

## **State Enforcement of Federal Immigration Laws**

Although traditionally a responsibility of the federal government, states can play a legitimate role in providing border security and law enforcement against illegal immigration.

Border crime, by its very nature, is a local issue. Just as the costs of illegal immigration are borne by local governments, the negative impact of crime along the border is felt by real individuals in very specific areas of the nation. Those individuals who reside along the U.S.–Mexico border should not be forced to seek redress solely from the federal government; instead, they should be allowed to seek remedies from local officials.

The crime that is brought on by illegal immigration, however, is not limited to border states. On June 8, 2006, for example, an illegal immigrant killed a young couple in Tennessee in a drunk driving accident. In December 2006, an illegal immigrant killed three members of the Ceran family in Salt Lake City, Utah, in another drunk driving accident. These are but two examples of serious crimes that were committed by individuals who should never have been in the United States in the first place.

All along the border, trafficking in both drugs and people creates a situation of lawlessness that endangers local citizens. Throughout the nation, illegal immigrants commit crimes at an abnormally high rate. State and local authorities have police powers that they employ in combating a wide variety of crimes, ranging from traffic violations to murder. To allow local enforcement officials to uphold federal immigration laws does not stretch these powers beyond what is reasonable and necessary to protect public safety.

### **Border States' Responses**

In August 2005, New Mexico Governor Bill Richardson (the nation's only Hispanic governor) declared a state of emergency in four counties along the international border with Mexico. Citing a region that "has been devastated by the ravages and terror of human smuggling, drug smuggling, kidnapping, murder, destruction of property and the death of livestock," Governor Richardson made \$750,000 in emergency state funds available to the four border counties on New Mexico's 180 miles of shared border with Mexico.<sup>1</sup> In addition to those immediate funds, Governor Richardson pledged another \$1 million to:

“support state and local law enforcement efforts, create and fund a field office for the New Mexico Office of Homeland Security to coordinate assistance to the area, and help build a fence to protect a livestock yard near Columbus, along a favorite path for illegal immigration where a number of livestock have been stolen and killed.”<sup>2</sup>

---

<sup>1</sup> “Border Emergency Declared in New Mexico”, CNN.com, August 13, 2005 at <http://www.cnn.com/2005/US/08/12/newmexico/index.html>

<sup>2</sup>State of New Mexico, Office of the Governor, “Governor Bill Richardson Declares State of Emergency Along New Mexico Border With Mexico,” News Release, August 12, 2005.

In Arizona—the only state in the nation to require citizenship verification for voting—state leaders have also taken action against illegal immigration and border crime. Pima County Sheriff Clarence Dupnik described the extent of border crime: “The violence associated with the problem of migration and narcotics ... has reached epidemic proportions.”<sup>3</sup>

Sheriff Dupnik has laid a framework by which Immigrations and Customs Enforcement (ICE) officials may work with the Border Patrol, National Guard, Phoenix metro area law-enforcement agencies, and the Arizona Department of Public Safety.<sup>4</sup>

The Arizona Department of Public Safety, Arizona Department of Corrections, and the Maricopa County Sheriff’s Department have all entered into 287(g) agreements with ICE that allow for local law enforcement officials to be trained and empowered to arrest illegal immigrants.

The Maricopa County Sheriff, Joe Arpaio, maintains an Illegal Immigration Interdiction Strike Force. The Sheriff’s Office notes that, to date, state laws have led to the arrest of 523 persons who were illegally transporting individuals or being transporting into Arizona. Under federal laws, Sheriff Arpaio and his deputies have made another 176 arrests.

In Texas, cooperative border security operations between federal, state, and local officials have proven successful in abating border crime. The most recent effort in Texas, Operation Wrangler III, decreased border crime by 30 percent in just 30 days. The El Paso Sheriff’s Office documented an 82 percent reduction in aggravated assaults and 43 percent reduction in robberies. The El Paso Police Department reported a 16 percent reduction in robberies and 26 percent reduction in sexual assaults during the period of this operation.

Operations in 13 Texas counties have yielded the following results (comparing January–April 2006 to January–April 2007):

- Criminal Mischief reduced 34 percent;
- Theft reduced 30 percent;
- Burglary reduced 13 percent;
- Aggravated Assault reduced 16 percent;
- Sexual Assault reduced 59 percent; and,
- Murder reduced 15 percent<sup>5</sup>

Operation Laredo and Operation Rio Grande have reduced border crossings and crime along the 1,240 mile border that Texas shares with Mexico. Operation Linebacker,

---

<sup>3</sup> Faye Bowers, “US Fights a Border Crime ‘Epidemic,’” *The Christian Science Monitor*, April 25, 2007 at <http://www.csmonitor.com/2007/0425/p02s01-ussc.html>.

