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Coming Out of the Shadows: Confronting Abusive Policing Against Latinos and Latinas

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**COMING OUT OF THE SHADOWS:
CONFRONTING ABUSIVE POLICING AGAINST LATINOS AND LATINAS**

Karol Yorlany Ruiz

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. CASE STUDIES: THE SUFFOLK COUNTY POLICE DEPARTMENT’S AND EAST HAVEN POLICE DEPARTMENT’S USE OF FORCE AND FRAUD AGAINST LATINOS/AS....	7
A. The Suffolk County “Climate of Fear” and the SCPD’s Discriminatory Policing of the Latino/a Community.....	7
B. East Haven Police Department’s Harassment and Use of Excessive Force Against Latinos/as	11
III. PROPOSED SOLUTIONS & REFORMS.....	13
A. Legislative Solutions: Comprehensive Immigration Reform (CIR), The End Racial Profiling Act (ERPA), and an End to State Laws Prohibiting Driver’s Licenses for Undocumented Immigrants	13
1. Humane, Comprehensive Immigration Reform (CIR).....	15
2. The End Racial Profiling Act (ERPA).....	16
3. State Legislation Allowing for the Provision of Driver’s Licenses for Undocumented Immigrants.....	18
B. Reform Police Policy and Practices to Increase Transparency and Accountability	20
C. Federal and Civil Oversight of Police Departments	23
IV. CONCLUSION.....	24

I. INTRODUCTION

Carlos Fernández¹ a young, frightened, Latino immigrant father, quietly stepped out of his car for the now expected, “Stop, Search, and Steal.” Mr. Fernandez recognized this officer from previous stops. After pulling the car over, without giving a reason for the stop, Suffolk County Police Department (“SCPD”) Sergeant Scott Greene ordered the driver out of the car, searched the car and the man’s pockets, stole \$100.00 out of his wallet, and then gave the man a warning to stop driving without a valid New York driver’s license.² This scene was repeated numerous times with dozens of Latino/a immigrant victims in Suffolk County, Long Island, New York. The victims did not initially report the thefts for fear of being deported.³ For several years, police officers victimized Latino immigrants in Suffolk County, not only in this “Stop, Search, and Steal” scheme, but also specifically targeting Latinos/as in traffic stops, conducting regular police checkpoints in Latino/a neighborhoods, and searching Latino/a motorists, pedestrians, and residents without proper cause.⁴ Sergeant Greene’s “Stop, Search, and Steal” scheme finally ended in 2014, when an undercover officer caught the theft on camera.⁵

The SCPD is not the only police department whose officers engaged in such unlawful practices against Latino/a immigrants.⁶ Department of Justice (“DOJ”) investigations uncovered

¹ Not the victim’s real name.

² Kirk Semple, *Latino Drivers Report Theft by Officers*, N.Y. Times, March 2, 2014, at A20.

³ *Id.*

⁴ Press Release, U.S. Department of Justice, United States Agrees to Comprehensive Settlement with Suffolk County Police Department to Resolve Investigation of Discriminatory Policing (Dec. 3, 2013), [hereinafter DOJ/SCPD Settlement Agreement Press Release], <http://www.justice.gov/opa/pr/united-states-agrees-comprehensive-settlement-suffolk-county-police-department-resolve>; See also Southern Poverty Law Center, *Climate of Fear: Latino Immigrants in Suffolk County, N.Y.* (S. Poverty Law Ctr., Montgomery, Ala.) Sept. 2009, 8-9, [hereinafter *Climate of Fear*].

⁵ Editorial, *Immigrants, Robbed by the Police*, NY TIMES, March 11, 2014, at A20.

⁶ For example, in 2009, Memphis Tennessee Police Officer Carlton Moore pled guilty to 3 counts of stealing from Latino motorists. Press Release, U.S. Department of Justice, Former Memphis, Tennessee, Police Officer Convicted of Civil Rights Violations (June 25, 2009), <http://www.justice.gov/opa/pr/former-memphis-tennessee-police-officer-convicted-civil-rights-violations>; In 2014, The King City, San Francisco, California Police Department (KCPD) chief and other police employees were arrested on charges connected to a scheme to steal impounded cars from

this systemic police abuse against Latinos/as in Suffolk County, and similar racial profiling and unlawful searches in East Haven, Connecticut and Alamance County, North Carolina, to name just a few jurisdictions.⁷ Police use of deadly force against Latinos/as has also been challenged, most recently, in response to the lethal police shootings of four Latino men in the span of four months in Salinas, California.⁸ To date, the DOJ continues to investigate numerous complaints of abusive policing against Latinos/as in Texas, Illinois, Arizona, and numerous other states throughout the country.⁹

Both incidents of and systemic police use of excessive force and fraud against Latinos/as violate civil rights and build mistrust of police within the Latino/a community.¹⁰ Police fraud and abuse is particularly invidious because it leaves victims and witnesses reluctant to report attacks against them or to cooperate with criminal investigations, decreasing the overall public safety in

Latino immigrants. Lee Romney, *King City police arrests: Latino immigrants victimized*, D.A. says, L.A. TIMES Feb. 25, 2014, <http://articles.latimes.com/2014/feb/25/local/la-me-ln-king-city-police-arrested-car-scheme-20140225>.

⁷ DOJ/SCPD Settlement Agreement Press Release, *supra* note 4; *see also* Letter from Thomas E. Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to The Honorable Joseph Maturo Jr., Mayor, Town of East Haven (Dec. 19, 2011), http://www.justice.gov/crt/about/spl/documents/easthaven_findletter_12-19-11.pdf; Press Release, U.S. Department of Justice, Justice Department Releases Investigative Findings on the Alamance County, N.C., Sheriff's Office (Sept. 18, 2012), <http://www.justice.gov/opa/pr/justice-department-releases-investigative-findings-alamance-county-nc-sheriff-s-office>.

⁸ Letter from Christopher A. Callihan, City Attorney, and Anais Martinez Aquino, Deputy City Attorney, Office of the City Attorney, City of Salinas, California to members of the press and John L. Burris, Esq. (Sept. 30, 2014), available at https://www.indybay.org/uploads/2014/09/30/salinas_police_killings_2014.pdf

⁹ For example, in Austin Texas, the National Association for the Advancement of Colored People (NAACP) and the Texas Civil Rights Project filed a second administrative complaint with the U.S. Department of Justice (DOJ) against the Austin Police Department (APD) for continued racial discrimination and abusive policing against African American and Latino/a members of the community, even after the completion of a DOJ investigation in 2007. Press Release, NAACP and TCPR Renew Complaint with U.S. Department of Justice Against Austin Police Department and City of Austin (June 27, 2012), <http://content.austin.ynn.com/auscontent/NAACPCompliant.pdf>; In Chicago, Illinois, The Chicago Alliance Against Racist & Political Repression (NAARPR) and victims of police crimes and their families filed a complaint with the United States Attorney's Office seeking an investigation into patterns of racial discrimination, murder, and false imprisonment against the African American and Latino/a community. Letter from the Chicago Alliance Against Racist & political Repression, to Eric H. Holder, Jr., United States Attorney General, U.S. Department of Justice and Zachary T. Fardon, United States Attorney's Office, Northern District of Illinois, Eastern Division (Aug. 28, 2014), http://naarpr.org/wp-content/uploads/2014/09/CAARPR_Complaint_USAttyGen_EricHolder_Aug2014.pdf

¹⁰ *See generally* Southern Poverty Law Center, *Under Siege: Life for Low-Income Latinos in the South*, (S. Poverty Law Ctr., Montgomery, Ala.) April 2009, 16-27, <http://www.splcenter.org/sites/default/files/downloads/UnderSiege.pdf>, (presenting examples of racial profiling by law enforcement and documenting the fear and distrust that keeps Latino/a immigrants from reporting crimes).

a community.¹¹ When members of the community stop cooperating with law enforcement, policing and prosecuting become severely compromised.¹² To ensure the protection of all civil rights and increase public safety, systemic police abuse against Latinos/as must be addressed.

