

Trends in America



Issue Brief

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IMMIGRATION ENFORCEMENT

Since the Sept. 11, 2001, terrorist attacks, the federal government, and more recently several state governments, have called on state and local law enforcement agencies to become more active partners in enforcing federal immigration laws. As the federal government struggles to enact comprehensive immigration reform, the call for a larger role for state and local law enforcement only grows.

In the absence of action on the national level, states are increasingly working to fill this void, despite the fact that immigration remains primarily a federal responsibility. Those who favor state and local enforcement of federal immigration laws cite the federal government's inadequate resources, and claim that state and local law enforcement officers should be utilized to increase national security and stem the flow of immigrants entering the country illegally. However, there is significant debate on the proper role of state and local law enforcement in immigration law, with many expressing concerns over proper training, finite resources, possible civil rights violations and the overall impact on community policing.

While it is difficult to accurately determine the number of people who have entered the country illegally, it is believed between 12 million and 13 million illegal immigrants live in the United States. The Department of Homeland Security (DHS) estimated that in 2005 there were 10.5 million unauthorized immigrants living in the country, with an annual growth rate of 408,000 people. These immigrants are no longer centralized in large urban areas and border states, and it is no coincidence that many of the states that have passed wide-reaching measures to deter illegal immigration are the very ones experiencing the largest growth in their immigrant populations.

Compounding this problem is the insufficient number of federal immigration agents. Before Sept. 11, 2001, the Immigration and Naturalization Service had fewer than 2,000 agents to enforce immigration law throughout the country. While the number of agents has grown to 5,700 following the agency's merger with the Customs Service to become Immigration and Customs Enforcement, commonly known as ICE, many observers believe the number is still insufficient. The shortage of ICE agents, exacerbated by heavy caseloads, has resulted in delays in responding to calls for assistance from state and local law enforcement agencies. When police arrest someone they suspect is in the country illegally, they must call to see whether ICE wants to pursue deportation. However, there is no guarantee that ICE officers will respond. For example, Virginia Sen. Kenneth Stolle, chairman of the Crime Commission, reported that Virginia State Police contacted ICE for nearly 12,000 inmates during 2006, but ICE detained only 690 of them.

These problems are compounded by murky case law regarding the authority of state and local enforcement officers to enforce federal immigration law. Historically, the authority of state and local enforcement officials has been limited to the criminal provisions of the law, which includes crimes like human trafficking or alien smuggling. However, the enforcement of the civil provisions, which include common immigration violations such as being in the country illegally and failure to depart after the expiration of a visa, has historically been viewed as strictly a federal responsibility.

In 1996, Congress blurred the line between federal and state and local enforcement of immigration law with the passage of the Immigration and Nationality Act. Section 287(g) of the law authorizes the federal government to enter into coopera-



tive agreements with state and local law enforcement agencies to allow specially trained officers to enforce federal immigration laws and functions. The agreements allow those officers to engage in certain civil immigration enforcement activities, provided the officers receive appropriate training and function under the supervision of sworn ICE officers. ICE trains police and corrections officers during a five-week course on civil rights and immigration rules, federal prohibitions on racial profiling, cross-cultural issues and treaty obligations to notify foreign consulates about certain arrests. Once the training is completed, the officers have access to federal law enforcement databases to check a criminal suspect's legal status. Trained officers also can start deportation proceedings with ICE approval.

Since then, Congress has considered several legislative proposals that would have specifically authorized, and in some cases required, local police to enforce civil provisions of federal immigration law, in part to alleviate the uncertainty of the legality of such actions. However, no such legislation has passed.

The States Respond

In 2007, more than 1,500 bills and resolutions dealing with immigration were introduced in all 50 state legislatures, triple what was considered in 2006. The legislation covered various aspects of the issue, including law enforcement, employment, public benefits, education and driver's licenses, as well as other forms of identification. Some states continue to insist that immigration is a federal responsibility, and that state and local resources should not be used for this purpose. Other states, increasingly frustrated by the lack of federal action, have opted to enact their own reforms.

