department/sheriff’s office, and the State’s Attorney’s Office. The Baltimore City police department declined to be interviewed for this project. Prince George’s County is in the process of revising its policies and, while officials did not provide information for this project, the police department offered to provide information at a later date.

Appendix 7-A. Anne Arundel County

Police Departments

- 1. Does the police department have a formal or informal policy or other guidelines regarding apprehension of undocumented immigrants, and what is the content of the policy or guidelines?**

We are in the process of developing a formal policy. Our informal policy is to contact ICE if an undocumented immigrant is arrested. We do not look into the status of witnesses or victims.

- 2. If a formal or informal policy or guidelines exist, when were the guidelines or policy adopted?**

A formal policy is currently being developed.

- 3. How are the guidelines or policy conveyed to line officers?**

Through training.

- 4. If a person is detained by an officer, is the officer expected to ask for citizenship status and/or a Social Security number (SSN) while taking down the personal information of the detainee?**

Generally we ask for a Social Security number (for police reports) and where the detainee was born.

- 5. Are the citizenship status and/or SSN verified? How is the information verified?**

If citizenship status cannot be verified when the detainee is asked for identifying information, ICE is contacted to have the person processed through the NCIC database.

- 6. If the detainee is not a citizen or the SSN is not valid, what happens: Is the person referred to Immigration and Customs Enforcement (ICE) or is the person processed at the local level and arrested or released?**

Both. We continue to process the individual at the local level and contact ICE (through their 24-hour hotline) to see if they want to send a detainer for the individual. If the person is being detained as a victim or witness to a crime, then no additional effort to verify status is made.

- 7. What is departmental policy or what are the guidelines that dictate when ICE is contacted regarding a person who appears to be undocumented or without a valid SSN who has been detained, arrested, or held in jail?**

We generally contact ICE.

- 8. What are the primary gangs operating in your jurisdiction with a known foreign national presence?**

We have documented some MS-13, Blood, and Dead Man Incorporated (Aryan Prison Gang) activity. We also have local “motorcycle” gangs. MS-13 has a known foreign national presence.

- 9. How extensive is the gang problem in your jurisdiction? To what extent do you think undocumented immigrants contribute to the magnitude of the gang problem?**

Gangs are a concern. While we do have members of gangs, we do not believe any cells have been set up within our county. We do believe there is a mild spillover of undocumented immigrant gang members in the northern part of the county.

- 10. If a gang member is detained or arrested for a criminal investigation, is citizenship status ascertained? If ascertained, is it verified? What is the process for verification?**

Citizenship status is ascertained. If the individual appeared to be undocumented, we report the individual to ICE for verification through the NCIC database.

- 11. If it is determined that the gang member/detainee is an undocumented immigrant, how is the member processed? Is ICE notified? If ICE is notified, at what point in the process is ICE notified? Is the gang member subjected to arrest, prosecution, and incarceration under State law without notifying ICE?**

Yes, ICE is notified.

As soon as it becomes evident that the individual is undocumented or otherwise has questionable citizenship status.

We routinely contact ICE, but generally follow through on the charges the gang member was originally arrested for as well. There is a special enforcement team that deals with gangs and works with ICE. The police department would probably coordinate with the special enforcement team and with ICE if a multijurisdictional investigation is occurring.

- 12. Are you aware of any federal-state-local law enforcement task forces that are addressing undocumented immigrants and gang activity? Do law enforcement**

personnel from your jurisdiction participate in any of these task forces? Have law enforcement personnel ever participated in such a task force within the last five years?

We have worked on combined drug task forces since the 1980s. ICE generally has representation on the task forces. We recently joined the Document and Benefit Fraud Task Force. One officer will be permanently assigned to the Baltimore Field Office as an Immigration and Customs Enforcement Task Force Officer. Four other officers, one from each district, will receive specialized training in the areas of document fraud and immigration. Participating in the task force is viewed as a way to maximize resources. ICE wields incredible authority. A person suspected of a major crime and of being in the United States illegally can be deported even if there is no arrest. Deportation can happen within 72 hours of being detained.

13. What are the circumstances in which you work with the Office of the U.S. Attorney, the FBI, and ICE regarding gang activity and undocumented immigrants?

We work regularly with the Office of the U.S. Attorney (through DEA) for criminal drug gang cases. We anticipate working with them more through our participation in the Document and Benefit Task Force.

14. Have there been any allegations of human trafficking in your jurisdiction in the last five years? How many each year?

There have been no formal allegations of human trafficking; however, our VICE officers have worked on cases involving Asian-run massage parlors, where they felt strongly that there was a human trafficking component.

15. Have there been any arrests and prosecutions for human trafficking in the last five years? How many each year?

No.

16. If a person files a complaint about human trafficking, is the citizenship status or SSN requested from the complainant? If requested, is it verified?

We generally do not look into the status of witnesses or victims.

17. When a person who is accused of human trafficking is investigated, is citizenship status or SSN checked? If so, at what point in the investigation is the citizenship status or SSN checked?

If the person is a suspect, then status is ascertained early in the investigation, and ICE is contacted.

18. If citizenship status is not checked during an initial investigation, is it checked if the person is detained or arrested?

Status is ascertained early in the investigation.

19. If there is no probable cause to arrest a person accused of human trafficking, but it appears that the person is undocumented, is that person reported to ICE?

If there is no probable cause, then status is not checked unless there is reason to believe that the person is involved in trafficking activity, but there is not enough evidence to confirm that. Checking status can be used for leverage.

20. If there is probable cause to arrest a person on a human trafficking charge and the accused is undocumented, is that person reported to ICE or is that person processed under State criminal law?

The individual would probably be reported to ICE since the Baltimore regional office for ICE has prior experience with investigations of human trafficking offenses.

21. Have you encountered any problems with civil detainees on NCIC? What would be your preference as to the continued inclusion of civil detainees on NCIC?

We have no preference at this point, as no significant issues or problems have been brought to our attention.

22. To what extent do you think initiatives for local law enforcement to become more active in enforcing immigration laws (such as they are doing in Prince William County, Virginia) will impact relationships with the immigrant communities?

It is always a challenge to achieve the proper balance between our policing responsibilities and the need to build relationships with the community in order to encourage cooperation. These initiatives are likely to drive a greater wedge between the police and the immigrant communities.

23. Aside from human trafficking, have there been any particular problems in your jurisdiction with immigrants being targeted as victims? Are your officers confronted with additional challenges when dealing with an immigrant who has been the victim of a crime?

At one point a few years ago, there was an increase in street robberies with Hispanic victims. Our officers met with the Hispanic community to provide basic safety tips and encourage them to report the crimes. With the community's cooperation, we were able to put patterns together that eventually led to arrests.

In many of the immigrants' countries of origin, the police are viewed as repressive and corrupt. This general distrust of authority extends to us even before we have had any contact with the community.