The nativist, racist, and misinformed rhetoric within the national debate on immigration, and blurred lines between local, state, and federal immigration law enforcement have dehumanized and criminalized new Latino/a immigrants, creating fertile ground for abusive police practices. Instead of welcoming new immigrants as “Americans in Waiting,” current federal immigration law and recent state and local legislation label new immigrants in two simplistic categories: undesirable “criminal aliens” and security risks at worst, or victims eligible for asylum and a few other protections, perceived to drain the economy and social safety net, at best.¹³ Immigration law enforcement is now intertwined with criminal law enforcement, creating a new field of law some have termed “crimmigration.”¹⁴ As a result of the restructuring of federal immigration priorities, the “criminal alien” category includes all noncitizens convicted of petty traffic offenses, misdemeanors, or a serious felony.¹⁵

¹¹ Lindsey J. Gill, *Secure Communities: Burdening Local Law Enforcement and Undermining the U Visa*, 54 WM. & MARY L. REV. 2055, 2071 (2013).

¹² See Generally Tom R. Tyler and Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?* 6 OHIO ST. J. CRIM. L. 231 (2008-2009) (Presenting research showing that fair policing procedures increases legitimacy and cooperation with law enforcement within a community).

¹³ See generally HIROSHIMA MOTUMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* (2006) (detailing the immigration history, for over 150 years, during which immigrants were essentially being treated as future citizens—“Americans in waiting” and juxtaposing it with current conceptions of immigrants no longer perceived as future citizens but rather as a criminal threat); see also César Cuahtémoc García Hernández, *Creating Crimmigration*, 2013 BYU L. REV. 1457 (2014) (explaining the political and legal shifts that led to the intersection of criminal law and immigration law into a new field of law, crimmigration, and contending that crimmigration is used to sort desirable new immigrants from undesirable immigrants, with facially neutral laws that mask racist intent or have a disproportionate effect on immigrants of color).

¹⁴ David Alan Sklansky, *Crime, Immigration, and Ad Hoc Instrumentalism*, 15 NEW CRIM. L. REV. 157, 202 (2012); Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 376 (2006).

¹⁵ The Criminal Alien Program (CAP) is an expansive immigration-enforcement program that extends to every area of the country and intersects with most state and local law-enforcement agencies. Administered by Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE), it identifies allegedly removable noncitizens and places them into removal proceedings. CAP is now listed as one of 14 federal/local law-enforcement

In this climate, Latinos/as are increasingly victims of racial profiling and become susceptible to police fraud or abuse upon even the most routine interaction with law enforcement.¹⁶ Compounding the injury, these interactions make deportation a near certainty for undocumented Latino/a immigrants, separating families and further cementing the notion that police officers pose a threat to Latino/a residents instead of offering protection.¹⁷ This criminalization of immigrants and the racial profiling of Latinos/as as “criminal aliens” makes Latino/a undocumented immigrants especially vulnerable to systemic police fraud and abuse. The fear of the police, due to the risk of deportation that may result from any interaction with law enforcement, keeps undocumented Latino/a immigrant victims from reporting crimes against them.¹⁸ The fear is well-founded; deportations have increased and the overwhelming majority of those deported from the United States in the past decade had a Latin American national origin.¹⁹ The Secure Communities Program, (S-Comm) was mostly responsible for the mass deportations, and the program was blamed for the increase in incidents of racial profiling and police abuse

programs under ICE ACCESS (Agreements in Cooperation in Communities to Enhance Safety and Security). DHS purports to focus its jail status check programs (including CAP and the now suspended Secure Communities) on immigrants with serious criminal backgrounds. However, DHS statistics show that a large percentage (over 50 percent in 2008 and 2009) of immigrants apprehended under CAP are not criminals at all. IMMIGRATION POLICY CENTER, AMERICAN IMMIGRATION COUNCIL, THE CRIMINAL ALIEN PROGRAM (CAP): IMMIGRATION ENFORCEMENT IN PRISONS AND JAILS, (Updated Jan. 2013), Available at http://immigrationpolicy.org/sites/default/files/docs/criminal_alien_program_fact_sheet_final.pdf; Ingrid V. Eagly, *Criminal Justice for Noncitizens: An Analysis of Variation in Local Enforcement*, 88 N.Y.U. L. REV. 1126, 1140-41 (2013).

¹⁶ E.g., *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012); *Giron v. City of Alexander*, 693 F. Supp. 2d 904 (E.D. Ark. 2010); See Generally Jenny Rivera, *The Continuum of Violence Against Latinas and Latinos*, 12 N.Y. CITY L. REV. 399, 400 (2009); Katherine Culliton, *How Racial Profiling and Other Unnecessary Post-9/11 Anti-Immigrant Measures Have Exacerbated Long-Standing Discrimination Against Latino Citizens and Immigrants*, 8 U. D.C. L. REV. 141 (2004).

¹⁷ Tanya Golash-Boza & Pierrette Hondagneu-Sotelo, *Latino Immigrant Men and The Deportation Crisis: A Gendered Racial Removal Program*, 11 LATINO STUDIES 271, (2013); DORA SCHRIRO, IMMIGRATION DETENTION OVERVIEW AND RECOMMENDATIONS, DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT. 12-13 (OCTOBER 6, 2009).

¹⁸ Gill, *supra* note 11; NIK THEODORE, DEPARTMENT OF URBAN PLANNING AND POLICY, U. OF IL. AT CHI, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT, (May 2013).

¹⁹ ENFORCEMENT AND REMOVAL OPERATIONS ANNUAL REPORT, DEPARTMENT OF HOMELAND SECURITY, FISCAL YEAR 2013 ICE IMMIGRATION REMOVALS available at <http://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf> see also Golash-Boza & Hondagneu-Sotelo, *supra* note 17.

against Latino/a communities throughout the country.²⁰ Latino/a U.S. citizens and authorized immigrants also report fear of interaction with law enforcement due to the increase in unjustified arrests or use of force against Latino/a communities that resulted from police participation in the S-Comm program.²¹ While suspicion of unlawful immigrant status may be an officer's objective reason for initiating an encounter or stop, immigrant status is not a visible characteristic, and Latino/a identity is used as a proxy.²²

Thus, S-Comm implicitly encouraged racial profiling, breaking down trust between Latino/a immigrant communities and law enforcement agencies. The jurisdictions that participated in the program were accused of administering it with bias, including Suffolk County, with Latinos/as becoming victims of police racial profiling, harassment, and abuse.²³ S-Comm was so problematic that on November 20, 2014, President Barack Obama announced its suspension, replacing it with the "Priorities Enforcement Program" (PEP).²⁴ The new PEP purports to focus the limited ICE resources to deport immigrants that pose national security risks, are gang members, or have recently crossed the border without authorization, instead of continuing to deport immigrant workers, students, and parents with no more than traffic

²⁰ Elise Foley, *Obama Faces Growing Rebellion Against The Secure Communities Deportation Program*, HUFFINGTON POST, April 24, 2014 available at http://www.huffingtonpost.com/2014/04/24/secure-communities_n_5182876.html

²¹ 38 percent of Latinos reported they feel like they are under more suspicion now that local law enforcement authorities have become involved in immigration enforcement. This figure includes 26 percent of US-born respondents, 40 percent of foreign-born respondents, and 58 percent of undocumented immigrant respondents. THEODORE, *supra* note 18.

²² TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, TRAC IMMIGRATION, SECURE COMMUNITIES AND ICE DEPORTATION: A FAILED PROGRAM? (April 8, 2014) available at <http://trac.syr.edu/immigration/reports/349/>

²³ Letter from the Long Island Immigrant Alliance (LIIA) to Steve Ballone, Suffolk County Executive, (Dec. 15, 2011), available at <http://supportimmigrants.blogspot.com/p/liia-transition-paper.html>.