Many cities across the country, ranging from Anchorage, Alaska, to Chicago to Trenton, N.J., have adopted so-called "confidentiality policies", in which the cities either do not require or explicitly prohibit their employees, including law enforcement officers, from reporting people who may be in the U.S. illegally to federal officials.

Four states have policies prohibiting state and local enforcement of federal immigra-

tion laws beyond normal criminal investigations. Montana and Alaska lawmakers have both passed joint resolutions that prohibit state agencies from using state resources or institutions for the purpose of enforcing federal immigration law. In 2005, New Mexico Gov. Bill Richardson signed an executive order that prohibits state law enforcement officers from inquiring about a person's immigration status solely for the purpose of determining whether that person is in the U.S. in violation of federal civil immigration law, or inquiring about the immigration status of crime victims, witnesses or others who call or approach police seeking assistance. In 1987, Oregon passed a law that prohibits both state and local law enforcement agencies from using agency funds, equipment or personnel for the purpose of detecting or apprehending foreign citizens based on violation of federal immigration law. The Oregon law, however, permits law enforcement officers to exchange information with federal authorities to verify the immigration status of an individual arrested for a criminal offense.

Proponents of confidentiality policies also are concerned about the potential for civil

rights violations. Because unauthorized immigrants are often also members of minority groups, complications can arise when enforcing immigration law due to the difficulty of identifying illegal immigrants while at the same time avoiding the appearance of discrimination based on ethnicity. To avoid racial profiling accusations, state and local law enforcement officers should be properly trained and experienced in enforcing immigration laws.

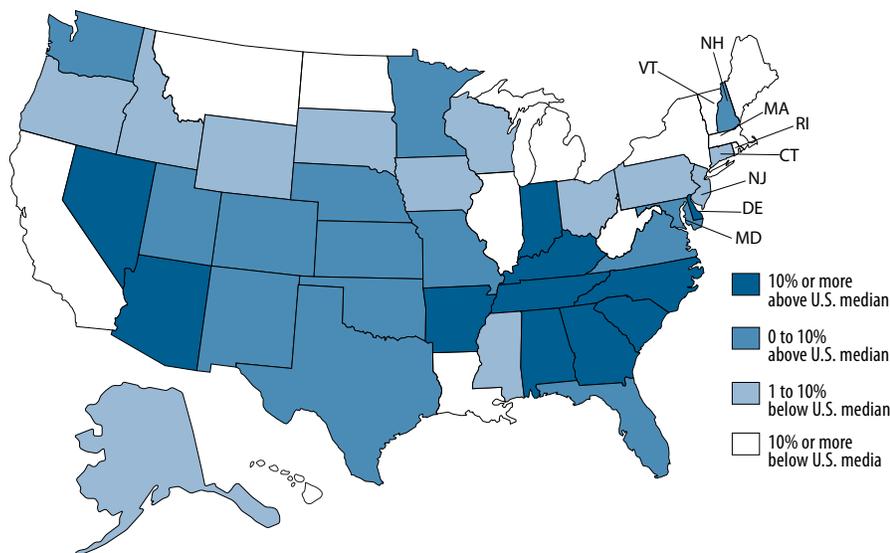
States Enact Anti-Illegal Immigrant Laws

In contrast, other states have become frustrated with the lack of federal response to the number of immigrants entering the country illegally, and have begun enacting their own immigration policies in addition to federal immigration policies some already enforce. States increasingly are considering legislation related to state and local enforcement of federal immigration laws, including bills that target cities' existing confidentiality policies.