<sup>4</sup>Ibid.

<sup>5</sup> “Texas Border Security Surge Operations’ Continued Success,” *Government Technology*, April 25, 2007 at <http://www.govtech.com/gt/117907?topic=117680>

initiated by the Texas Border Sheriff's Coalition, has increased border patrols and provided support to local law enforcement in order to reduce crime and enhance border security.

Operation Rio Grande, launched in February 2006 to augment the efforts of Operation Linebacker, pools resources from various local, state, and federal law enforcement agencies, increasing law enforcement's presence on the border. Operation Rio Grande included the sheriffs from Kinney, Maverick, Val Verde, Zavala and Dimmit counties; the police departments of Del Rio and Eagle Pass; U.S. Customs and Border Protection; the Department of Public Safety; the Texas National Guard; the Texas Parks and Wildlife Department; the Civil Air Patrol; and the Governor's Division of Emergency Management. Operation Laredo and Operation Rio Grande have reduced border crime by at least 65 percent.

In stark contrast to the successful state efforts in Arizona, New Mexico, and Texas, a federal wall-building exercise in California has yielded mixed results, at best. The United States Border Patrol put up the first border fence beginning in 1990 in the San Diego area. A report by the Congressional Research Service notes the limited efficacy of border fencing:

“While the San Diego fence... has proven effective in reducing the number of apprehensions made in that sector, there is considerable evidence that the flow of illegal immigration has adapted to this enforcement posture and has shifted to the more remote areas of the Arizona desert.”<sup>6</sup>

The San Diego border fence is admittedly a federal, not state, response to illegal immigration. States, however, should heed the mixed results when considering erecting a border fence.

Responding to proposals to construct a wall along sections of the U.S.–Mexico border in May 2006, Arizona Governor Janet Napolitano took a reasoned approach to border fencing: “show me a 50-foot wall, and I'll show you a 51-foot ladder.”<sup>7</sup>

This underscores the principles on which states should act in regards to border security and enforcement of federal immigration laws. States have a legitimate role to play in providing for the safety and well-being of their residents, but fence building is a costly and limited state approach to illegal immigration.

Given the success of Arizona's, New Mexico's and Texas' operations involving federal, state and local officials, states should take on an active role in protecting against border crime and combating illegal immigration.

---

<sup>6</sup> Blas Nuñez-Neto and Stephen Viña, “Border Security: Barriers Along the U.S. International Border” Congressional Research Service, Library of Congress, September 21, 2006.

<sup>7</sup> “The Great Wall of America,” *OpinionJournal.com*, September 24, 2006.at <http://www.opinionjournal.com/editorial/feature.html?id=110008985>

The actions of border states to secure their international border with Mexico and, in some cases, actively move to arrest illegal immigrants, proves that states are justified in taking border security and law enforcement actions against illegal immigration.

Although border states, due to geographic proximity, have higher populations of illegal immigrants, illegal immigrants do not reside solely in border states. Every state in the nation could take aggressive steps in enforcing federal immigration laws.

## **Recommendations**

### *Enter Into 287(g) Agreements to Enable Local Law Enforcement of Federal Immigration Law*

Section 287(g) of the Immigration and Nationality Act (INA) authorizes local law enforcement agencies to enter a memorandum of understanding with the U.S. Department of Homeland Security (DHS) so that local peace officers may perform immigration law enforcement functions. Section 287(g) requires that the peace officers undergo training and oversight by ICE.

ICE describes the 287(g) agreements as follows:

“The cross-designation between ICE and state and local patrol officers, detectives, investigators and correctional officers working in conjunction with ICE allows these local and state officers:

- necessary resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering; and
- increased resources and support in more remote geographical locations.”<sup>8</sup>

### *Increase Funding for Border Security*

Sheriffs in border states should be provided with increased funding and resources. State-led initiatives in Texas, Arizona, and New Mexico have proven successful. Increasing funding for border security and/or state enforcement of federal immigration laws will further reduce drug trafficking, human trafficking, and other types of crime associated with illegal immigration.

### *Ban Sanctuary Cities*

Texas statute authorizes local law enforcement officers to enforce federal drug laws.<sup>9</sup> Several bills filed in the 80th Texas Legislature (2007) would have given local law enforcement the power to enforce federal immigration laws. Similarly, bills have linked

---

<sup>8</sup> U.S. Immigration and Customs Enforcement Web site: “Partners, Law Enforcement, Delegation of Immigration Authority” at [http://www.ice.gov/partners/287g/Section287\\_g.htm](http://www.ice.gov/partners/287g/Section287_g.htm)

<sup>9</sup>Texas Local Government Code, Section 370.003.

homeland and border security funds to the ban on sanctuary cities so that any sanctuary city will forfeit state funding.