See also U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, SECURE COMMUNITIES, MONTHLY STATISTICS THROUGH AUGUST 31, 2012, 36, http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf.

²⁴ Press Release, Office of The Press Secretary, The White House, Remarks by the President in Address to the Nation on Immigration (Nov. 20, 2014), <http://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>.

violations.²⁵ The PEP aims to address the S-Comm failures in terms of removal priorities (deportations), but does not address the disproportionate impact of deportations on Latino/a communities nor the issues of racial profiling or abusive policing against Latino/a immigrant communities.²⁶

Legislation, police reform, and oversight are necessary to address systemic police violations of Latinos/as' civil liberties. First, legislation to decriminalize immigrants and prohibit racial profiling must be enacted, specifically, comprehensive, humane, immigration reform and The End Racial Profiling Act (ERPA). Such legislation would help remove the stigma against Latino/a immigrants and address the police practice of targeting communities of color. State legislatures should refrain from enacting anti-immigrant legislation and provide undocumented immigrants the opportunity to obtain driver's licenses, thereby decreasing the potential for police abuse in traffic stops. Second, police departments must reform policies and practices to increase transparency and accountability. Mandating that officers use body-worn cameras (BWCs) and adopting community policing practices that engage the community would meet these goals. Third, federal oversight should be implemented where police departments are found to have engaged in discriminatory or abusive policing against Latino/a communities, and civil oversight should be available for police departments overall. Such monitoring is necessary to ensure the

²⁵ *Id.*

²⁶ Memorandum from Jeh Charles Johnson, Secretary, U.S. Department of Homeland Security for Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection, Leon Rodriguez, Director, U.S. Citizenship and Immigration Services, and Alan D. Bersin, Acting Assistant Secretary for Policy (Nov. 20, 2014) *available at* http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf [hereinafter Prosecutorial Discretion in Immigration Memo]; Memorandum from Jeh Charles Johnson, Secretary, U.S. Department of Homeland Security for Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, Megan Mack, Officer, Office of Civil Rights and Civil Liberties, Philip A. McNamara, Assistant Secretary for Intergovernmental Affairs (Nov. 20, 2014) *available at* http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf

effective implementation and maintenance of reformed police policies and practices to prevent abusive policing and address any ongoing civil rights violations.

II. CASE STUDIES: THE SUFFOLK COUNTY POLICE DEPARTMENT'S AND EAST HAVEN POLICE DEPARTMENT'S USE OF FORCE AND FRAUD AGAINST LATINOS/AS

The systemic police fraud and abuse against the Latino/a immigrant communities of Suffolk County, Long Island, New York and East Haven, Connecticut, and the subsequent reforms to the respective police departments, can inform legislators, police department leaders, and civil rights advocates as to how to prevent and address similar abuses in other communities. Elected officials in both Suffolk County and East Haven publicly expressed anti-Latino/a immigrant racism and nativism, dehumanizing Latino/a members of the community and making targeted, abusive policing acceptable.²⁷ Exploring the climate of these communities when the abusive policing occurred and analyzing the effectiveness of remedial measures leads to the conclusion that a multi-pronged approach, including legislation, police reform, and oversight, is necessary to provide relief from discriminatory policing against Latino/a communities.

A. The Suffolk County “Climate of Fear” and the SCPD’s Discriminatory Policing of the Latino/a Community

Anti-Latino immigrant hate speech and hate crimes were documented in Suffolk County since 1999, long before the DOJ began investigating incidents of discriminatory and predatory policing against Latinos/as in Suffolk County.²⁸ The county’s elected officials used anti-Latino/a immigrant rhetoric to garner votes, fermenting a nativist, racist climate where hate groups and

²⁷ Climate of Fear, *supra* note 4, at 19-20; Aliyah Shahid, *Joseph Maturo, mayor of East Haven, Connecticut, apologizes for ‘taco’ quip amid police brutality probe* NEW YORK DAILY NEWS, Jan. 26, 2012 available at <http://www.nydailynews.com/news/politics/joseph-maturo-mayor-east-haven-connecticut-apologizes-taco-quip-police-brutality-probe-article-1.1012179>

²⁸ Climate of Fear, *supra* note 4, at 21-28.

even some members of the police dehumanized and targeted Latino/a immigrants.²⁹ County Executive Steve Levy was elected to his first term in November 2003 after promising a crackdown on “illegal immigrants,” and was re-elected with the same nativist platform in 2007.³⁰ Consequently, the proposal of local legislative measures targeting immigrant workers and low-income immigrant renters increased, as did police harassment of Latino/a immigrant day laborers and motorists.³¹ In March 2007, County Legislator Elie Mystal publicly proposed a solution to the “problem” of Latino undocumented immigrants waiting for work on street corners: “If I’m living in a neighborhood and people are gathering like that, I would load my gun and start shooting.”³² A Southern Poverty Law Center special report and the film “Farmingville” detailed how such anti-Latino/a immigrant rhetoric was a catalyst for the ensuing increase in anti-immigrant ordinances, police harassment, and hate crimes against Latinos/as, including the murder of a Latino immigrant by a group of young men who called themselves “The Caucasian Crew” and engaged in regular attacks on Latinos in a practice they called “Beaner hopping.”³³

In this climate, Latino/a immigrants in Suffolk County became a population separate from the community, without the rights that others in the community enjoy, and a criminalized target of the police. The Southern Poverty Law Center’s report documented that although Latinos/as accounted for roughly 14% of Suffolk County’s population in 2009, a review of the police blotters printed in Suffolk County daily newspapers demonstrated that around 50% of the

²⁹ *Id.* at 19-20.

³⁰ *Id.*; see also Editorial, *The Riddle of Steve Levy* N.Y. TIMES Nov. 4, 2007 available at http://www.nytimes.com/2007/11/04/opinion/nyregionopinions/LI-Levy.html?_r=0

³¹ LONG ISLAND IMMIGRANT ALLIANCE, RECOMMENDATIONS TO THE SUFFOLK COUNTY HATE CRIMES TASKFORCE, 3, [hereinafter LIIA RECOMMENDATIONS] available at https://www.hofstra.edu/pdf/about/global/diversity/diversity_liia_recs.pdf; Climate of Fear, *supra* note 4 at 7 – 12.

³² Climate of Fear, *supra* note 4, at 8.

³³ See generally Climate of Fear, *supra* note 4; FARMINGVILLE (Camino Bluff Productions 2004); Vivian S. Toy, *Border Warriors*, N.Y. TIMES, Oct. 22, 2000 available at <http://www.nytimes.com/2000/10/22/nyregion/border-warriors.html>; see also SARAH GARLAND, GANGS IN GARDEN CITY: HOW IMMIGRATION, SEGREGATION, AND YOUTH VIOLENCE ARE CHANGING AMERICA’S SUBURBS 147-149 (2009).

drivers listed as having been fined for a motor vehicle violation had Hispanic surnames, and Latinos/as made up nearly half the defendants appearing in court for motor vehicle violations.³⁴ In addition, police response to reports of hate crimes against Latino/a immigrants was lacking, demonstrating a police culture that perceived Latinos/as outside of the community the SCPD was tasked to protect and serve.³⁵

The SCPD failures were so severe that in 2009 the DOJ opened an investigation into racial profiling, police misconduct, and hate crimes against Latinos/as in Suffolk County.³⁶ By 2014, when Sergeant Greene was arrested and indicted for targeting Latinos/as in the “Stop, Search, and Steal” scheme, racial profiling and discriminatory police checkpoints in Latino/a neighborhoods were documented as part of daily life for Latino/a immigrants in the county.³⁷ The DOJ investigation concluded that the SCPD did engage in discriminatory policing against Latinos/as and mandated reforms in the SCPD’s provision of services to Latino communities in Suffolk County.³⁸ Specifically, the DOJ and SCPD entered into an agreement (“the DOJ/SCPD Agreement”), which calls for the development and maintenance of a Community Oriented Policing Enforcement (“COPE” or “Community Policing”) program and federal oversight.³⁹

³⁴ Climate of Fear, *supra* note 4, at 9.