For example, several states have passed legislation requiring participation in the 287(g) program that provides federal training to state and local law enforcement so that they can enforce civil provisions of federal immigration law. Until recently, state and local agencies voluntarily participated in the program based on local conditions and desires. As of March, 2008, officers in 41 state and local agencies in 17 states have completed the training. To date, more than 660 officers have been trained and certified to enforce immigration law, and the officers from those agencies are credited for identifying more than 45,000 people with possible immigration violations in the past two years, according to ICE. The 287(g) program has received more than \$25 million for training and other associated costs under the 2008 fiscal year federal budget, up from approximately \$15 million in the 2007 fiscal year budget.

However, state legislatures are beginning to enact laws that require participation in the program. In 2006, Georgia passed

Percent Change in Foreign-Born Population, 2000-2006, vs. the U.S. Median



Source: U.S. Census Bureau

legislation (SB 159) that directs Georgia's attorney general to negotiate the terms of a Memorandum of Understanding under the provisions of the 287(g) program between the state and DHS. The bill also mandates that jailers make a reasonable effort to determine the citizenship status of people charged with a felony or with driving under the influence. The lawful presence of all foreign nationals must be determined, and if the person incarcerated is in the country illegally, the DHS must be contacted.

In 2007, Oklahoma passed a comprehensive anti-illegal immigration law (HB 1804) that incorporated many of the provisions of the 2006 Georgia law. In response to concerns about cities with confidentiality policies, the bill also prohibits local governments from enacting any ordinance or policy that limits or prohibits a law enforcement officer, local official or local government employee from communicating or cooperating with federal officials with regard to the immigration status of any person within the state. It also prevents any government action that would restrict or prohibit interaction between any other entity or official and the DHS with regard to the citizenship or immigration status of any individual.

Similarly, in 2006, Colorado passed legislation (SB 90) that prohibits the state or any local government from enacting legislation that impedes law enforcement agencies from cooperating or communicating with federal officials concerning an arrestee who is suspected to be illegally present in the U.S. Under this law, law enforcement officers are required to report any suspected illegal immigrant arrestees to ICE, although this does not apply to people arrested for suspected acts of domestic violence until a conviction has been reached. The act also encourages state and local law enforcement officials to actively pursue any federal money available that reimburse states for enforcing federal immigration laws. Any local government that does not subscribe to the act will not be eligible for state grants from the Department of Local Affairs.

Law Enforcement Concerns

As lawmakers across the country debate legislation related to immigration, law enforcement executives urge legislators to consult with their state and local agencies, and consider the effects such policy will have on policing in their communities. This caution stems from the fact that enforcing federal immigration laws could lead to fundamental changes in the way local agencies police and serve their communities, and raises many complex legal, logistical and resource concerns.

Immigrants are more likely to be victimized than the general population, and they are often afraid to report crime to local authorities, making them easy targets. This underreporting is especially true for domestic violence, sexual assault and gang violence. Police officials fear immigrants would become even more reluctant to seek assistance, report crimes or serve as witnesses if state and local officers are required to enforce federal immigration laws. For this reason, many police agencies do not ask about immigration status of those reporting crimes or serving as witnesses, unless the person is suspected of committing a crime.

Law enforcement executives are also extremely concerned about the resources needed to become federal partners in immigration enforcement, especially considering that more than three-quarters of all police agencies serve populations up to 25,000 and have 25 or fewer sworn officers, according to the International Association of Chiefs of Police. Many lawmakers argue that state and local resources should not be used to fund what is essentially a federal responsibility, especially if it could result in a reduction of resources available for other law enforcement purposes. This is especially important in a time when federal assistance to state and local law enforcement has already been significantly reduced. State and local law enforcement agencies received \$2.79 billion from the three major law enforcement grant programs administered by the Justice