Section 370.003 of the Texas Local Government Code prohibits municipalities, counties, and other political subdivisions from adopting a policy under which the entity will not fully enforce federal drug laws. In Texas, at least, the statutory framework exists for a similar prohibition on local policies against enforcement of federal immigration laws.

Two communities, Farmer's Branch, Texas, and Hazleton, Pennsylvania, have led the nation in this local approach to abating the costs of illegal immigration with strict ordinances.

### *Increase Penalties for Human Trafficking*

Human trafficking is a deplorable act contrary to the most basic human rights. Individual liberty, fundamentally, is a God-given right that no man can deprive another. However men and women are held, bought and sold against their will not only in foreign nations, but in the United States. Some human trafficking is for the purposes of forced labor; other trafficking is for sexual exploitation, including that of children.

In August of 2006, local officials uncovered a brothel in Austin, Texas, frequented by "undocumented workers,"<sup>10</sup> at which Mexican and Central and South American women were held against their will and forced to perform sexual acts for money. This example of sex slavery was discovered only eight miles from the State Capitol.

Worldwide, between 800,000 to 900,000 persons are illegally trafficked across international borders per year, and between 18,000 and 20,000 of those victims are trafficked into the U.S., according to the U.S. Department of State. However the latter figures do not include the trafficking that occurs within the U.S. For example, women held in the Austin, Texas, brothel were sometimes transferred to one in Oklahoma City. While they are included in the estimates of how many people are smuggled *into* the United States, their forced trips from Austin to Oklahoma City would not be reflected in the State Department figures.

A U.S. Department of Justice memo states:

- From FYs 2001- 2006, the Civil Rights Division and U.S. Attorneys' Offices have:
- Prosecuted 360 defendants compared to 89 defendants charged during the prior six years, representing a more than 300 percent increase;
- Secured 238 convictions and guilty pleas, a 250 percent increase from the 67 obtained in the previous six years;

---

<sup>10</sup> Steven Kreytak, "Immigrant Prostitution Ring Busted," *Austin American-Statesman*, August 2, 2006,

- Opened 639 new investigations, approximately 399 percent more than the 128 opened in the previous six years.<sup>11</sup>

To deal with this growing problem, the U.S. Congress passed the Victims of Trafficking and Violence Protection Act of 2000 and, subsequently, the Trafficking Victims Protection Reauthorization Act of 2003. Additionally, President Bush dedicated nearly \$50 million to the Initiative to Combat Trafficking in Persons, which gave project grants to eight nations during FY 2003 to FY 2005.<sup>12</sup>

Federal efforts have proven insufficient, making state action imperative. State penalties for human trafficking should be severe.

#### *Improve Measures to Combat Document Fraud*

Fraudulent documents are a cornerstone of the process by which illegal immigrants apply for, and obtain employment in, the United States:

“By definition, illegal aliens lack the documentation required by employers, so many resort to document or identity fraud instead. Fraudulent documents vary greatly in quality, depending on price, but they fall into roughly three categories: counterfeit documents, meaning that the entire document is fabricated; genuine documents that are altered; or genuine documents that are fraudulently obtained, either by bribing an official or by using other counterfeit or altered documents.”<sup>13</sup>

The scale of this problem was revealed in December 2006, when raids of meatpacking plants in six states uncovered workers with dubious documentation and organized document fraud rings.<sup>14</sup>

In its June 2006 “Fact Sheet on Comprehensive Immigration Reform,” the White House pointed out that “[t]oday there is an entire underground industry dedicated to producing fake IDs and fraudulent Social Security Numbers.”<sup>15</sup>

By increasing the penalties for those who engage in production of fraudulent documents, states can issue an appropriate response to the growing problems created by the document fraud industry.

---

<sup>11</sup> U.S. Department of Justice, Fact Sheet: Civil Rights Division Efforts to Combat Modern-Day Slavery, January 31, 2007 at [http://www.usdoj.gov/opa/pr/2007/January/07\\_crt\\_061.html](http://www.usdoj.gov/opa/pr/2007/January/07_crt_061.html).