³⁵ See generally Climate of Fear, *supra* note 4; see also Kirk Semple, *4 Years Later, Still No Answer in Killing of a Long Island Laborer* N.Y. TIMES (July 28, 2014) available at <http://www.nytimes.com/2014/07/29/nyregion/four-years-after-a-deadly-night-on-long-island-no-answers.html>.

³⁶ Anne Barnard, *Assaults on Latinos Spur Inquiry* N.Y. TIMES (JAN. 12, 2009) Available at http://www.nytimes.com/2009/01/13/nyregion/13patchogue.html?_r=0&adxnnl=1&adxnnlx=1417845639-ayfgiXwFQqZQSnGjt7kghg; DOJ/SCPD Settlement Agreement Press Release, *supra* note 4.

³⁷ Climate Of Fear, *supra* note 4, at 8-9; Andrew Smith, *Scott Greene, ex-Suffolk police sergeant accused of stealing from Latinos, faces 60 more counts*, NEWSDAY, June 24, 2014, available at <http://www.newsday.com/long-island/suffolk/scott-greene-ex-suffolk-police-sergeant-accused-of-stealing-from-latinos-faces-60-more-counts-1.8552009>.

³⁸ See generally Agreement between the U.S. Department of Justice and Suffolk County Police Department, Jan. 13, 2014 available at http://www.justice.gov/crt/about/spl/documents/suffolk_agreement_1-13-14.pdf [hereinafter DOJ/SCPD Agreement]; DOJ/SCPD Settlement Agreement Press Release, *supra* note 4.

³⁹ Community Policing is a law enforcement philosophy aimed at preventing instead of simply responding to crime by promoting interactions of trust between the police and the community. GAYLE FISHER-STEWART, U.S. DEPARTMENT OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES (COPS), COMMUNITY POLICING EXPLAINED: A GUIDE FOR LOCAL GOVERNMENTS (2007); DOJ/SCPD Settlement Agreement, *supra* note 4.

Community policing programs function to increase positive and collaborative interactions between officers and the community they protect and serve.⁴⁰ The COPE program in Suffolk County requires specific officers identified as liaisons between the police department and the community to attend neighborhood meetings, present crime-prevention programs at schools, and meet with local business owners in efforts to mend relations with all members of the community, and Latino/a residents in particular.⁴¹ To promote trust-building with the Latino/a community, Suffolk County became yet another jurisdiction to end its participation in S-Comm.⁴²

In addition to the DOJ federal oversight over the implementation of reforms, members of the Long Island Immigrant Alliance (LIIA or “The Alliance”) and civil rights groups, such as LatinoJustice PRLDEF (LJP) and the New York Civil Liberties Union (NYCLU), served to provide civil oversight for the development of reforms and their implementation, providing recommendations and feedback to legislators and the SCPD throughout the process.⁴³ Specifically, the Alliance members began a dialogue with elected officials to propose legislation aimed at preventing continued police abuse and hate crimes against Suffolk County’s Latino/a community.⁴⁴ As the criminal case against Sergeant Greene developed, LJP provided guidance and counsel to identified “Stop, Search, and Steal” scheme victims to ensure that Sergeant Greene and the SCPD were held accountable.⁴⁵ Civilian monitoring and collaboration ensures progress in Suffolk County, even as the community continues to change and heal from the

⁴⁰ See generally Fisher-Stewart *supra* note 39.

⁴¹ DOJ/SCPD Agreement, *supra* note 38 at 14.

⁴² Christina Bonawandt, *Suffolk County Breaks ICE’s Hold, Stop Honoring Immigration Detainer*, LONG ISLAND WINS Sept. 17, 2014, available at

http://www.longislandwins.com/news/detail/breaking_news_suffolk_county_breaks_ices_hold_stops_honoring_immigration_de.

⁴³ LIIA RECOMMENDATIONS *supra* note 31 at 23; Ray Sanchez and Cindy Y Rodriguez, *Hate crime killing triggers federal oversight of town’s police*, CNN, Dec. 17, 2013, <http://www.cnn.com/2013/12/17/justice/new-york-hate-crime-police/>.

⁴⁴ LIIA RECOMMENDATIONS *supra* note 31.

⁴⁵ Semple, *supra* note 2.

detrimental effects of hate crimes, biased policing, and the “Stop, Search, and Steal” police scheme.

B. East Haven Police Department’s Harassment and Use of Excessive Force Against Latinos/as

Like Suffolk County, the East Haven, Connecticut community had a reputation for prejudice long before the systemic police abuse against Latinos/as was uncovered.⁴⁶ East Haven’s notoriety can be traced back to the 1997 lethal police shooting of a 21 year old unarmed African-American man, Malik Jones, and the racial tensions that escalated in East Haven throughout the decade of litigation following the shooting.⁴⁷ East Haven was considered an unofficial “sundown town” where African American and Latinos/as felt generally unwelcome, especially after dark.⁴⁸ As in Suffolk County, The DOJ opened investigations into discriminatory policing allegations in 2009 and found that the EHPD engaged in a pattern or practice of discriminatory policing against Latinos/as.⁴⁹ Released in 2011, the DOJ findings showed that the EHPD targeted Latinos/as for discriminatory traffic enforcement, treated Latinos/as more harshly than non-Latinos/as after traffic stops, and intentionally failed to design and implement internal systems that would identify and prevent the discriminatory conduct.⁵⁰ By the end of 2013, four EHPD officers either pled guilty or were found guilty for their roles in the

⁴⁶ Sarah Kate Kraemer, *The Taco Mayor, Overcoming Anti-Immigrant Politics in Connecticut*, 1 FOREFRONT 4, (2012).

⁴⁷ Kimberly Johnson & Rebecca Baker Erwin, *Emma Jones goes to East Haven; Rally Turns Ugly; Motorcade Greeted by Cheers and Jeers* NEW HAVEN REGISTER July 13, 2003; *Jones v. Town of E. Haven*, 691 F.3d 72 (2d Cir. 2012) cert. denied sub nom. *Jones v. Town of E. Haven, Conn.*, 134 S. Ct. 125, 187 L. Ed. 2d 255 (2013).

⁴⁸ See Michael Melia, *Hispanics Leaving Connecticut Town, Citing Racial Abuse by Police*, HUFFINGTON POST, Dec. 26, 2010 available at http://www.huffingtonpost.com/2010/12/26/east-haven-police-racial-profiling_n_801373.html; See Also Vivian Yee, *Hispanics in East Haven are Wary of Kinder Tone*, N.Y. TIMES, Jan. 23, 2013, at A22.

⁴⁹ U.S. Department of Justice, Special Litigation, Investigation of the East Haven Police Department, [hereinafter DOJ Investigation of EHPD], <http://www.justice.gov/crt/about/spl/easthavenpd.php>; See generally Kraemer, *supra* note 46; See also *N.A.A.C.P. v. Town of E. Haven*, 259 F.3d 113 (2d Cir. 2001).

⁵⁰ DOJ Investigation of EHPD, *supra* note 49.

unlawful arrests, the use of cruel and excessive force, and the execution of illegal searches of Latino/a immigrants.⁵¹ Testimony showed that, in one incident, an officer slammed a handcuffed Latino restaurant owner to the ground and repeatedly kicked him in the back and legs.⁵² United States Attorney for the District of Connecticut Deirdre M. Daly described the abuse as “assaults, intimidation, and humiliation of vulnerable victims that undermined the legitimacy of the EHPD and damaged the public’s trust in law enforcement.”⁵³ Throughout the investigation and the trial, long-standing racial tensions escalated in East Haven, with some members of the majority community defending the police officers and resenting federal involvement.⁵⁴

In addition to the DOJ investigation and the criminal case against four officers, a 2010 civil litigation was filed on behalf of Latino/a residents who alleged police officers racially profiled them and repeatedly used excessive force; a settlement was reached soon after the officers were convicted of criminal charges.⁵⁵ As in Suffolk County, participation in S-Comm was terminated in an effort to begin to rebuild trust between the Latino/a community and the police.⁵⁶ In accord with the settlement agreement, the EHPD hired Spanish/English bilingual officers, and in June 2014, the EHPD implemented the use of body-worn cameras (BWCs), mandating each officer to wear and follow protocol for using their body camera.⁵⁷ As a result of

⁵¹ Press Release, U.S. Department of Justice, Former East Haven Police Officer Sentenced to Five Years in Prison for Criminal Civil Rights Violations, (Jan. 23, 2014) [hereinafter DOJ Press Release, EHPD Officers Sentencing], <http://www.justice.gov/usao/ct/Press2014/20140123-3.html>; Elizabeth Maker, *2 Officers Convicted of Harassing Latinos*, N.Y. TIMES, Oct. 22, 2013, at A18.