24. What efforts has your department made to improve relationships with immigrant communities?

We conduct outreach to community and church groups. We frequently work with Casa de Maryland, a Latino and immigrant-based service and advocacy organization. We attend a multitude of community and health fairs and provide crime prevention literature in Spanish.

County Executive/Council

25. Has the jurisdiction enacted or established any policies or statements of intent regarding ascertaining the status of undocumented immigrants?

Anne Arundel County Executive John Leopold issued an executive order in August that requires the county to require all companies and individuals that contract with the county to comply with federal law regarding the hiring of illegal aliens. The county purchasing departments will add language to all future contracts and Requests for Proposals that specifies the need for compliance. In addition, the county will no longer issue grants to organizations that provide services to undocumented immigrants.

26. Has the county established itself as a “sanctuary” area – how is that defined?

Anne Arundel County is not a sanctuary jurisdiction. The policy statements issued by the County Executive are intended to discourage undocumented immigrants from locating in Anne Arundel County.

27. Does the jurisdiction routinely ascertain the citizenship status of residents who request county services or file documents (property titles, marriage licenses, etc.)?

The policies within individual departments regarding ascertainment of citizenship status depend on the individual department director.

28. If the jurisdiction does ascertain citizenship status, are county services provided to all residents regardless of citizenship status?

Only services that must be provided to comply with State and federal law would be provided. Anne Arundel County intends to provide services only to U.S. citizens who are county residents.

29. Does the jurisdiction have any policy that authorizes denial of services to undocumented immigrants; if so, what services are denied?

The policy established for Anne Arundel County and contained in the budget for fiscal 2008 authorizes denial of all taxpayer funded services to undocumented immigrants.

30. Is ICE contacted if a county resident appears to be an undocumented immigrant?

No response.

31. When the SSN of a county resident is requested, does the jurisdiction try to verify the number?

No response.

32. If the SSN does not appear to be valid, is ICE contacted?

No response.

33. Do municipalities within the county have authority to establish themselves as sanctuaries or to declare that they are not sanctuaries? Can municipal policies differ or must they conform to the county policy, if a policy has been established?

Municipal policies would have to conform to the policies established at the county level. Municipalities would not be able to declare themselves “sanctuaries” as that would violate the policies established by the County Executive.

State’s Attorney

34. Does the S.A. office make specific inquiries as to immigration status? What, if any, communications does the S.A. office have with ICE?

Generally, the S.A. office receives a rap sheet from local law enforcement that contains an individual’s citizenship status. If this information is blank, the S.A. office contacts ICE for citizenship information. In rare instances, ICE requests a detainer on the defendant before the S.A. office proceeds with the case.

35. How does the S.A. office proceed with a case upon discovering that a defendant is an undocumented immigrant?

The S.A. office prosecutes all criminal defendants irrespective of citizenship status. Typically, the S.A. office contacts ICE once the defendant has been convicted.

36. What impact, if any, would a request for a detainer by ICE have on whether the case proceeds?

Minimal; the S.A. office typically prosecutes all cases and informs ICE of the status of the case upon conclusion.

Appendix 7-B. Baltimore City

Police Departments

No response.

County Executive/Council

No response.

State's Attorney

No response.

Appendix 7-C. Baltimore County

Police Departments

- 1. Does the police department have a formal or informal policy or other guidelines regarding apprehension of undocumented immigrants, and what is the content of the policy or guidelines?**

There is no written policy, but there is an established practice of not conducting proactive immigration enforcement or “round-ups.” We cooperate with ICE and provide assistance, such as perimeter security and transportation, for any operations they are conducting within our jurisdiction.

- 2. If a formal or informal policy or guidelines exist, when were the guidelines or policy adopted?**

There is no specific date as our policy consists of a standard practice that has evolved during the years.

- 3. How are the guidelines or policy conveyed to line officers?**

The established practice is verbally presented to top officials within the department who disseminate the information.

- 4. If a person is detained by an officer, is the officer expected to ask for citizenship status and/or a Social Security number (SSN) while taking down the personal information of the detainee?**

Officers ask for Social Security numbers when filling out police arrest reports. Citizenship status is not routinely asked as a practice, but if there is probable cause to believe a detainee may be an undocumented immigrant, an officer may inquire.

- 5. Are the citizenship status and/or SSN verified? How is the information verified?**

No. Citizenship status is not routinely verified, but may be. SSNs are compared against prior arrest reports.

- 6. If the detainee is not a citizen or the SSN is not valid, what happens: Is the person referred to Immigration and Customs Enforcement (ICE) or is the person processed at the local level and arrested or released?**

We takes the individual into custody if there is any type of warrant in NCIC and contact ICE. If ICE declines to pick up the detainee, he or she is released, unless the individual was being

held on other charges. If ICE wants to take an individual into custody who is also being detained on State charges, the State's Attorney's office works with ICE and the Office of the U.S. Attorney to determine the process.

- 7. What is departmental policy or what are the guidelines that dictate when ICE is contacted regarding a person who appears to be undocumented or without a valid SSN who has been detained, arrested, or held in jail?**

We routinely contact ICE.

- 8. What are the primary gangs operating in your jurisdiction with a known foreign national presence?**

There are 25 known gangs and 350 identified gang members in Baltimore County. The Bloods, Crips, or spin-off of these, and MS-13 are the primary gangs operating in our jurisdiction. MS-13 has a known foreign national presence.

- 9. How extensive is the gang problem in your jurisdiction? To what extent do you think undocumented immigrants contribute to the magnitude of the gang problem?**

Gangs are a significant and growing concern. Investigating undocumented immigrants who are gang members can be complex. Witnesses and victims are frequently uncooperative. In order to thoroughly investigate these cases, our officers must occasionally travel out of State. The case could even cause us to take the investigation out of the country if the individual has fled the United States. This is due to the transient nature of the population.

- 10. If a gang member is detained or arrested for a criminal investigation, is citizenship status ascertained? If ascertained, is it verified? What is the process for verification?**

Citizenship status is ascertained when a gang member is arrested. It is verified by contacting ICE, if probable cause exists to indicate the individual is not a U.S. citizen.

- 11. If it is determined that the gang member/detainee is an undocumented immigrant, how is the member processed? Is ICE notified? If ICE is notified, at what point in the process is ICE notified? Is the gang member subjected to arrest, prosecution, and incarceration under State law without notifying ICE?**

Yes, ICE is notified.

As soon as it is known.

ICE is always notified as soon as it becomes apparent that the gang member is undocumented.

12. Are you aware of any federal-state-local law enforcement task forces that are addressing undocumented immigrants and gang activity? Do law enforcement personnel from your jurisdiction participate in any of these task forces? Have law enforcement personnel ever participated in such a task force within the last five years?

We are aware of the 287(g) program, but do not participate in it. We currently have a member of our agency who participates on an ICE task force addressing identity fraud.