<sup>12</sup> “The President’s \$50 Million Initiative To Combat Trafficking In Persons,” U.S. Department of State Fact Sheet, Office to Monitor and Combat Trafficking in Persons, April 12, 2006 at <http://www.state.gov/g/tip/rls/fs/2006/69671.htm>

<sup>13</sup> Fred Burton, “Hidden Risk in the Undocumented Workers Debate,” STRATFOR, April 19, 2006 at [http://www.stratfor.com/products/premium/read\\_article.php?id=264949&selected=Analyses](http://www.stratfor.com/products/premium/read_article.php?id=264949&selected=Analyses)

<sup>14</sup> “ID thieves targeted in immigration raids” Associated Press/MSNBC, December 12, 2006 at <http://www.msnbc.msn.com/id/16169899/>

<sup>15</sup> The White House, “Fact Sheet: Comprehensive Immigration Reform: Improving Worksite Enforcement,” June 1, 2006 at <http://www.whitehouse.gov/news/releases/2006/06/20060601-3.html>

Support and Implement the REAL ID Act of 2005

Pursuant to the REAL ID Act of 2005<sup>16</sup> and the rules drafted by the U.S. Department of Homeland Security, the states' driver's license application and issuance processes will change. By 2008 (2009, with a waiver), states' motor vehicle departments will be required to verify the citizenship or legal residency status of all applicants for a driver's license or personal identification card.

The REAL ID Act gives the states the opportunity to easily verify citizenship for a wide variety of purposes, including voting, provision of public benefits, and general law enforcement. The REAL ID Act does not require state driver's licenses and personal identification cards to list citizenship status; a simple state requirement, however, would empower local law enforcement officers to better enforce federal immigration laws.

*NOTE: Model legislation follows in Appendix 5.*

**Anticipating and Answering Objections**

1. Objection: Local governments lack the authority to enforce federal immigration laws.

Response: The authority of states in this regard is clear. In *United States v. Vasquez-Alvarez*, the U.S. Court of Appeals for the Tenth Circuit concluded that there is "a preexisting general authority of state or local police officers to investigate and make arrests for violations of federal law, including immigration laws."<sup>17</sup> Additionally, in *United States vs. Santana-Garcia*, the Tenth Circuit held that federal law "evinces a clear invitation from Congress for state and local agencies to participate in the process of enforcing federal immigration laws."<sup>18</sup>

Allowing state-level law enforcement officials to detain illegal immigrants on the basis of their illegal residency status or illegal entry alone is a vital tool for combating illegal immigration.

A Department of Justice memorandum states that nothing precludes states from enforcing federal immigration laws. The relevant portion of the memo reads:

"We... do not believe that the authority of state police to make arrests for violation of federal law is limited to those instances in which they are exercising delegated federal power. We instead believe that such arrest authority inheres in the States' status as sovereign entities."<sup>19</sup> [Emphasis added]

---

<sup>16</sup> Public Law 109-13, Division B, Title II, at <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR01268:@@D&summ2=m&>.

<sup>17</sup> *United States vs. Vasquez-Alvarez*, United States Court of Appeals, Tenth Circuit. 176 F.3d 1294, 1295 (10th Cir. 1999).

<sup>18</sup> *United States vs. Santana-Garcia*, United States Court of Appeals, Tenth Circuit. 264 F.3d 1188, 1193 (10th Cir. 2001)

<sup>19</sup> Jay S. Bybee, Assistant Attorney General, Memorandum for the Attorney General, U.S. Department of Justice, Office of Legal Counsel; April 3, 2002, p. 3; made public July 22, 2005

The memo continues:

“[[W]e determine that our 1996 advice was mistaken and we should instead have concluded that federal statutory law posed no obstacle to the authority of state police to arrest aliens on the basis of civil deportability.”<sup>20</sup> [Emphasis added]

State and local law enforcement officials have the clear authority to arrest illegal immigrants.

2. Objection: Implementation of the REAL ID Act will be costly.

Response: The Texas Department of Public Safety, Driver’s License Division estimated as of July 2006 that implementation of the REAL ID Act would cost \$167.5 million in addition to other state expenditures on issuing driver’s licenses.<sup>21</sup>

This estimated price tag, however, is all the more reason for states to mandate that their enhanced driver’s license somehow reflect the citizenship and/or immigration status of the holder. Such information empowers poll workers, public benefit eligibility systems, and police officers to quickly verify citizenship. These ends, in addition to the REAL ID Act’s homeland security benefits, make the procedures worth the cost.

**Conclusion**

By entering into 287(g) agreements and actively pursuing enforcement of illegal immigration laws, states can take decisive action against illegal immigration without waiting for federal intervention that may or may not come. Border states have led the nation with ingenuity and creativity in response to illegal immigration. All states can and should take action to enforce the law.

---

<sup>20</sup>*Ibid.*, p. 5

<sup>21</sup>Impact Analysis of the REAL ID Act by the Texas Department of Public Safety, July 24, 2006