⁵² Michael Schwartz, *2 Officers Accused of Harassing Latinos Now Await Verdict*, N.Y. TIMES, Oct. 16, 2013, at A31.

⁵³ DOJ Press Release, EHPD Officers Sentencing, *supra* note 51.

⁵⁴ Yee, *supra* note 48.

⁵⁵ Associated Press, *East Haven Settles Suit on Civil Rights*, N.Y. TIMES, June 10, 2014, at A20.

⁵⁶ Honorable Board of Police Commissioners, East Haven Police Department Policies and Procedures Directive No. 428.2, Secure Communities Program, June 10, 2014, http://www.easthavenpolice.com/files/2314/0244/5061/428.2_-_Secure_Communities_Program_Effective_07-01-2014.pdf.

⁵⁷ Yee, *supra* note 48; Honorable Board of Police Commissioners, East Haven Police Department Policies and Procedures Directive No. 401.2, AVL and Officer Video Camera Use and Operation, June 27, 2014, [hereinafter EHPD Camera Directive]

the DOJ investigation, litigation, and consequent reforms to the EHPD's policy and practice, East Haven now has some of the nation's strictest limits on local police immigration enforcement and strong protections against racial profiling.⁵⁸ Seemingly, the changes have been effective, as East Haven Latino/a immigrants report that conditions in East Haven have improved over the last couple of years and the EHPD has been lauded for remarkable progress.⁵⁹

III. PROPOSED SOLUTIONS & REFORMS

Addressing police use of excessive force and fraud against a minority population requires bold interventions at the legislative level, meaningful reforms to police policy and practice, and careful monitoring to prevent continued abuse. President Obama's Executive Order ending the S-Comm program is poised to indirectly decrease some of the unjustified interactions between Latino/a immigrant communities and law enforcement officers, but more proactive, sustainable measures are necessary to prevent and address abusive policing practices overall. Adapting the lessons learned from Suffolk County and East Haven to the country as a whole, the legislative measures, strategic police reform, and oversight described below could prevent or remedy similar civil rights violations in other communities.

A. Legislative Solutions: Comprehensive Immigration Reform (CIR), The End Racial Profiling Act (ERPA), and an End to State Laws Prohibiting Driver's Licenses for Undocumented Immigrants

As evidenced in Suffolk County, Long Island, New York and East Haven, Connecticut, anti-immigrant rhetoric and anti-immigrant legislation often precedes and accompanies systemic

http://www.easthavenpolice.com/files/1614/0208/2517/401.2_AVL_and_Officer_Video_Camera_Use_and_Operation_Effective_06-27-2014.pdf.

⁵⁸ Associated Press, *supra* note 55.

⁵⁹ Yee, *supra* note 48; Evan Lips, *East Haven Police Department progress remarkable, feds say*, NEW HAVEN REGISTER Feb. 01, 2014, available at <http://www.nhregister.com/general-news/20140201/east-haven-police-department-progress-remarkable-feds-say>.

police abuse against Latino/a communities. Legislation to reform immigration law on the federal level, end the practice of racial profiling, and state legislation allowing for the provision of driver's licenses for undocumented immigrants is necessary to remove the vulnerabilities that make Latinos/as targets for police abuse.⁶⁰ When undocumented immigrants are victimized, they lack adequate protection under current law. Current federal law enforcement policies explicitly permit racial profiling where the Department of Homeland Security is enforcing immigration law.⁶¹ The Supreme Court of the United States held that Title VII of the Civil Rights Act of 1964 does not prohibit discrimination based on unauthorized immigrant status and undocumented immigrants do not qualify for the antidiscrimination provisions of the Immigration Reform and Control Act of 1986 (IRCA).⁶² Current immigration laws that criminalize and depersonalize immigrants, leading some to label Latinos/as immigrants specifically as “illegal” or “criminal aliens”, leaves the entire Latino/a community subject to increased interactions with law enforcement, with limited avenues for relief when such interactions include abuse.⁶³

CIR, including a path to citizenship for the millions of undocumented immigrants living and working in the United States, would help to remove the stigmatized “illegal alien” label from the Latino/a community and provide the protections of citizenship and authorized immigrant

⁶⁰ See generally Fatma E. Marouf, *Regrouping America: Immigration Policies and The Reduction of Prejudice*, 15 HARV. LATINO L. REV. 129 (2012).

⁶¹ Sari Horwitz and Jerry Markon, *Racial profiling will still be allowed at airports, along border despite new policy*, WASHINGTON POST, DEC. 5, 2014, http://www.washingtonpost.com/politics/racial-profiling-will-still-be-allowed-at-airports-along-border-despite-new-policy/2014/12/05/a4cda2f2-7ccc-11e4-84d4-7c896b90abdc_story.html?tid=HP_more%3Ftid%3DHDP_more

⁶² *Espinoza v. Farah Mfg.*, 414 U.S. 86 (1973); 8 U.S.C. § 1324b(a)(2)(B), (b)(2) (1986); see also Marouf, *supra* note 60 at 136.

⁶³ AARTI KOHLI, PETER L. MARKOWITZ AND LISA CHAVEZ, CHIEF JUSTICE EARL WARREN INSTITUTE, SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS AND DUE PROCESS, October 2011; Marouf, *supra* note 60 at 145-151. see also Robert J. Lopez, *L.A. Police residents face off over police killing of Guatemalan*, L.A. TIMES, Sept. 7, 2010, <http://articles.latimes.com/2010/sep/07/local/la-me-police-shooting-20100907>.

status for Latinos/as subjected to predatory policing.⁶⁴ The End Racial Profiling Act (ERPA) would prohibit the practice of using an individual's race or ethnicity as a pretext for encounters with or stops by law enforcement, thereby reducing the risk for further abuse. On the state level, legislation removing the prohibition on providing driver's licenses to undocumented immigrant drivers would provide immediate relief from discriminatory traffic stops. With valid driver's licenses, undocumented Latino/a immigrants are less susceptible to arrests and civil rights violations, while the overall community public safety is increased when the majority of drivers are tested, registered, and insured. At a bare minimum, federal, state, and local legislators must refrain from using anti-immigrant rhetoric and from introducing anti-immigrant legislation.

1. Humane, Comprehensive Immigration Reform (CIR)

Current immigration law stigmatizes unlawful entry as an unredeemable offense that leaves undocumented immigrants in the position of permanent outcast.⁶⁵ CIR is a crucial, albeit elusive, reform that could bring undocumented Latino/a immigrants out of the shadows, removing the criminalized label of "illegal alien" that facilitates the targeting of Latinos/as for police fraud and abuse.⁶⁶ The suspension of S-Comm and recent executive orders providing relief from deportation for immigrants that arrived as children and immigrant parents of citizen children are certainly a step in the right direction.⁶⁷ However, neither the PEP that replaces S-Comm nor the executive orders on immigration address the civil rights violations of Latino/a

⁶⁴ Bipartisan Framework for Comprehensive Immigration Reform, Senators Schumer, McCain, Durbin, Graham, Menendez, Rubio, Bennet, and Flake, [hereinafter Bipartisan CIR Framework] *available at* http://www.flake.senate.gov/documents/immigration_reform.pdf

⁶⁵ Marouf, *supra* note 60 at 170.