13. What are the circumstances in which you work with the Office of the U.S. Attorney, the FBI, and ICE regarding gang activity and undocumented immigrants?

We have good relationships with all of these agencies and work with them as needed. Most frequently we work with them on cases involving individuals who are wanted for a series of violent crimes.

14. Have there been any allegations of human trafficking in your jurisdiction in the last five years? How many each year?

There was one allegation of human trafficking last year that was brought to our attention during an investigation of an Asian-run massage parlor.

15. Have there been any arrests and prosecutions for human trafficking in the last five years? How many each year?

No.

16. If a person files a complaint about human trafficking, is the citizenship status or SSN requested from the complainant? If requested, is it verified?

No. We do not routinely request citizenship status from victims or witnesses.

17. When a person who is accused of human trafficking is investigated, is citizenship status or SSN checked? If so, at what point in the investigation is the citizenship status or SSN checked?

We obtain an SSN and check the citizenship status in the early stages of the investigation.

18. If citizenship status is not checked during an initial investigation, is it checked if the person is detained or arrested?

It generally is checked at the early stages of the investigation.

19. If there is no probable cause to arrest a person accused of human trafficking, but it appears that the person is undocumented, is that person reported to ICE?

Yes.

20. If there is probable cause to arrest a person on a human trafficking charge and the accused is undocumented, is that person reported to ICE or is that person processed under State criminal law?

Both. We would want to proceed on the criminal charges.

21. Have you encountered any problems with civil detainers on NCIC? What would be your preference as to the continued inclusion of civil detainers on NCIC?

We have not encountered any problems with civil detainers and have no preference as far as their continued inclusion.

22. To what extent do you think initiatives for local law enforcement to become more active in enforcing immigration laws (such as they are doing in Prince William County, Virginia) will impact relationships with the immigrant communities?

If local law enforcement is perceived as immigration enforcers, there could be a detrimental effect on community relations. However, this problem is not exclusive to immigrants, as there are individuals in many communities who do not welcome greater police involvement.

23. Aside from human trafficking, have there been any particular problems in your jurisdiction with immigrants being targeted as victims? Are your officers confronted with additional challenges when dealing with an immigrant who has been the victim of a crime?

We have had an increasing problem with legal immigrant business owners being burglarized. We attribute this to the fact that criminals are aware that many immigrants, for a variety of reasons, do not use banks. There also seems to be an increase lately of “Hispanic on Hispanic” crimes.

Language is often a barrier when dealing with immigrants who have been the victims of crime. We have approximately 17 officers who speak fluent Spanish, but they may not be the first responders to a crime scene. Baltimore County is also home to large Russian and Middle Eastern populations who may not speak English. Cultural differences, particularly the distrust that many immigrant communities have of law enforcement, also present a challenge. It is often particularly difficult to convince immigrants to report crime. When one member of an immigrant group reports a crime committed by a fellow immigrant, the victim can be ostracized from the community. It is not uncommon for immigrants to have limited economic resources. As the immigrant communities are generally “tight-knit” groups, this

ostracism can be devastating to victims who may find themselves with nowhere to go. There have also been cases where victims and witnesses have been subjected to violence as a result of their testimony in court or cooperation with the police.

24. What efforts has your department made to improve relationships with immigrant communities?

Recently we hosted a countywide Hispanic-Latino forum to discuss how county agencies, businesses, and residents could best work together to serve our diverse population. Citizens, community leaders, and advocacy groups attended and participated in very frank discussions. We also have a full-time Hispanic/Latino liaison officer who conducts outreach and education to the community, assists with investigations involving Spanish-speaking victims and suspects, recruits bilingual volunteers, and provides training to officers.

County Executive/Council

25. Has the jurisdiction enacted or established any policies or statements of intent regarding ascertaining the status of undocumented immigrants?

No.

26. Has the county established itself as a “sanctuary” area – how is that defined?

No.

27. Does the jurisdiction routinely ascertain the citizenship status of residents who request county services or file documents (property titles, marriage licenses, etc.)?

Not routinely. We only ascertain citizenship status as required to comply with any requirements of the program or license that is requested. For example, if someone applies for employment as a county police officer, U.S. citizenship is required as a minimum qualification.

28. If the jurisdiction does ascertain citizenship status, are county services provided to all residents regardless of citizenship status?

Yes, except as noted above.

29. Does the jurisdiction have any policy that authorizes denial of services to undocumented immigrants; if so, what services are denied?

There is no such general policy.

30. Is ICE contacted if a county resident appears to be an undocumented immigrant?

ICE is contacted by police if they arrest someone and there is a federal detainer pending.

31. When the SSN of a county resident is requested, does the jurisdiction try to verify the number?

We attempt to verify as needed to comply with requirements of the applicable program. For instance, if someone applies for housing assistance, either a grant/subsidy or loan, county staff collect and document numerous pieces of information including SSN, bank accounts, tax returns, employment, credit history, etc. to verify and document the applicant's identity and program eligibility. Any invalid numbers, including SSNs, become apparent during this process. If not corrected, the application is rejected.

32. If the SSN does not appear to be valid, is ICE contacted?

We are not aware of any examples when ICE has been contacted.

33. Do municipalities within the county have authority to establish themselves as sanctuaries or to declare that they are not sanctuaries? Can municipal policies differ or must they conform to the county policy, if a policy has been established?

N/A as there are no municipalities within Baltimore County.

State's Attorney

34. Does the S.A. office make specific inquiries as to immigration status? What, if any, communications does the S.A. office have with ICE?

The S.A. office has limited contact with defendants. At times, law enforcement provides the citizenship status of defendants. The S.A. office contacts ICE if and when the citizenship status of a defendant is made available.

35. How does the S.A. office proceed with a case upon discovering that a defendant is an undocumented immigrant?

The S.A. office evaluates each case on a case-by-case basis. If the case is a serious felony that is provable, the S.A. office typically prosecutes the case irrespective of immigration status. If the case is a misdemeanor, the S.A. office may dismiss the case in favor of deportation. Every case is judged on its unique set of facts.

36. What impact, if any, would a request for a detainer by ICE have on whether the case proceeds?

The S.A. office honors all of ICE's detainers. While the severity of the case is an important factor, every case is evaluated on a case-by-case basis.

Appendix 7-D. Harford County

Police Departments

- 1. Does the police department have a formal or informal policy or other guidelines regarding apprehension of undocumented immigrants and what is the content of the policy or guidelines?**

There is currently no formal written policy. The practice has always been that if law enforcement comes in contact with an illegal or undocumented immigrant, we contact ICE. This is true for victims and witnesses as well. However, for victims, we do not delve into their immigration status immediately, but first make sure their other needs are addressed (such as counseling). Eventually, though, ICE is contacted.

