
Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement



The September 11th attacks have affected the manner in which law enforcement agencies view their responsibilities and duties. In the ensuing two years, state and local law enforcement agencies have done a magnificent job in meeting the challenges presented by this new reality, and we have done much to make our communities and our citizens safer and more secure.

Law enforcement has used a variety of methods, including increased cooperation with federal law enforcement, reassessment of current training and patrol methods, and greater communication and intelligence sharing between and among law enforcement agencies.

But the specter of foreign terrorists has also brought the state and local law enforcement community face-to-face with a critical and fundamental question that will likely help shape the way we police our communities: namely, what role should state and local law enforcement play in the enforcement of federal immigration laws?

Significantly, in the 111-year history of the IACP, the membership has never adopted a resolution or policy position on this vital question. The reason for this silence is clear. There is a significant difference of opinion in the law enforcement profession on this issue.

Many law enforcement executives believe that state and local law enforcement should not be involved in the enforcement of civil immigration laws since such involvement would likely have a chilling effect on both legal and illegal aliens reporting criminal activity or assisting police in criminal investigations. They believe that this lack of cooperation could diminish the ability of law enforcement agencies to effectively police their communities and protect the public they serve.

Other law enforcement executives believe that it is appropriate for state and local law enforcement to play an active role in immigration enforcement because individuals who are in the country illegally have violated the law and should be treated in the same fashion as other criminals. They feel that it is the duty of state and local law enforcement to assist the federal government and to apprehend and detain these individuals.

Both viewpoints raise valid arguments and it is easy to understand why no consensus has been reached and no policy position has been adopted by the IACP.

This document is not intended to rule on this fundamental philosophical question. It is the IACP's belief that the question of state, tribal or local law enforcement's participation in immigration enforcement is an inherently local decision that must be made by a police chief, working with their elected officials, community leaders and citizens.

Instead, this issue brief was prepared to provide background information on the current status of immigration enforcement efforts, examine the concerns and obstacles that

currently hinder enforcement efforts by the state, tribal and local law enforcement community, and to set forth the elements necessary to secure the support of the IACP for legislative proposals addressing the question of immigration enforcement by non-federal law enforcement agencies.

**BACKGROUND INFORMATION:
IMMIGRATION & ILLEGAL ALIENS IN THE UNITED STATES**

At the outset, it is important to note that state, tribal and local police are *not required to enforce federal immigration laws*. The federal government and its agencies are the authorities responsible for enforcement of immigration law. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act (INA), that regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration.

The following is a brief review of the most common status classifications.

1) Legal Immigrants & Visa Holders:

Immigrants are citizens of other countries who have been granted a visa that allows them to live and work permanently in the United States and to become naturalized U.S. citizens. Immigrant visas are normally issued to foreigners at U.S. consulates in their home countries. Along with a foreign passport, the visa entitles them to enter the United States. Once here, immigrants receive a card from the INS indicating they are permanent residents. This card used to be green, so that immigrants are still referred to frequently as "greencard holders."

Refugees are persons outside their country of citizenship who fear persecution based on race, religion, nationality, membership in a particular social group, or political opinion if they return. Some are resettled every year in the United States: the total number is determined annually by the President in consultation with Congress. Asylum applicants arrive in the United States and request safe haven here: their number depends on how many aliens show up asking to be recognized as refugees

Nonimmigrant visa holders are persons who are granted temporary entry into the United States for a specific purpose, such as visiting, working, or studying. The U.S. has 25 types of nonimmigrant visas, including A1 visas for ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the U.S. to work under NAFTA.

2) Illegal Aliens

Illegal aliens are foreign nationals who have entered the U.S. without any legal status. The most common ways are by either crossing a land or sea

border without being inspected by an immigration officer, or simply by violating the terms of a legal entry document. Legal aliens are entitled to enter and remain in the U.S. as long as they maintain the terms of their status.

3) **Alien Absconders**

Alien absconders are foreign nationals who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States.

It is currently estimated that there are between 8-10 million illegal aliens living in the U.S., with another estimated 800,000 illegal aliens entering the country every year. Of this total, the Department of Homeland Security has estimated that 450,000 are “alien absconders”. Finally, an estimated 86,000 are criminal illegal aliens--people convicted of crimes committed in the U.S. and who should have been deported but have, through a variety of reasons, remained in the United States.

**OBSTACLES/CONCERNS OVER
LOCAL INVOLVEMENT IN IMMIGRATION ENFORCEMENT**

Confusion Over Immigration Laws: Criminal Versus Civil Violations

Immigration laws differ from the criminal laws local police officers deal with most regularly in that immigration laws contain both civil and criminal aspects. For example, an illegal entrant into the United States has committed a federal felony violation, and state and local law enforcement officers are legally empowered to arrest and detain the individual. However, legally admitted aliens who have overstayed their visas have committed a civil violation, and state and local police have no authority to arrest and detain them.

Therefore, the IACP is greatly concerned that if the names of 314,000 deportable aliens are placed into the NCIC system without the benefit of a felony warrant being issued for their arrest, state and local law enforcement officers will be placed in the position of being asked to detain and arrest these individuals without possessing the proper authority to do so.

This situation concerns some in the law enforcement community who fear that immigration enforcement by state and local police could lead the government to burden state and local agencies with enforcement of still other federal civil violations.

