

Testimony of  
**Dr. William F. McDonald**

July 12, 2006

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Hearing on "Immigration"

Senate Judiciary Committee  
Washington, DC  
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Mr. Chairperson and Members of the Committee. Greetings. It is a honor to appear here today.

I have been studying the connections between crime and immigration since 1996. As you know, this is a complex and highly charged issue. I shall try to play the role of the impartial expert but testifying about this issue is giving me a new appreciation of what it means to be walking near the third rail.

I have been informed that it would be helpful if I could touch upon three particular issues: the statistics on the criminality of "illegal immigrants"<sup>2</sup>; the likely response of victims in helping the police if the state and local police were authorized to enforce immigration law; and the deterrent value regarding illegal immigration of having state and local police enforce immigration law and also of increasing fines and penalties to private entities including such ideas as requiring landlords to check immigration status.

I have tried to do so but I have only had time to prepare remarks addressing the first point, one which I think is important to clarify. Perhaps in the Q and A I could respond to the other points. I would like to make a few general observations.

Although we are a nation of immigrants, Americans have always worried about the criminality of the next wave of immigrants.

There have been many studies in the United States and abroad that have addressed the question of the criminality of immigrants. While by no means unanimous, there has been a remarkable degree of agreement among them regarding one important finding. The criminality of the first generation of immigrants (those who migrated as opposed to their children) is less than that of the native-born.<sup>4</sup> Public fears about immigrant criminality have usually not been born out by research.

I mention this literature on immigrant criminality because there is little reason to believe that the findings would be substantially different for illegal immigrants assuming data were available that

would allow us to make the necessary statistical controls for age, sex, economic status and immigrant status.

Obtaining such data has long been a major challenge for studies of the immigration-crime nexus. Most contemporary researchers in Europe and Australia have given up on trying to get information about a person's immigrant status. They just use race and ethnicity.<sup>5</sup>

Because of the difficulties of getting proper data, studies of the comparative criminality of illegal immigrants are rare. Without adjustments for the age and sex composition of the population, the few available studies are inconclusive.

Personally, I believe that the critics of illegal immigration are not interested in knowing whether illegal immigrants are more or less criminally inclined than the native-born. For them any crime committed by an illegal immigrant represents a crime that would not have happened if the government had been in control of immigration.

I turn now to the question about the statistics on illegal immigrants who commit crimes. In 1989 the Immigration Subcommittee of the House Committee on the Judiciary asked the Immigration and Naturalization Service: "What percentage of the individuals incarcerated in specific cities are illegal aliens?"<sup>7</sup> The answer was simply that the data do not exist in anything like a useable form.<sup>8</sup> Since then, things have not gotten much better.

Before proceeding further I must warn you of a terminological quagmire that surrounds this issue. There are technical (legal) definitions of terms that cause a lot of confusion.<sup>9</sup> The basic distinction to keep in mind is between "criminal aliens" and illegal immigrants who commit crimes.<sup>10</sup> Criminal aliens have been around since the country began. They are non-citizens who have committed crimes either before or after they arrived in the United States. Illegal immigrants did not exist until the federal government began regulating immigration in the 1870s.<sup>11</sup>

Not all criminal aliens are illegal immigrants. A legal immigrant who commits a crime while in the United States becomes a criminal alien. Some criminal aliens are deportable depending upon the crime they have committed. In the late 1980s and 1990s responding to complaints from the states about increasing numbers of "criminal aliens" in state and local prisons Congress added to the terminological confusion. In 1986 it mandated the INS to conduct expeditious proceedings for aliens convicted of deportable criminal offenses. In 1988 it created a new category of criminal alien called the "aggravated felon" who could be expeditiously removed.<sup>12</sup>

In 1994 Congress introduced the phrase, "undocumented criminal aliens," in connection with legislation to reimburse the states for the costs of housing illegal criminal aliens.<sup>13</sup> This reimbursement was only for the costs of housing illegal aliens incarcerated in state or local prisons. It was only for illegal criminal aliens, not legal criminal aliens. Only the former were regarded as the federal government's responsibility.

It was in connection with these concerns about illegal criminal aliens held in state and local facilities that a few studies were done to determine the numbers involved so that the costs could be established. The Urban Institute conducted a major national study intended to estimate the number of "illegal aliens" - as defined by the Immigration Reform and Control Act of 1986 - in

the prisons in seven states as of March 1994.<sup>14</sup> One of their important findings was that it appeared to that the number of prisoners erroneously counted as "illegal aliens" was quite small.