- 2. If a formal or informal policy or guidelines exist, when were the guidelines or policy adopted?**

As there is no formal policy, there is no specific date when the practice was implemented. However, the standard practice of notifying federal authorities has been in place at least since Sheriff Bane has been with the department (1972).

- 3. How are the guidelines or policy conveyed to line officers?**

Through training.

- 4. If a person is detained by an officer, is the officer expected to ask for citizenship status and/or a Social Security number (SSN) while taking down the personal information of the detainee?**

It is a general practice to ask for that information.

- 5. Are the citizenship status and/or SSN verified? How is the information verified?**

If the information provided seems suspect in any way, ICE is notified. Information is also generally cross-checked against two computer databases: MILES (Maryland Interstate Law Enforcement System) and NCIC (National Crime Information Center).

- 6. If the detainee is not a citizen or the SSN is not valid, what happens: Is the person referred to Immigration and Customs Enforcement (ICE) or is the person processed at the local level and arrested or released?**

Both. ICE is notified as soon as it is apparent or suspected that the detainee is not a citizen. In the most common situation, as the detainee is being processed at the local level, ICE

responds as to whether or not they wish to pick up the detainee. If the detainee is not being charged at the local level (or if the detainee has been charged and would otherwise have been released), we generally hold the detainee at the precinct until ICE can respond. If ICE wants to take custody of the detainee but there will be a significant delay in doing so, we do not continue to hold someone unless ICE can provide us with paperwork. There have been occasions in the past when we were not able to reach ICE right away. In those cases, we contacted judges who provided us with orders to continue holding the detainee until ICE could be consulted.

- 7. What is departmental policy or what are the guidelines that dictate when ICE is contacted regarding a person who appears to be undocumented or without a valid SSN who has been detained, arrested, or held in jail?**

ICE is notified as soon as it is apparent that a person is undocumented.

- 8. What are the primary gangs operating in your jurisdiction with a known foreign national presence?**

There are no known gangs with a foreign national presence operating in Harford County. The Crips and the Bloods are the main gangs operating in Harford County, and they have primarily white and African American members.

- 9. How extensive is the gang problem in your jurisdiction? To what extent do you think undocumented immigrants contribute to the magnitude of the gang problem?**

The gang problem is extensive enough in Harford County that approximately 8 to 15 percent of the Sheriff's budget is allocated for gang-related issues. In addition, the Harford County Detention Center was recently reconfigured, and one of the primary needs was adapting the space to allow for the separation of gang members. Undocumented immigrants are not at this time contributing to the gang problem in Harford County.

- 10. If a gang member is detained or arrested for a criminal investigation, is citizenship status ascertained? If ascertained, is it verified? What is the process for verification?**

Citizenship status is generally ascertained for all arrests. If there is anything suspect in the paperwork provided, the information is verified by contacting ICE.

- 11. If it is determined that the gang member/detainee is an undocumented immigrant, how is the member processed? Is ICE notified? If ICE is notified, at what point in the process is ICE notified? Is the gang member subjected to arrest, prosecution, and incarceration under State law without notifying ICE?**

ICE is notified.

ICE is notified as soon as it is known that the person is undocumented or as soon as it is suspected that the paperwork provided is false.

ICE is routinely contacted.

- 12. Are you aware of any federal-state-local law enforcement task forces that are addressing undocumented immigrants and gang activity? Do law enforcement personnel from your jurisdiction participate in any of these task forces? Have law enforcement personnel ever participated in such a task force within the last five years?**

At this time there are no task forces addressing gang activity and undocumented immigrants in Harford County. Law enforcement officers in Harford County have not participated in any such task forces during the past five years. The Sheriff's office is a member of the Mid-Atlantic Regional Gang Investigators Network (MARGIN) which is primarily an information sharing organization. The Sheriff has explored the idea of creating a task force with the towns of Bel Air, Aberdeen, and Havre de Grace, but nothing has been formed as of yet.

- 13. What are the circumstances in which you work with the Office of the U.S. Attorney, the FBI, and ICE regarding gang activity and undocumented immigrants?**

We share information with them as needed.

- 14. Have there been any allegations of human trafficking in your jurisdiction in the last five years? How many each year?**

No.

- 15. Have there been any arrests and prosecutions for human trafficking in the last five years? How many each year?**

No.

- 16. If a person files a complaint about human trafficking, is the citizenship status or SSN requested from the complainant? If requested, is it verified?**

N/A as no allegations have been reported.

- 17. When a person who is accused of human trafficking is investigated, is citizenship status or SSN checked? If so, at what point in the investigation is the citizenship status or SSN checked?**

N/A

18. If citizenship status is not checked during an initial investigation, is it checked if the person is detained or arrested?

N/A

19. If there is no probable cause to arrest a person accused of human trafficking, but it appears that the person is undocumented, is that person reported to ICE?

N/A

20. If there is probable cause to arrest a person on a human trafficking charge and the accused is undocumented, is that person reported to ICE or is that person processed under State criminal law?

N/A

21. Have you encountered any problems with civil detainees on NCIC? What would be your preference as to the continued inclusion of civil detainees on NCIC?

We have not encountered any specific problems with the inclusion of civil detainees on NCIC. Our experience with them so far has been limited, so at this point we have no real preference as to their continued inclusion.

22. To what extent do you think initiatives for local law enforcement to become more active in enforcing immigration laws (such as they are doing in Prince William County, Virginia) will impact relationships with the immigrant communities?

The general distrust of law enforcement that is shared by many immigrant groups would probably escalate. It would make the civil service responsibilities of our Sheriff's office even more difficult, as the immigrant community would become wary of any contact with the Sheriff's office.

23. Aside from human trafficking, have there been any particular problems in your jurisdiction with immigrants being targeted as victims? Are your officers confronted with additional challenges when dealing with an immigrant who has been the victim of a crime?

The immigrant population in Harford County is somewhat limited, and we are not aware of any specific problems with immigrants being targeted as victims. The language barrier can often be an initial challenge when dealing with a member of the immigrant community.

24. What efforts has your department made to improve relationships with immigrant communities?

In an effort to address the language barrier, we offer tuition reimbursement for employees to take Spanish classes. We also offer in-service training to teach basic Spanish. Spanish-speaking officers are always available should the need arise. We have contact with a group of Hispanic community leaders who advise us as to community concerns. A member of our department is on the Human Relations Commission.

County Executive/Council

25. Has the jurisdiction enacted or established any policies or statements of intent regarding ascertaining the status of undocumented immigrants?

No.

26. Has the county established itself as a “sanctuary” area – how is that defined?

No.

27. Does the jurisdiction routinely ascertain the citizenship status of residents who request county services or file documents (property titles, marriage licenses, etc.)?

We do not ascertain the citizenship status of residents who request county services or file documents. The county’s human resources department does participate in the E-verify system. This system is used to confirm that an individual is “legally employable” by verifying the SSN of applicants for county jobs.