⁶⁶ Bipartisan CIR Framework *supra* note 64.

⁶⁷ U.S. CITIZEN AND IMMIGRATION SERVICES, EXECUTIVE ACTIONS ON IMMIGRATION, <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca> (last visited Dec. 22, 2014).

communities that occur in the current anti-immigrant climate.⁶⁸ Close monitoring of the implementation and administration of the PEP will be necessary to prevent and confront a repeat of the discriminatory enforcement that left communities susceptible to police abuse under S-Comm.

Specifically, humane CIR should offer a change in immigration law that recognizes the personhood of an immigrant as a student, a worker, a parent, a soldier, or other contributing member of United States society, instead of a simple dichotomy of immigrants as either criminals or victims (i.e. those granted asylum or other relief based on victimization as a result of persecution, domestic violence, human trafficking, child abuse or neglect, or violent crime).⁶⁹ CIR would offer protection to the vulnerable undocumented immigrant population from stringent state and local legislation that dehumanizes unauthorized immigrants by excluding them from the right to contract, rent property, or find employment and encourages racial profiling and police harassment.⁷⁰ With lawful immigrant status, Latino/a immigrants would be less susceptible to unlawful police stops, searches, and arrests and would be more likely to report incidents of police use of excessive force or fraud.

2. The End Racial Profiling Act (ERPA)

⁶⁸ S-Comm used a federal information-sharing partnership between ICE and the Federal Bureau of Investigation (FBI) to identify “criminal aliens.” Notably, the PEP that replaces S-Comm will continue to rely on state and local law enforcement fingerprint-based biometric data submitted to the FBI, but ICE will now only seek the transfer of an immigrant when he or she has been convicted of a priority 1 or priority 2 offense, which include threats to national security, border security, and public safety. The difference between S-Comm and PEP is that under the new program, only immigrants convicted (as opposed to simply arrested) of specifically enumerated crimes (as opposed to simply traffic violations) will be subject to detention and deportation. DEPT. OF HOMELAND SECURITY, IMMIGRATION ENFORCEMENT, SECURE COMMUNITIES: GET THE FACTS <http://www.ice.gov/secure-communities/get-the-facts> (last visited Dec. 22, 2014); KOHLI, MARKOWITZ AND CHAVEZ *supra* note 62; Prosecutorial Discretion in Immigration Memo, *supra* note 26.

⁶⁹ See generally Marouf, *supra* note 60.

⁷⁰ Marouf, *supra* note 60 at 170.

Federal legislation prohibiting racial profiling could remedy some of the issues of discriminatory policing, not just in Latino/a communities, but for all communities of color. The DOJ defines racial profiling as “any police-initiated action that relies upon the race, ethnicity, or national origin of an individual” rather than on the behavior of the individual.⁷¹ While the United States Supreme Court has sanctioned racial profiling in law enforcement, the negative disparate impact on Latinos/as (and on people of color generally) evident in communities like Suffolk County and East Haven make clear the need to prohibit the practice.⁷² Following high profile cases in New Jersey and Maryland, where police officers disproportionately stopped and arrested African-American and Latinos/as, several states enacted legislation banning racial profiling and requiring mandatory data collection.⁷³ ERPA would provide guidance to all police departments and ensure uniformity across the states.

Enacting ERPA would prevent some of the unjustified, negative interactions between law enforcement and Latinos/as and thus decrease the incidents of police fraud and abuse.⁷⁴ Specifically, ERPA would prohibit any law enforcement agent or agency from engaging in racial profiling and require federal, state, and local law enforcement agencies that apply for certain grants to maintain adequate policies and procedures to eliminate racial profiling and to cease existing practices that permit racial profiling.⁷⁵ Evidence in support of passing ERPA is found in

⁷¹ AMY FARRELL, JACK MCDEVITT, AND DEBORAH RAMIREZ, NORTH EASTERN U., U.S. DEPT. OF JUSTICE, A RESOURCE GUIDE ON RACIAL PROFILING DATA COLLECTION SYSTEMS: PROMISING PRACTICES AND LESSONS LEARNED. U.S. 4 (2000).

⁷² See, e.g., *Melendres v. Arpaio*, 989 F.Supp.2d 822 (2013). *United States v. Martinez-Fuerte*, 428 U.S. 543, 563 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873, 885-86 (1975). See generally Kevin R. Johnson, *How Racial Profiling in America Became the Law of the Land: United States v. Brignoni-Ponce and Whren v. United States and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005 (2010) (analyzing racial profiling sanctioned by the Supreme Court in criminal and immigration enforcement); Kevin R. Johnson, *The Case Against Race Profiling in Immigration Enforcement*, 78 WASH. U. L.Q. 675 (2000) (advocating for an end to the use of racial profiles in the enforcement of the U.S. immigration laws).

⁷³ FARRELL, MCDEVITT, RAMIREZ, *supra* note 71.

⁷⁴ S. 1038, 113th Cong. (1997).

⁷⁵ *Id.*

the aftermath of DOJ investigations of police departments accused of racially profiling Latinos/as, such as the SCPD and the EHPD. Addressing racial profiling through settlement agreements with the DOJ has brought positive change to the Suffolk County and East Haven communities; legislation could similarly confront the issue of discriminatory policing throughout the country without the costs of litigation.⁷⁶ In East Haven, the compliance report at the one-year mark showed marked improvement from the situation in 2011, with the percentage of Latino/a drivers the EHPD stopped (8.9 percent) no longer significantly larger than the estimated percentage of Latino/a drivers (8.3 percent).⁷⁷ Victims of the discriminatory policing in East Haven report policing conditions have improved over the last couple of years, bringing business and a sense of safety to the Latino/a community.⁷⁸ Similarly, members of the Suffolk County Latino/a community have reported slow but steady change for the better in the four years following the launch of the DOJ investigation.⁷⁹ Passing ERPA could help to bring about such change without intensive, at times divisive, investigations and litigation, and better still, prevent such civil rights violations in the first place.

3. State Legislation Allowing for the Provision of Driver's Licenses for Undocumented Immigrants

As immigration reform legislation and the ERPA continue to stall in Congress, state legislators should recognize the prevalence of police force and fraud against Latinos/as

⁷⁶ Lips, *supra* note 59. *East Haven Police Department progress remarkable, feds say*, NEW HAVEN REGISTER Feb. 01, 2014 available at <http://www.nhregister.com/general-news/20140201/east-haven-police-department-progress-remarkable-feds-say>; Will James, *Suffolk Police Reach Accord With Latinos, Settlement Calls For Federal Oversight of the Department*, WALL STREET JOURNAL, DE. 17, 2013, <http://online.wsj.com/articles/SB10001424052702304403804579264754055758122>; KATHLEEN M. O'TOOLE, *UNITED STATES OF AMERICA V. TOWN OF EAST HAVEN AND EAST HAVEN BOARD OF POLICE COMMISSIONERS*, AGREEMENT FOR EFFECTIVE AND CONSTITUTIONAL POLICING 365 DAY COMPLIANCE REPORT, Jan. 24, 2014, [hereinafter EHPD COMPLIANCE REPORT].

⁷⁷ EHPD COMPLIANCE REPORT, *supra* note 76 at 13.