The kind of data the Urban Institute study produced has not become an institutionalized piece of information in any annual reports of which I am aware.

Finally, I think it is useful to look at the outcome of all these efforts to expeditiously remove criminal aliens.. Several studies have found that substantial proportions of the criminal aliens are not deportable. A 1990 special study of the releasees from the Los Angeles County jail found that 19% of the 17,774 releasees in May were foreign born but 42% of them were not deportable.<sup>15</sup> A 1995 examination found that of all 115,145 inmates in Texas state prisons (excluding those held in county jails) only 8.5 percent were foreign born. Of those 39.6% were not deportable; 48.4% were deportable; and 14% were undetermined.<sup>16</sup>

In conclusion, I would say that obtaining updated the statistics on "illegal immigrants who commit crime" would not be easy and may not be of great value either to policy decisions or to theories about criminality.

#### Appendix A. Sample of Some Major Findings Reported Regarding Immigration and Crime

While it does not appear from available statistics that criminality among the foreign-born increases the volume of crime in proportion to the total population, nevertheless the coming of criminals and persons of criminal tendencies constitutes one of the serious social effects of the immigration movement. The present immigration law is not adequate to prevent the immigration of criminals, nor is it sufficiently effective as regards to the deportation of alien criminals who are in this country.

- U. S. Immigration Commission (1911)<sup>117</sup>

[I]n proportion to their respective numbers the foreign born commit considerably fewer crimes than the native born; that the foreign born approach the record of the native born most closely in the commission of crimes involving personal violence, and that in crimes for gain the native born greatly exceed the foreign born.

- National Commission on Law Observance and Enforcement (1936)<sup>218</sup>

Studies have consistently shown that persons from the general migrant population commit fewer offences and are less likely to be in prison than persons from the Australian-born population.

- K. Hazlehurst, Australian Institute of Criminology (1987) 19

The reality is that , for a number of reasons, immigrants generally have lower propensities for crime than their native-born counterparts except where a group's cultural traditions legitimate certain illegal acts.

- M. Yeager, Criminologist (1997/98) 20

Controlling for the demographic characteristics of the cities, recent immigrants appear to have no effect on crime rates. In explaining changes in a city's crime rate over time, recent immigration against has no effect. Youth born abroad are statistically significantly less likely than native -born youth to be criminally active.

- Kristen F. Butcher & Ann M. Piehl, Economic researchers (1995) 21

Contrary to what one would predict from their characteristics, immigrants are much less likely to be institutionalized than natives. In fact, if native-born men had the same institutionalization rates of immigrants with the same characteristics the institutionalized population would be two-third its current size.

- Kristen F. Butcher & Ann M. Piehl, Economic researchers (1997) 22

The risk of committing violence is comparatively lower for recent immigrant youth. Chicago and its suburbs are magnets for immigrants: According to Census 2000, the area has more than 1.4 million foreign-born residents (including more than 580,000 Mexican immigrants and more than 130,000 Polish immigrants). For those Chicagoans surveyed for this study, the odds of first-generation immigrants engaging in violence were almost one-half those of third-generation immigrants--implying that one reason whites and Latinos have lower levels of violence than blacks is that the first two groups are more likely to be recent immigrants. "Our data do not support the common link of immigration and violence," says Sampson.

- Robert Sampson, Sociologist (2006) 23

The evidence compiled by the authors suggests that in spite of posited societal, social, and economic disadvantages that should lead to a higher crime rate, the rate of crime committed by immigrants nationwide does not exceed that of the indigenous population. Even the aftermath of the Mariel boat lift from Cuba in 1980 did not result in a long-term increase in crime committed by Cuban immigrants in Florida.

- Ramiro Martinez, Jr., Matthew T. Lee and Amie L. Nielsen. Criminologists (2000) 24

In this paper, we examine and compare the impact of social disorganization, including recent immigration, and other predictors on community counts of black and Latino motive-specific homicides in Miami and San Diego. Homicides for 1985 to 1995 are disaggregated into escalation, intimate, robbery and drug-related motives. Negative binomial regression models with corrections for spatial autocorrelation demonstrate that there are similarities and differences

in effects of social disorganization and other predictors by motive-specific outcomes, as well as for outcomes across ethnic groups within cities and within ethnic groups across cities. Recent immigration is negatively or not associated with most outcomes. Overall, the study shows the importance of disaggregating homicide data by race/ethnicity and motive and demonstrates that predictions based on existing theories are qualified on local conditions.

- Amie L. Nielsen, Matthew T. Lee, Ramiro Martinez, Jr. *Criminologists* (2005) 25

## ENDNOTES

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