28. If the jurisdiction does ascertain citizenship status, are county services provided to all residents regardless of citizenship status?

N/A as we do not ascertain citizenship status for county services.

29. Does the jurisdiction have any policy that authorizes denial of services to undocumented immigrants; if so, what services are denied?

No.

30. Is ICE contacted if a county resident appears to be an undocumented immigrant?

No.

31. When the SSN of a county resident is requested, does the jurisdiction try to verify the number?

We do verify the SSN of individuals who apply for county jobs using the E-Verify system.

32. If the SSN does not appear to be valid, is ICE contacted?

No.

33. Do municipalities within the county have authority to establish themselves as sanctuaries or to declare that they are not sanctuaries? Can municipal policies differ or must they conform to the county policy, if a policy has been established?

We are not aware of any authority. No county policy has been established.

State's Attorney

34. Does the S.A. office make specific inquiries as to immigration status? What, if any, communications does the S.A. office have with ICE?

Citizenship status is usually provided to the S.A. office by local law enforcement. If the defendant is a foreign citizen or an undocumented immigrant, the S.A. office notifies ICE to see if the offense affects a defendant's citizenship status and whether ICE wants to request a detainer.

35. How does the S.A. office proceed with a case upon discovering that a defendant is an undocumented immigrant?

Typically, the S.A. office requests a higher bail amount for undocumented immigrants because their connection with the State is limited, which results in a higher flight risk. If ICE requests deportation and the criminal offense charged is relatively minor (*i.e.*, misdemeanor), the S.A. office dismisses the charges and allows ICE to deport the defendant. However, if the defendant is accused of committing a serious crime (*i.e.*, a felony), the S.A. office proceeds with the case and allows ICE to request a detainer with the prison system.

36. What impact, if any, would a request for a detainer by ICE have on whether the case proceeds?

Request for detainer/deportation by ICE is considered in light of the severity of the offenses charged.

Appendix 7-E. Howard County

Police Departments

No response.

County Executive/Council

25. Has the jurisdiction enacted or established any policies or statements of intent regarding ascertaining the status of undocumented immigrants?

No.

26. Has the county established itself as a “sanctuary” area – how is that defined?

No.

27. Does the jurisdiction routinely ascertain the citizenship status of residents who request county services or file documents (property titles, marriage licenses, etc.)?

For a majority of our services we do not ask for citizenship status. For some federal or State programs, we do need to ask if someone is a citizen. The Medicaid Waiver program does require citizenship.

28. If the jurisdiction does ascertain citizenship status, are county services provided to all residents regardless of citizenship status?

We always provide information, referrals, and basic services.

29. Does the jurisdiction have any policy that authorizes denial of services to undocumented immigrants; if so, what services are denied?

No.

30. Is ICE contacted if a county resident appears to be an undocumented immigrant?

No.

31. When the SSN of a county resident is requested, does the jurisdiction try to verify the number?

We do not verify the citizenship beyond seeing appropriate paperwork.

32. If the SSN does not appear to be valid, is ICE contacted?

No.

33. Do municipalities within the county have authority to establish themselves as sanctuaries or to declare that they are not sanctuaries? Can municipal policies differ or must they conform to the county policy, if a policy has been established?

We do not have any municipal corporations within the county that may have different policies than the county overall.

State's Attorney

34. Does the S.A. office make specific inquiries as to immigration status? What, if any, communications does the S.A. office have with ICE?

Inquiries regarding citizenship status are typically made by local law enforcement; however, the S.A. office inquires regarding citizenship status if there is reason to suspect that a defendant may not be a U.S. citizen.

35. How does the S.A. office proceed with a case upon discovering that a defendant is an undocumented immigrant?

The S.A. office contacts ICE upon discovering that a defendant is an undocumented immigrant and coordinates its prosecution efforts with ICE. The S.A. office evaluates each case on a case-by-case basis. If the case is a serious offense or a crime against a person, the S.A. office typically prosecutes the case irrespective of immigration status. However, if the case is a misdemeanor or a crime against property, the S.A. office may dismiss the case in favor of deportation.

36. What impact, if any, would a request for a detainer by ICE have on whether the case proceeds?

Typically, the S.A. office coordinates prosecution efforts, including requests for detainers with ICE.

Appendix 7-F. Montgomery County

Police Departments

- 1. Does the police department have a formal or informal policy or other guidelines regarding apprehension of undocumented immigrants, and what is the content of the policy or guidelines?**

The prevailing policy is generally not to contact ICE for either suspects or victims. Montgomery County also does not initiate investigatory stings to apprehend people who are in the country illegally. Montgomery County complies with Standard 1.1 issued by the Commission on Accreditation of Law Enforcement Agencies.

- 2. If a formal or informal policy or guidelines exist, when were the guidelines or policy adopted?**

The current policy was adopted in 2000. However, the department's policies regarding immigration are currently being revised. A new policy will probably be issued in 2008.

- 3. How are the guidelines or policy conveyed to line officers?**

Through training.

- 4. If a person is detained by an officer, is the officer expected to ask for citizenship status and/or a Social Security number (SSN) while taking down the personal information of the detainee?**

If a person is detained, generally, the officer does not ask for citizenship status. However, if the person is suspected of being a violent felon or involved in gangs or human trafficking, ICE may be contacted.

- 5. Are the citizenship status and/or SSN verified? How is the information verified?**

A suspect is taken to the Central Processing Unit, which is run by Corrections, for processing and the drawing up of a statement of charges. Generally, when officers arrest a person, the officer is not responsible for intake information. That is done by the Central Processing Unit. If there is a reason to determine a person's citizenship status, that is done by the Central Processing Unit.

- 6. If the detainee is not a citizen or the SSN is not valid, what happens: Is the person referred to Immigration and Customs Enforcement (ICE) or is the person processed at the local level and arrested or released?**

Generally, citizenship status is not verified, except in specialized situations dealing with especially serious crimes. So, in most instances, even if it is apparent that the person is not in the country legally, if the crime is minor, then the person is processed like anyone else. Being held does not depend on the citizenship status, but the crime charged and the defendant's ability to pay bail.

- 7. What is departmental policy or what are the guidelines that dictate when ICE is contacted regarding a person who appears to be undocumented or without a valid SSN who has been detained, arrested, or held in jail?**

Generally, ICE is not contacted, unless the arrest is part of a major crimes investigation.

- 8. What are the primary gangs operating in your jurisdiction with a known foreign national presence?**

The primary gangs operating in Montgomery County are MS-13, Vatos Locos, the Bloods, and the Crips. Those with a known foreign national presence are MS-13 and Vatos Locos.

- 9. How extensive is the gang problem in your jurisdiction? To what extent do you think undocumented immigrants contribute to the magnitude of the gang problem?**

Within the last three months, there were 95 gang-related incidents, and there are 1,117 known gang members. The vast majority of arrestees for all crimes, including gang-related crimes, are citizens. Undocumented immigrants do contribute to the problem, as even when gang members are deported, they are often back in the country within seven to eight weeks.