Training Requirements

Currently, state and local police do not have the training or expertise to enforce immigration laws, and in this time of shrinking local budgets, many executives feel they

do not have the resources to tackle this additional federal issue. There are federal agencies specifically charged with the enforcement and application of the complex immigration laws and regulations. These agents do not handle street disorder, robberies, murders, traffic problems, and a host of other issues facing state and local officers. These federal agencies are designed, and their agents are specifically trained, to enforce these immigration laws.

Addressing immigration violations such as illegal entry or remaining in the country without legal sanction would require specialized knowledge of the suspect's status and visa history and the complex civil and criminal aspects of the federal immigration law and their administration. This is different from identifying someone suspected of the type of criminal behavior that local officers are trained to detect. Whether or not a person is in fact remaining in the country in violation of federal civil regulations or criminal provisions is a determination best left to these agencies and the courts designed specifically to apply these laws and make such determinations after appropriate hearings and procedures. Without adequate training, local patrol officers are not in the best position to make these complex legal determinations.

Limitations on Arrest without a Warrant

Local police agencies must also comply with the laws of their own states. These laws may limit their ability and authority to detain and arrest persons on suspicion of being in the country in violation of federal laws. These limitations may have little to do with immigration specifically but more general police powers, such as the power to arrest without a warrant.

The fact that state law may not authorize local police to detain persons for illegal immigration is recognized by the federal agencies as shown by the language of some of the civil detention notices currently being placed on the NCIC system. These notices to detain include the qualifiers "If permitted by state and local law" and "If permitted in your jurisdiction." Federal immigration officers do not face such restrictions, because the federal immigration laws allow them to detain and interrogate a person as to their right to be or remain in the United States without a warrant.

Liability Concerns

When local police have waded into immigration enforcement, it has often come with disastrous and expensive consequences. To list just one example, in 1994 the police in Katy, Texas, conducted raids in search of illegal immigrants. More than 80 of those persons temporarily detained were Hispanics who were either U. S. citizens or foreign nationals who were in the country legally. The Katy Police Department faced numerous lawsuits alleging civil rights violations.

This example illustrates the legal risk that law enforcement agencies and officers are exposed to when they attempt, in good faith, to enforce federal immigration law.

Chilling Effects on Immigrant Cooperation

Immigration enforcement by state and local police could have a chilling effect in immigrant communities and could limit cooperation with police by members of those communities. Local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families. Because many families with undocumented family members also include legal immigrant members, this would drive a potential wedge between police and huge portions of the legal immigrant community as well.

This will be felt most immediately in situations of domestic violence. For example, many law enforcement agencies have been addressing the difficult issues related to domestic abuse and the reluctance of some victims to contact the police. This barrier is heightened when the victim is an immigrant and rightly or wrongly perceives her tormentor to wield the power to control her ability to stay in the country. The word will get out quickly that contacting the local police can lead to deportation or being separated by a border from one's children. Should local police begin enforcing immigration laws, more women and children struggling with domestic violence will avoid police intervention and help.

IACP POSITION: LEGISLATION ADDRESSING IMMIGRATION ENFORCEMENT

Given the concerns and obstacles outlined above, the IACP believes that at a minimum, any legislation seeking to have state and local law enforcement agencies participate in immigration enforcement must contain the following essential elements.

Voluntary:

Because the question of state, tribal or local law enforcement's participation in immigration enforcement is an inherently local decision, the IACP believes that any legislative proposal to enlist the assistance of non-federal agencies in immigration enforcement must be based on the completely *voluntary cooperation* of state/local law enforcement agencies.

Therefore, any legislative proposals that seek to coerce cooperation through the use of sanction mechanisms that would withhold federal assistance funds from states or localities is unacceptable to the IACP.

Authority Clarification:

In order to clarify the authority of state, tribal and local law enforcement to act in matters related to immigration enforcement, it is necessary for the federal government to issue a clear and complete statement that outlines the role of state, local and tribal law

enforcement agencies in this effort and enumerates the legal authority of state, local and tribal law enforcement officers to act in these matters.

In addition, in cases involving aliens with civil violations, it is the IACP's belief that if the federal government wants to have state and local law enforcement officers apprehend and detain these deportable aliens, then it must first secure a federal criminal arrest warrant for these individuals. In this fashion, state and local law enforcement officers will be certain that the actions they take in dealing with these individuals is consistent with their legal authority and the policies of their agencies.

Incentive Based Approach

Legislative proposals addressing immigration enforcement should provide law enforcement agencies with an incentive to perform immigration enforcement. Under such an incentive based approach, agencies that agree to perform immigration enforcement activities as set forth in the legislation would be eligible to receive federal assistance funds that may be used for a variety of uses related to immigration enforcement. For example, agencies should be authorized to use these funds to:

- 1) Cover the personnel costs associated with the enforcement effort.
- 2) Cover the costs of training programs for their law enforcement officers.
- 3) Cover the costs associated with housing and transportation of these individuals prior to their release into federal custody.

Liability Shield:

Legislative proposals addressing immigration must provide:

- 1) Personal liability immunity to state, tribal and local law enforcement officials for enforcing federal immigration laws within the scope of their duties.
- 2) Immunity for state, tribal or local agencies enforcing immigration laws unless their personnel violated criminal law in such enforcement.

Training Resources: The legislation should also ensure that the federal government will provide the financial assistance necessary to develop and provide a training program for state, local and tribal law enforcement officers on federal immigration law and how they should respond when they encounter suspected illegal aliens and absconders. (However, specific-training requirements, including the number of hours or topics to be covered, should be the responsibility of law enforcement administrators, who should design training programs appropriate to their agencies.)