⁷⁸ Thomas MacMillan, *\$450K Settlement Buys Latinos Peace of Mind*, NEW HAVEN INDEPENDENT, June 9, 2014, http://www.newhavenindependent.org/index.php/archives/entry/east_haven_settles/

⁷⁹ James, *supra* note 76.

throughout the country and implement preventative and remedial measures to address concerns in their states. Specifically, ending prohibitions on providing access to driver's licenses to undocumented immigrants has already proven an effective preventative and remedial measure in 10 states and Washington D.C.⁸⁰ Several law enforcement leaders have endorsed measures that would ensure that undocumented immigrants are eligible to obtain driver's licenses.⁸¹

A driver's license is the accepted form of identification necessary to avoid instant suspicion as a law breaker in interactions with the police.⁸² The denial of licenses to undocumented immigrants generally increases fears of arrest and deportation and increases immigrant vulnerability to exploitation.⁸³ Not only would providing undocumented immigrants the opportunity to obtain driver's licenses decrease the risk of civil rights violations against Latinos/as during routine traffic stops, but also increase the number of safety-tested, insured drivers on the roads and create a fuller record of the identity of all U.S. residents.⁸⁴ Licensing all drivers makes communities safer by improving relations between immigrant communities and law enforcement, ensuring that residents contact the police to report accidents or crimes, and allowing police to concentrate on pursuing more serious crimes.⁸⁵ In 2013, Connecticut legislators approved such a measure and will provide the opportunity to obtain a "Drive-Only License" to undocumented immigrants beginning January 2, 2015.⁸⁶ Notably, advocacy for this

⁸⁰ See ERIKA J. NAVA, NEW JERSEY NJ POLICY PERSPECTIVE, SHARE THE ROAD: ALLOWING ELIGIBLE UNDOCUMENTED RESIDENTS ACCESS TO DRIVER'S LICENSES MAKES SENSE FOR NEW JERSEY, 4 (Sept. 2014), available at <http://www.njpp.org/reports/share-the-road-allowing-eligible-undocumented-residents-access-to-drivers-licenses-makes-sense-for-new-jersey>.

⁸¹ NATIONAL IMMIGRATION LAW CENTER, DRIVER'S LICENSES MAP, (Dec. 2014), <http://www.nilc.org/driverlicenseemap.html>; Kevin R. Johnson, *Driver's Licenses and Undocumented Immigrants: The Future of Civil Rights Law?* 5 NEV. L.J. 213, 221 (2004).

⁸² *Id.*

⁸³ *Id.* At 215.

⁸⁴ *Id.* at 223.

⁸⁵ NAVA, *supra* note 80.

⁸⁶ STATE OF CT DEPT. OF MOTOR VEHICLES, DRIVE ONLY LICENSE OVERVIEW, <http://www.ct.gov/dmv/cwp/view.asp?a=805&q=547212> (last visited Dec. 22, 2014).

new law began in New Haven Connecticut, at the time when its neighbor East Haven was under investigation for discriminatory traffic stops against Latino/a drivers and other abuses.⁸⁷

B. Reform Police Policy and Practices to Increase Transparency and Accountability

While federal and state legislation will help to prevent and address abusive policing in the long-term, reforming police policy and practice is an immediate remedy to incidental or systemic police use of force and fraud against the Latino/a community. Transparency in police policies, practices, and outcomes allows both the department and the community to identify problematic incidents before they become patterns and to uncover and address discriminatory patterns proactively.⁸⁸ Community policing, a policing philosophy that includes officers from the community actively engaged with the community, aims to increase accountability and trust, and in concert with reforms aimed at transparency and cultural-proficiency, can decrease the use of force.⁸⁹

Transparency requires published data tracking officers' use of force, as well as the racial and ethnic identity of those stopped or arrested.⁹⁰ Data regarding an officer's decisions leading up to an incident of abusive policing could inform the department and lead to changes, such as the implementation of verbal conflict de-escalation training or racial profiling prohibitions, which would prevent continued police abuse.⁹¹ Public availability of such data increases

⁸⁷ Tony Terzi, *Program for 'drive only' licenses for undocumented residents begins* FOX CT Dec. 2, 2014, available at <http://foxct.com/2014/12/02/drive-only-preparation-for-licensing-undocumented-residents-begins-at-local-dmvs/>.

⁸⁸ See Kami Chavis Simmons, *New Governance and the "New Paradigm" of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U. L. REV. 373, 393 – 398, (2010).

⁸⁹ See TRENT IKERD AND SAMUEL WALKER, U.S. DEPT. OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES MAKING POLICE REFORMS ENDURE: THE KEYS FOR SUCCESS, 23-26 (April 2010).

⁹⁰ See Chavis Simmons, *supra* note 88 at 392 – 398.

⁹¹ *Id.*

accountability and decreases the risk of discriminatory policing.⁹² Both Suffolk County and East Haven agreed to incorporate such tracking in response to the findings of discriminatory policing against their respective Latino/a communities.⁹³ Implementation of such tracking programs in all police departments, particularly in those that serve immigrant communities and communities of color, would prevent and address police abuse.

Body-Worn Cameras (BWCs) are a relatively new tool in policing that dramatically increase transparency and were found effective in decreasing the use of excessive force.⁹⁴ The findings of a recent Police Foundation study show more than a 50% reduction in the total number of incidents of use-of-force when officers used BWCs.⁹⁵ In Suffolk County, a police camera was used to uncover Sergeant Greene’s “Stop, Search, and Steal” Scheme, and dashboard cameras are already in use for driving while intoxicated (DWI) arrests.⁹⁶ Following the publicized video of Eric Garner’s death in a forceful arrest in Staten Island, New York, advocates for police reform have invigorated their call for BWCs for all police officers.⁹⁷ In East Haven, officers were provided and mandated to properly use BWCs in the wake of the DOJ findings of discriminatory policing.⁹⁸ While BWCs raise privacy concerns, even the American Civil Liberties Union has concluded that BWCs assist in holding law enforcement more accountable to

⁹² See generally LYNN LANGTON AND MATTHEW DUROSE, U.S. DEPT. OF JUSTICE OFFICE OF JUSTICE PROGRAMS BUREAU OF JUSTICE STATISTICS, POLICE BEHAVIOR DURING TRAFFIC AND STREET STOPS (Sept. 2013), <http://www.bjs.gov/content/pub/pdf/pbtss11.pdf>.

⁹³ DOJ/SCPD Settlement Agreement Press Release, *supra* note 4; DOJ Investigation of EHPD, *supra* note 49.

⁹⁴ TONY FARRAR, POLICE FOUNDATION, AND BARAK ARIEL, CAMBRIDGE UNIVERSITY, SELF-AWARENESS TO BEING WATCHED AND SOCIALLY-DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE OF FORCE available at

<http://www.policefoundation.org/sites/g/files/g798246/f/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf>; Randall Stross, *Wearing a Badge, and a Video Camera* NY TIMES April 6, 2013 at BU4.

⁹⁵ FARRAR AND ARIEL, *supra* note 93 at 9.

⁹⁶ Semple, *supra* note 2; Associated Press, *Nassau testing police dashboard cameras*, WASHINGTON TIMES (Aug 4, 2014), available at <http://www.washingtontimes.com/news/2014/aug/4/nassau-testing-police-dashboard-cameras/>

⁹⁷ Jennifer Millman, *Official Calls for Police Body Cameras in wake of Eric Garner Death*, NBC NEW YORK, (Aug. 20, 2014), <http://www.nbcnewyork.com/news/local/Body-Camera-Police-Record-Interaction-Eric-Garner-Chokehold-Death-270897901.html>.

⁹⁸ EHPD Camera Directive, *supra* note 57.

the communities that they serve.⁹⁹ BWCs would aid all police departments in tracking data, preventing the use of excessive force, and provide evidence to guide investigations into alleged police misconduct.

The community policing model adds to the reformative effects of transparency by requiring diversity in officer recruitment and selection, allowing for minority community engagement initiatives, and recognizing that racial profiling and inquiring about immigrant status dissuades minority groups from trusting the police.¹⁰⁰ As one police chief stated, “It is nearly impossible to gain the required trust to make community policing a reality in places where the community fears the police will help deport them, or deport a neighbor, friend or relative.”¹⁰¹ Crime experts, including police officers, have found that jurisdictions that adopt community policing practices build bridges to immigrant communities that improve public safety and protect the entire community.¹⁰² In places where the Latino/a immigrant community is segregated and set apart, as was the case in Suffolk County, community policing would allow officers to engage with this population not as a criminal element, but as partners in the efforts to maintain public safety. Many police chiefs throughout the country favor community policing strategies, and where the police initiate such reforms proactively, with cultural-proficiency, as opposed to responding to a DOJ investigation or lawsuit, deep divisions between police officers and the

⁹⁹ JAY STANLEY, ACLU SENIOR POLICY ANALYST, POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL (Oct. 2013).