- 10. If a gang member is detained or arrested for a criminal investigation, is citizenship status ascertained? If ascertained, is it verified? What is the process for verification?**

If a police officer who is involved in investigating gangs contacts a gang member to gain intelligence, that person is not questioned about his/her status. This is true even if there is reason to believe that the person does not have legal status. However, those major crimes divisions like vice, gangs, drug enforcement, and to a lesser extent, homicide, are much more likely to coordinate with ICE to determine citizenship status as the prospect of federal enforcement can mean a suspect is held long enough to make progress in or complete an investigation.

- 11. If it is determined that the gang member/detainee is an undocumented immigrant, how is the member processed? Is ICE notified? If ICE is notified, at what point in the process is ICE notified? Is the gang member subjected to arrest, prosecution, and incarceration under State law without notifying ICE?**

As noted, if the gang member could provide intelligence, or is an informant, citizenship status will not be ascertained, and ICE is not contacted. If the gang member is suspected of a

major felony or is suspected of passing fraudulent documents, there is likely to be coordination with ICE.

- 12. Are you aware of any federal-state-local law enforcement task forces that are addressing undocumented immigrants and gang activity? Do law enforcement personnel from your jurisdiction participate in any of these task forces? Have law enforcement personnel ever participated in such a task force within the last five years?**

An officer is assigned part-time to the Regional Area Gang Enforcement Task Force (RAGE). The task force is directed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

- 13. What are the circumstances in which you work with the Office of the U.S. Attorney, the FBI, and ICE regarding gang activity and undocumented immigrants?**

With regard to gang crimes, Montgomery County works through a task force directed by federal law enforcement, especially when the gang or gang suspect is being treated as a part of a major criminal enterprise. With regard to human trafficking, it has been difficult to coordinate with the U.S. Attorney's Office or federal law enforcement.

- 14. Have there been any allegations of human trafficking in your jurisdiction in the last five years? How many each year?**

While statistically it is not a big problem, we do not think we know the scope of human trafficking in Montgomery County.

- 15. Have there been any arrests and prosecutions for human trafficking in the last five years? How many each year?**

There have been several arrests and prosecutions for labor trafficking offenses that were brought under the U.S. Attorney's Office, but they did not involve Montgomery County law enforcement.

- 16. If a person files a complaint about human trafficking, is the citizenship status or SSN requested from the complainant? If requested, is it verified?**

If the person is a victim or complainant, citizenship status is not questioned.

- 17. When a person who is accused of human trafficking is investigated, is citizenship status or SSN checked? If so, at what point in the investigation is the citizenship status or SSN checked?**

If the person is a suspect, then status is ascertained, and ICE is contacted for coordination.

18. If citizenship status is not checked during an initial investigation, is it checked if the person is detained or arrested?

If the person is a suspect or citizenship status can be used for leverage, then status is checked and the department coordinates with ICE.

19. If there is no probable cause to arrest a person accused of human trafficking, but it appears that the person is undocumented, is that person reported to ICE?

If there is no probable cause, then status is not checked, unless there is reason to believe that the person is involved in trafficking activity, but there is not enough evidence to confirm that. Checking status can be used for leverage.

20. If there is probable cause to arrest a person on a human trafficking charge and the accused is undocumented, is that person reported to ICE or is that person processed under State criminal law?

That would depend on the nature of the investigation. The department works with ICE. Sometimes it is more useful to process the suspect under federal law; sometimes, it is more useful to process under State law. Now that Maryland has a State law against human trafficking offenses, State investigation of crimes is easier.

21. Have you encountered any problems with civil detainees on NCIC? What would be your preference as to the continued inclusion of civil detainees on NCIC?

We would prefer for the civil detainees to be removed from the system as they can be confusing to the officers, and there is no consistency among the counties as to how they are handled. If the civil detainees are to continue being included in NCIC, we need to see clear authority created for our participation in their execution. It is also important to note that many NCIC civil detainees are for individuals who once entered the country legally but have since overstayed. We see the “underground” immigrant community as a larger problem.

22. To what extent do you think initiatives for local law enforcement to become more active in enforcing immigration laws (such as they are doing in Prince William County, Virginia) will impact relationships with the immigrant communities?

The more active local law enforcement becomes in such initiatives, the more difficult it will be to secure the trust of the immigrant community and encourage them to report crime. Immigrants would grow even more distrustful of the police and would be hesitant to cooperate with us at all if they believed that every time we had contact with them, we would investigate their immigration status.

23. Aside from human trafficking, have there been any particular problems in your jurisdiction with immigrants being targeted as victims? Are your officers confronted

with additional challenges when dealing with an immigrant who has been the victim of a crime?

We do have problems with robberies in a trend called “amigo shopping.” This is when Hispanic victims are targeted specifically because they are thought to carry cash rather than use banks and to be reluctant to report crimes to police. Many immigrants are targeted by gang members of their own ethnic groups, who know and take advantage of the fear among immigrants of reporting crimes to the authorities.

It is often difficult for our officers to earn the trust of immigrant victims. In a recent case, an undocumented individual was the victim of a sexual assault. She was very uncooperative until an officer who spoke Spanish arrived on the scene and was able to assure her that the officers were there to help her and were not concerned with her immigration status. Even when bilingual officers are on the scene, many immigrants remain distrustful of the police.

24. What efforts has your department made to improve relationships with immigrant communities?

The chief holds separate meetings every month with members of the African-American, Latino, and Asian communities. The meetings allow undocumented residents an opportunity to voice any concerns they have about the police. Each of the six police districts in Montgomery County has a community advisory board. We participate in various programs and conduct outreach at the Gilchrist Center for Cultural Diversity. Our media department includes a full-time employee who is responsible for communicating with the Latino community through television, radio, and newspapers. We also constantly strive to increase diversity within the police department. Specifically, the chief is interested in eliminating the U.S. citizenship requirement for police officers.

County Executive/Council

No response.

State’s Attorney

No response.

Appendix 7-G. Prince George's County

Police Departments

Prince George's County Police Department did not participate in the survey at this time, as it is currently reviewing its policy on immigration concerns. The department offered to provide information as soon as the assessment is complete.

County Executive/Council

No response.

State's Attorney

34. Does the S.A. office make specific inquiries as to immigration status? What, if any, communications does the S.A. office have with ICE?

The S.A. office is unaware of whether a defendant is an undocumented immigrant in most cases. At no point prior to prosecuting the case is the S.A. office provided information regarding a defendant's citizenship status. The S.A. office reports that there is no routine mechanism for contacting ICE. The S.A. office has only had contact with ICE once during the current S.A.'s tenure.

