

Should Local Police Enforce Federal Immigration Laws? *

Due to the recent anti-immigrant atmosphere, some local police departments have started to try to enforce federal immigration law—an area that traditionally has been enforced only by federal officials. There are increasing questions about what role local police can or should play in the enforcement of immigration laws.

Express Authorization to Enforce Immigration Law

Local police have the authority to enforce immigration law when the federal government expressly delegates that authority to them. For example, under Section 287(g) of the Immigration and Naturalization Act, state and local police departments have the ability to enter into agreements to enforce immigration law with the Department of Homeland Security. Under these Memorandums of Understanding—which can be tailored to meet local needs—local police receive training in immigration law and enforcement and can carry out the specific immigration-related functions that are permitted under their MOU.

Other express federal delegations of immigration enforcement authority permit local police to enforce certain immigration laws that pertain to criminal actions, such as smuggling and harboring undocumented immigrants.

Can Local Police Enforce Immigration Law Without a Specific Delegation of Authority from DHS?

Authorities are divided on whether local police can enforce federal immigration law without a specific delegation of authority. One federal court held that local police have an inherent authority to enforce immigration law.¹ Another federal court found that, as Congress carved out specific delegations of immigration enforcement, there must not be an inherent authority to enforce immigration law.²

Complicating this argument is the fact that while local police clearly have the authority to arrest immigrants who have violated criminal laws, most immigration violations are civil in nature, and their adjudication is handled in immigration court, which is a civil administrative court. For example, a person who entered the United States on a tourist visa but stayed past its expiration date would be violating a civil law.

Should Local Police Enforce Immigration Law?

No. Doing so would increase local police departments' risk of civil liability, due to the complexity of immigration law and the prohibition against racial profiling. In addition, enforcing immigration law would undermine the trust and cooperation local police departments receive from immigrant communities. Assistance from victims and witnesses to crimes is needed to prevent and solve crimes to protect public safety for the whole community.

* The information contained in this document is for general informational purposes only. It is not intended to serve as legal advice and it does not substitute for legal counsel.

¹ *United States v. Santana-Garcia*, 264 F.3d 1188 (10th Cir. 2001).

² *Gonzalez v. City of Peoria*, 722 F.2d 468 (9th Cir. 1983).