¹⁰⁰ See *Generally* INSTITUTE ON RACE AND JUSTICE, NORTHEASTERN UNIVERSITY. PROMOTING COOPERATIVE STRATEGIES TO REDUCE RACIAL PROFILING. COPS EVALUATION BRIEF NO. 1. WASHINGTON, D.C.: OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, U.S. DEPARTMENT OF JUSTICE, (2008), Available at <http://www.cops.usdoj.gov/Publications/e08086157.pdf>

¹⁰¹ George Gascón, Chief, Mesa Police Dep't, Mesa, Ariz.. Testimony Before the Subcomm. on Immigration, Citizenship, Refugees, Border Sec., & Int'l Law and the Subcomm. on the Constitution, Civil Rights, & Civil Liberties of the Comm. on the Judiciary H.R., 111th Cong. 84 (2009).

¹⁰² LYNNE TRAMONTE, IMMIGRATION POLICY CENTER SPECIAL REPORT DEBUNKING THE MYTH OF “SANCTUARY CITIES”: COMMUNITY POLICING POLICIES PROTECT AMERICAN COMMUNITIES, 2 (April 2011).

community may be avoided.¹⁰³ However, the use of litigation as a catalyst for reform may be necessary in communities where anti-Latino/a immigrant sentiments and police abuse are most endemic, as was the case in Suffolk County and East Haven. As can be gleaned from the experiences of Latinos and Latinas in both Suffolk County and East Haven, such reformed policing can bring much needed relief to victimized populations.

C. Federal and Civil Oversight of Police Departments

The 1994 Violent Crime Control and Law Enforcement Act gives DOJ's Civil Rights Division authority to investigate state and local law enforcement agencies suspected of adopting unconstitutional policies or engaging in unconstitutional patterns or practices of conduct.¹⁰⁴ This law authorizes the DOJ (but not private actors) to file civil lawsuits against local governments and to obtain injunctive relief for the goal of reform where the DOJ determines that a pattern or practice of civil rights violations exist.¹⁰⁵ More than 25 police departments have experienced DOJ involvement in the past twenty years, including SCPD and EHPD.¹⁰⁶ DOJ investigations require the collection and analysis of systemic data to identify recurring problems and as such increase transparency.¹⁰⁷ The reforms mandated through this system of federal oversight have proven effective but costly, time-intensive, and conflictual, as some police departments may challenge the DOJ findings and resist the DOJ mandates.¹⁰⁸ For this very reason, such federal

¹⁰³ See Chavis Simmons, *supra* note 88 at 376.

¹⁰⁴ 42 U.S.C.A. § 14141 (West).

¹⁰⁵ *Id.*

¹⁰⁶ CRITICAL ISSUES IN POLICING SERIES, CIVIL RIGHTS INVESTIGATIONS: LESSONS LEARNED, POLICE EXECUTIVE RESEARCH FORUM, 1 (July 2012), http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.

¹⁰⁷ Chavis Simmons, *supra* note 88 at 394.

¹⁰⁸ For Example, Alamance County Sheriff Terry Johnson repeatedly denied DOJ findings of discriminatory policing against Latinos/as and has defended that position at trial instead of agreeing to a consent decree or settlement agreement similar to those reached between the DOJ and the SCPD and EHPD. *Cost of Alamance Sheriff*

oversight is crucial where a police force is reluctant to address complaints of police force and fraud.

In addition to federal oversight, civil oversight is necessary to ensure that the community is empowered to work with their local police department to prevent abusive policing and to respond when violations arise. Local civil rights groups have organized to monitor law enforcement entities, and in numerous cities throughout the United States, civilian oversight departments have been established.¹⁰⁹ As the Honorable LaDoris Hazzard Cordel, the independent police auditor for the city of San Jose, noted, civilian oversight holds police officers accountable to the public by providing independent review of complaints of police misconduct, instead of relying solely upon internal investigations in which the police investigate themselves, or waiting for costly and time-consuming federal investigations.¹¹⁰ Civilian oversight helps to develop and maintain an open, fair, and impartial process for receiving, investigating, and resolving complaints of police misconduct.¹¹¹ Such civil oversight would help to identify and discipline officers for abusive, discriminatory, or predatory policing practices before such incidents become a de facto policy and practice.

IV. CONCLUSION

Terry Johnson's Trial continues to grow, NEWS & RECORD Aug. 26, 2014, http://www.news-record.com/news/cost-of-alamance-sheriff-terry-johnson-s-trial-continues-to/article_1a68694a-2d16-11e4-a78a-001a4bcf6878.html

¹⁰⁹ NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT, U.S. OVERSIGHT AGENCY WEBSITES, <https://nacole.org/resources/u-s-oversight-agency-websites/> (last visited Dec. 22, 2008).

¹¹⁰ LaDoris Hazzard Cordell, *Policing the Police: Training, retraining, and yet more training are not the way stop police brutality*, SLATE, (Aug. 15, 2014).

¹¹¹ Letter from Michael J. Goldberger, United States Attorney's Office for the Eastern District of New York Chief of Civil Rights, Civil Division, U.S. Department of Justice, to Steve Levy, Suffolk County Executive (Sept. 13, 2011) at 11. available at http://www.justice.gov/crt/about/spl/documents/suffolkPD_TA_9-13-11.pdf

The experiences of Latinos/as in Suffolk County, Long Island, New York and East Haven, Connecticut are not unique. Anti-Latino/a immigrant hate speech and legislation that lead to and accompany increased police discrimination, harassment, and use of force and fraud affect Latino/a communities in states throughout the country. In the wake of civil rights violations, everyone in the community, not just the victims, suffers a decrease in public safety. To ensure the protection of all civil rights and increase public safety, incidents of police use of force and fraud and systemic police abuse against Latinos/as must be addressed. Racism, nativism, and abuse of authority are not simple problems; no simple, singular solution can provide relief. Instead, elected officials, police officers, community members, and civil rights advocates must collaborate to adapt multiple preventative and remedial measures to the needs of their particular community.

Federal and state legislators must enact bold changes to existing immigration and criminal law that would remove the “criminal alien” stigma against Latinos/as. As long as Latino/a immigrants are perceived as separate from the community, as criminals without rights, the Latino/a community overall, regardless of immigrant status, will continue to be vulnerable to racial profiling, police harassment, excessive use of force, fraud, and other police misconduct. Comprehensive, humane immigration reform and the End Racial Profiling Act are necessary to remove the target for police harassment and abuse that current legislation has placed on the Latino/a community. In the absence of such federal legislation, state legislators can pass laws allowing for the provision of driver’s licenses to undocumented immigrants, thereby removing what is often the first point of conflict between an officer and a Latino/a immigrant motorist.

Police officers and the Latino/a community must take the urgent step to report abusive police practices and work together to reform the policies that permit such offenses. Voluntary

reforms to increase transparency and accountability of our police force are an immediate, effective remedy available through the use of technology such as body worn cameras and culturally-proficient community policing techniques. Where voluntary reform is not possible, the DOJ should continue investigating police departments suspected of systemic misconduct and provide oversight for the mandated reforms.

When police officers are accountable to the community and can focus on serious crime prevention, the likelihood of civil rights violations decrease, while public safety increases. Civil oversight is necessary to maintain a connection between police officers and the community they are expected to serve and protect. Civilian oversight contributes to transparency and accountability in policing, as it provides a means for reporting abusive policing, ensuring such incidents are investigated, and monitoring the implementation of reforms. Ultimately, the reforms proposed here do not simply benefit Latinos and Latinas, but everyone in the community.