287(g) Participants as of Feb. 4, 2008

Alabama State Police
Arizona Department of Corrections
Arizona Department of Public Safety
Maricopa County, Ariz., Sheriff's Office
Los Angeles County, Calif., Sheriff's Department
Orange County, Calif., Sheriff's Office
Riverside County, Calif., Sheriff's Office
San Bernardino County, Calif., Sheriff's Office
Colorado Department of Public Safety
El Paso County, Colo., Sheriff's Office
Collier County, Fla., Sheriff's Office
Florida Department of Law Enforcement
Georgia Department of Public Safety
Cobb County, Ga., Sheriff's Office
Hall County, Ga., Sheriff's Office
Whitfield County, Ga., Sheriff's Office
Massachusetts Department of Corrections
Framingham, Mass., Police Department
Barnstable County, Mass., Sheriff's Office
Frederick County, Md., Sheriff's Office
Alamance County, N.C., Sheriff's Office
Cabarrus County, N.C., Sheriff's Office
Durham, N.C., Police Department
Gaston County, N.C., Sheriff's Office
Mecklenburg County, N.C., Sheriff's Office
Hudson, N.H., City Police Department
Butler County, Ohio, Sheriff's Office
Tulsa County, Okla., Sheriff's Office
Davidson County, Tenn., Sheriff's Office
Manassas Police Department
Manassas Park, Va., Police Department
Prince William-Manassas, Va., Adult Detention Center
Prince William County, Va., Police Department
Prince William County, Va., Sheriff's Office
Rockingham County, Va., Sheriff's Office
Shenandoah County, Va., Sheriff's Office

Source: US Department of Homeland Security

Department in fiscal year 1999. By FY 2008, only \$757.2 million was appropriated.

Another concern cited by state and local government authorities is the lack of sufficient prison beds to house immigration violators once they are detained. Many states and municipalities are already suffering from severe overcrowding in their jails, and holding immigration violators may not be feasible. In addition, the cost of detaining unauthorized immigrants until deportation will be substantial. To compound the problem, the State Criminal Alien Assistance Program, which reimburses local law enforcement agencies for the cost of imprisoning undocumented immigrants, has been significantly underfunded in recent years. According to the California State Association of Counties, the state and its counties spend more than \$1 billion annually to incarcerate undocumented criminals, while the total nationwide appropriation for the program is just \$410 million.

In addition, officials are concerned that training officers to enforce immigration laws would detract from their core policing mission. Immigration law is very detailed and complex, with both criminal and civil sanctions, and a person's immigration status is not always easily ascertained, especially since immigration documents are unusual and are often counterfeited. Adequate training would most likely be lengthy and costly and failure to do so could result in significant risks and liabilities for both the agency and local government. Failure to understand immigration law can result in mistakes that can damage the public perception of law enforcement agencies. If a citizen or legal immigrant were mistakenly detained or

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arrested, law enforcement agencies could face suits and damages for negligent training or the deprivation of civil rights. More broadly, the lack of a clear authority for enforcement of civil immigration violations by state and local law enforcement can also increase the risk of civil liability.

For these reasons, major law enforcement associations believe federal and state law should not mandate local enforcement of federal immigration law, arguing that it is an inherently local decision that should be made in consultation with local police agencies, elected officials, community leaders and the public.

Looking Ahead

Legislation related to immigration has continued to be popular in 2008, with bills introduced in every state in which the legislature is currently in session as of March 1, 2008. More specifically, legislation related to the enforcement of federal immigration law by state and local law enforcement has

been introduced in 28 states. For example, laws targeting cities' confidentiality policies and requiring cooperation with ICE have been proposed in at least eight states. In contrast, demonstrating the radically different strategies taken by different states, lawmakers in both New York and New Hampshire have proposed legislation that would prohibit enforcement of federal immigration law by state and local law enforcement authorities.

As long as immigrants, both legal and illegal, continue to enter the United States and settle in areas that were not traditional destination locations with large, long-established populations, this debate will continue. And until the federal government acts on national immigration policy, states and cities will continue enacting a patchwork of local immigration law.

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Trends in America

The most dominant characteristic of the 21st century is not just change, but the rate of change. Understanding change is the first step toward identifying and implementing effective responses. Trends in America Issue Briefs are designed to help state leaders promote positive change through forward-looking policies and strategic investments.