35. How does the S.A. office proceed with a case upon discovering that a defendant is an undocumented immigrant?

The S.A. office prosecutes all criminal defendants irrespective of citizenship status.

36. What impact, if any, would a request for a detainer by ICE have on whether the case proceeds?

None. To date, the S.A. office has had minimal contact with ICE.

Appendix 7-H. Maryland State Police

Gangs

- 1. What are the primary gangs operating in your jurisdiction with a known foreign national presence?**

Throughout the State of Maryland, we have encountered the following gangs: Mara Salvatrucha, Sur 13, 18th St., Florencia 13, Vatos Locos, Camby Park Sur 13, Lomas 13, South Side Locos, Carnalitos, and El Palo.

- 2. How extensive is the gang problem in your jurisdiction? To what extent do you think undocumented immigrants contribute to the magnitude of the gang problem?**

The gang problem is extensive throughout the State. Bloods are the largest problem, but we do have extensive gang membership in the Central/Latin American communities. Many of these gang members are undocumented or illegal immigrants. Many of these gangs were formed by illegal immigrants in these communities. We are also seeing a large number of undocumented/illegal immigrants that are gang members who have moved to Maryland from other states, including California, Arizona, New York, New Jersey, and Texas.

- 3. If a gang member is detained or arrested for a criminal investigation, is citizenship status ascertained? If ascertained, is it verified? What is the process for verification?**

An attempt is made to gain information about citizenship status. We often contact ICE to verify this status. This holds true for arrests and documenting gang members during field contacts.

- 4. If it is determined that the gang member/detainee is an undocumented immigrant, how is the member processed? Is ICE notified? If ICE is notified, at what point in the process is ICE notified? Is the gang member subjected to arrest, prosecution, and incarceration under State law without notifying ICE?**

- a. The gang member is processed for the local charges or, if not arrested, the gang member is documented, and a gang card is completed. This gang member is then added to the gang database.
- b. Yes, if they are not a citizen.
- c. ICE is notified if the gang member is not a citizen of the United States. This is done after arrest or initial contact.

d. ICE is routinely contacted. After the gang member fulfills any State or local obligations, ICE places an immigration detainer on the subject and that gang member is subject to the deportation process.

- 5. Are you aware of any federal-state-local law enforcement task forces that are addressing undocumented immigrants and gang activity? Do law enforcement personnel from your jurisdiction participate in any of these task forces? Have law enforcement personnel ever participated in such a task force within the last five years?**

The State Police Gang Enforcement Unit currently works with ICE agents from the Baltimore Field Office. Troopers in this unit are currently in the process for Task Force Officer (TFO) status with ICE. This status will assist troopers in investigating undocumented immigrants who are gang members.

- 6. What are the circumstances in which you work with the Office of the U.S. Attorney, the FBI, and ICE regarding gang activity and undocumented immigrants?**

We work closely with ICE agents from the Baltimore Field Office and use their expertise when we come into contact with undocumented immigrants. We also have sworn and civilian members assigned to the Joint Terrorism Task Force (JTTF) where information is shared concerning these topics.

Human Trafficking

- 7. Have there been any allegations of human trafficking in your jurisdiction in the last five years? How many each year?**

No.

- 8. Have there been any arrests and prosecutions for human trafficking in the last five years? How many each year?**

No.

- 9. If a person files a complaint about human trafficking, is the citizenship status or SSN requested from the complainant? If requested, is it verified?**

N/A

10. When a person who is accused of human trafficking is investigated, is citizenship status or SSN checked? If so, at what point in the investigation is the citizenship status or SSN checked?

N/A

11. If citizenship status is not checked during an initial investigation, is it checked if the person is detained or arrested?

N/A

12. If there is no probable cause to arrest a person accused of human trafficking, but it appears that the person is undocumented, is that person reported to ICE?

N/A

13. If there is probable cause to arrest a person on a human trafficking charge and the accused is undocumented, is that person reported to ICE or is that person processed under State criminal law?

N/A

Miscellaneous

14. Have you encountered any problems with civil detainees on NCIC? What would be your preference as to the continued inclusion of civil detainees on NCIC?

No. The department has no preference as to the continued inclusion of civil detainees on NCIC.

15. To what extent do you think initiatives for local law enforcement to become more active in enforcing immigration laws (such as they are doing in Prince William County, Virginia) will impact relationships with the immigrant communities?

Enforcing immigration laws should be left to ICE. If there is fear of deportation, members or victims in these communities may fail to report crime.

16. Aside from human trafficking, have there been any particular problems in your jurisdiction with immigrants being targeted as victims? Are your officers confronted with additional challenges when dealing with an immigrant who has been the victim of a crime?

Immigrants are often targeted and are victimized by members of their own community. For example, Mara Salvatrucha extorts business owners in the Langley Park, Hyattsville area because they know that these crimes go unreported. The victims are afraid of police interaction for fear of deportation. One of the biggest challenges for troopers is the language barrier and lack of additional language training.

17. What efforts has your department made to improve relationships with immigrant communities?

Our department ensures that each sworn member receives mandatory cultural diversity training to assist in our contacts with immigrants.

Appendix 8. Case Study – *Lozano v. City of Hazleton*

One case that illustrates how local regulations that seek to regulate the hiring and housing of undocumented immigrants may encounter legal difficulty is *Lozano v. City of Hazleton*. The City of Hazleton, located in northeastern Pennsylvania, had a population of approximately 23,000 residents at the time of the 2000 census. Since then, the city's population has grown considerably, primarily due to an influx of immigrants, most of whom are Hispanic/Latinos. After the September 11, 2001 terrorist attacks, many Hispanic/Latino families moved from New York and New Jersey to Hazleton seeking a better life, employment, and affordable housing. Those moving to Hazleton included U.S. citizens, lawful permanent residents, and undocumented immigrants.

City Ordinances

In 2006, the city government enacted numerous ordinances targeting the rental housing and employment of undocumented immigrants. These restrictions were contained in a series of city ordinances:

- The Illegal Immigration Relief Act Ordinance (IIRA) (later replaced by the Illegal Immigration Relief Act Ordinance, as amended, and the Official English Ordinance) prohibiting the employment and harboring of undocumented immigrants in the City of Hazleton.
- The Tenant Registration Ordinance (RO) requiring apartment dwellers to seek an occupancy permit. Proof of citizenship or lawful residence was required for an occupancy permit.
- Official English Ordinance (OEO) combined with the second Illegal Immigration Relief Act Ordinance, replaced the original Illegal Immigration Relief Act Ordinance.

The ordinances were challenged by a coalition of plaintiffs, including lawful immigrants, undocumented immigrants, and various advocacy organizations. The plaintiffs alleged that the city's ordinances were illegal on multiple grounds, including federal preemption of state laws, violation of constitutional due process and equal protection guarantees, violation of the federal Fair Housing Act, violation of privacy rights, violation of state law under Pennsylvania's home rule charter, and landlord and tenant laws.

