

OPPOSE STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAW

ISSUE: The Department of Justice (DOJ) drafted an unpublished legal opinion in 2002 that reversed long-standing agency interpretation by taking the position that states and localities, as sovereign entities, have the “inherent authority” to enforce federal immigration laws, including civil violations of immigration law. In the face of widespread criticism of this change of opinion, the DOJ refused to publish the opinion and denied repeated Freedom of Information Act (FOIA) requests. Only after a number of groups sued the DOJ and a federal court ordered the opinion’s release did the DOJ finally disclose the reasoning behind its changed interpretation (more than three years after word of its existence became public).

The opinion finds that state and local police may arrest and detain individuals for criminal and non-criminal violations of the immigration laws because states are not preempted from making such arrests and they have the “inherent authority” to do so. The Department apparently fought so hard to keep the document secret because it wished to protect the opinion’s deeply flawed preemption and inherent authority analysis from public scrutiny.

In an attempt to moot the DOJ’s flawed interpretation with a legislative override, a number of Representatives and Senators have pushed for statutory confirmation of the inherent authority of state and local agencies to enforce civil immigration laws. Indeed, a number of bills that have been introduced seek to go beyond the dubious affirmation of inherent authority by creating a comprehensive regime for local police to support federal enforcement of the civil immigration laws. The principal stand-alone bills addressing these issues have been Representative Charlie Norwood’s (R-GA) Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, and Senator Jeff Sessions’ (R-AL) Homeland Security Enhancement Act (HSEA).

Provisions in the CLEAR Act and HSEA would *require* state and local police to enforce federal civil immigration laws or lose certain critical funding. They also would impose expansive new responsibilities on state and local police departments where resources already are stretched perilously thin. With no requirement that the police receive training in immigration law, these bills are certain to trigger civil rights abuses against citizens and non-citizens alike. Moreover, law enforcement officials agree that these measures would undermine rather than enhance our safety by jeopardizing critical community-based policing initiatives that are predicated on earning the trust and confidence of the served communities.

AILA’S POSITION: AILA strongly opposes the use of state and local police departments to enforce civil immigration laws. Doing so would impose an unconscionable burden on overtaxed state and local law enforcement agencies, jeopardize public safety, promote racial profiling and other abuses, divert scarce resources from critical local law enforcement activities, and threaten the viability of already underfunded immigration services.

AILA believes that measures like the CLEAR Act and the HSEA are dangerously flawed for the following reasons:

- **Past attempts by local law enforcement agencies to enforce immigration law have failed, and many local officials have opposed turning their police into immigration agents.**
- **Because of the complexity of federal immigration law, local law enforcement agencies lack the experience and training to enforce it.**
- **Relying on local law enforcement agencies to enforce federal immigration law will undermine important community relationships.**
 - ❖ “We’ve tried very hard for years to build bridges to all segments of our community. This would be a setback in that regard.” *San Antonio, TX, Police Chief Albert Ortiz*

- ❖ “I don’t think it’s a good idea. We’ve made tremendous inroads into a lot of our immigrant communities. To get into the enforcement of immigration laws would build wedges and walls that have taken a long time to break down.” *Sacramento, CA, Police Chief Arturo Venegas, Jr.*
- ❖ “Communication is big in inner-city neighborhoods and the underpinning of that is trust. If a victim thinks they’re going to be a suspect (in an immigration violation), they’re not going to call on us, and that’s just going to separate us further.” *Denver, CO, Police Chief Gerry Whitman*
- **Asking local law enforcement agencies to enforce federal immigration law will drain these agencies of scarce dollars, further limit resources, and lead to problems in enforcement.**
 - ❖ “We have enough problems just doing our routine calls and investigating the everyday things. This would put an additional burden on us that we probably wouldn’t be able to handle.” *Anaheim, CA, Police Department Spokesman, Mike Hidalgo*
 - ❖ “That’s a whole new area of the law that we have to come up to speed on. We have enough on our plates right now. It’s not as if we’re looking for extra things to do.” *Glenwood Springs, CO, Police Chief Terry Wilson*
 - ❖ “I do not believe it is appropriate to allocate the limited resources of the Tucson Police Department to the issue of immigration control.” *Tucson, AZ, Police Chief Richard Miranda*

CURRENT LEGISLATION: While the CLEAR Act and the Homeland Security Enhancement Act died with the close of the 108th Congress, both were reintroduced as stand-alone bills in the 109th Congress. Also, the CLEAR Act in its entirety was added to the House immigration reform bill, H.R. 4437, as an amendment, one of numerous abhorrent provisions in that bill. Furthermore, the Senate immigration reform bill (S. 2611), set to be reconciled in conference with the House bill later this year, also contains provisions that increase the involvement of local authorities in enforcing immigration laws.

In addition, the House of Representatives recently passed an amendment to the Department of Homeland Security Authorization bill (H.R. 1817) declaring that state and local law enforcement have inherent authority to apprehend, detain, and remove noncitizens in this country. The amendment, which was introduced by CLEAR Act sponsor Representative Norwood (R-GA), passed by a 242-185 margin.

For more information on the House immigration reform bill, please review AILA’s section-by-section summary, now posted and available for downloading on InfoNet at document #06010965: <http://www.aila.org/content/default.aspx?docid=18258>. For information on the Senate immigration reform bill, please see AILA’s summary of the bill, posted on InfoNet at document # 06060966: <http://www.aila.org/content/default.aspx?docid=19642>. A full section-by-section summary of the bill will be posted to InfoNet soon.