Federal Court Ruling

At trial, the U.S. District Court for the Middle District of Pennsylvania struck down various provisions of the ordinances. The court held that the provisions regulating the employment of undocumented immigrants were preempted by federal law, that the landlord/tenant provisions violated the due process rights of tenants and owner/landlords, and that the city could not prohibit undocumented immigrants from entering into leases. However, the court sustained a provision establishing penalties for those who employed or provided rental housing for undocumented persons in the city, holding that the ordinance did not violate equal protection guarantees.

After a discussion of jurisdictional and standing issues, the court concluded that it had jurisdiction and that all but two plaintiffs had standing to bring suit against the city. Following further analysis of the court's decision to allow certain plaintiffs to proceed anonymously, as well as the court's decision to examine the constitutionality of the city's current ordinances as amended rather than the ordinances as first enacted, the court turned to the merits of the plaintiffs' case. The court first addressed the question of federal preemption.

Federal Preemption

With regard to preemption, under Article VI, Clause 2 of the U.S. Constitution, federal laws preempt contradictory state laws. This clause is commonly referred to as the Supremacy Clause. The court noted that immigration constituted "a federal concern, not a state or local matter," and that the U.S. Congress had made clear its intent that federal law preempt state law in the area of immigration. The court held that IIRA's provisions were expressly preempted by the federal Immigration Reform and Control Act of 1986 (IRCA).

First, in the context of IIRA provisions dealing with employment of undocumented immigrants, the court noted that IRCA contained an express preemption clause. IRCA explicitly specifies that the "provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) on those who employ, or recruit or refer for a fee for employment, unauthorized aliens." The city argued that IIRA's penalty for employment of undocumented immigrants, suspension of the employer's business license, did not violate the express preemption clause. Rather, the city characterized its ordinance as a non-preempted licensing regulation. The court disagreed, holding that the denial of a business license would inevitably result in the closure of the business, resulting in exactly the sort of local sanction against employers the U.S. Congress sought to prohibit through IRCA's preemption clause. The court noted that the city's ordinance punished violations of the ordinance, not violations of IRCA, and that its primary purpose was preventing employers from hiring undocumented immigrants, not preserving industry standards of operation. The court proceeded to discuss other bases for preemption and found that the ordinance was also preempted on those grounds. In particular, the court noted that the federal government has historically been dominant in the field of immigration law to the exclusion of state or local laws,

that the federal immigration laws were intended to be a comprehensive scheme precluding state or local regulation, and that implementation of local as well as federal immigration law would result in conflict between the laws.

Turning to IIRA's tenancy provisions, the court examined two landlord/tenant provisions of IIRA. The first established a complaint procedure where a city official, business entity, or resident could have a landlord investigated for harboring an undocumented immigrant, potentially resulting in fines and loss of a rental license; the second provision required all occupants of rental units to obtain an occupancy permit requiring proof of legal citizenship or residency. The court again found that these provisions conflicted with the comprehensive federal immigration law. The ordinances assumed that the federal government sought the removal of all persons who lacked legal residence in the United States and substituted the local government's judgment for a federal immigration judge's judgment in determining an individual's immigration status.

Due Process Clause

The court then examined the plaintiffs' claims under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. The Due Process Clause prohibits a deprivation of "life, liberty, or property" without due process of the law. The court divided the ordinances examined into provisions regulating employment and provisions regulating landlord/tenant relations. The court agreed with the plaintiffs that the city's employment ordinances, which required employers to provide worker identity information to the city following a written complaint, violated the Due Process Clause. The court found that the plaintiffs possessed interests in their businesses and continued employment encompassed by the liberty and property interests protected by the Fourteenth Amendment. The court reiterated that the protections of the Due Process Clause apply to all "persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."

With regard to provisions regulating landlord/tenant relations, the court again found that the plaintiffs possessed interests protected by the Due Process Clause. The court found that the IIRA provisions penalizing the "harboring" of undocumented immigrants failed to adequately protect the plaintiffs' due process rights under the Fourteenth Amendment. The provisions did not provide adequate notice to employees or tenants whose immigration status was challenged; did not adequately inform employers, owners of rental property, and landlords of the types of identity information needed to prove the challenged individual's identity for immigration status confirmation; and provided for judicial review in a court system that lacked jurisdiction over determinations of immigration status.

Equal Protection Clause

The court next evaluated the plaintiffs' claim that IIRA violated the Equal Protection Clause of the Fourteenth Amendment by allowing the city to consider race, ethnicity, or national origin in investigating complaints. The court noted that the city had previously amended the ordinance to remove language requiring enforcement on the basis of race, ethnicity, and national origin. The court found that the plaintiffs had failed to demonstrate discriminatory intent by the city in passing the amended IIRA and found that the ordinance as amended did not violate the Equal Protection Clause.

Right to Privacy

The court dismissed the plaintiffs' claim that IIRA and RO violated their right to privacy protected in the U.S. and Pennsylvania constitutions. Although the court criticized the vagueness of the information purportedly required by the ordinances, the court felt that neither party had produced dispositive information regarding the records required by the ordinances. The court found that it lacked adequate information to balance the plaintiffs' privacy interest in the information required by the city to comply with the tenant registration ordinance, answer a valid complaint about an illegal worker, or meet the requirements of IIRA's harboring provisions.

Fair Housing Act and Civil Rights Act

The plaintiffs also asserted causes of action under the federal Fair Housing Act and the Civil Rights Act. The court dismissed the plaintiffs' claim under the Fair Housing Act, finding that the city had amended the ordinances to remove potentially problematic language. The court declined to find that the ordinance would be discriminatory in effect based on plaintiffs' expert testimony alone. Addressing plaintiffs' claims under 42 U.S.C. 1981, the court reasoned that undocumented immigrants had rights under the statute, that unauthorized workers had the same rights to contract as other citizens – barring IRCA's prohibition on employment of unauthorized immigrants, and that therefore Section 1981 prohibited the defendant from barring undocumented immigrants from entering into leases. Thus, the Tenant Registration Ordinance and the housing provisions of IIRA prohibiting undocumented immigrants from entering into leases violated Section 1981. In addition, the court found that the ordinances violated certain provisions of Pennsylvania's municipality law and exceeded the legitimate scope of the city's police powers. The court permanently enjoined the city from enforcing the ordinances. The City of Hazleton has appealed the district judge's ruling to the Third Circuit Court of Appeals.

Conclusion

Throughout the case, the court maintained a skeptical view of the city's attempts to construct an adequate procedural system to protect the plaintiffs against abuse of the city's

regulations. Combined with the supremacy of the federal government in the field of immigration law, the city's ordinances had little chance of passing constitutional muster. The case illustrates the difficulty a state or local government would face in enacting legislation designed to address such a complicated topic, given the federal government's historical role as the originator and enforcer of immigration law.