



Understanding the Role of Police Officers in Immigration Enforcement and the Memorandum of Agreement with DHSⁱ

What has been the role of state and local police in helping the federal government enforce federal immigration laws?

Historically, the primary role of a police force in any community is keeping the peace and investigating, arresting, and helping to convict criminals. Generally, local police do not enforce federal civil laws, such as the civil provisions of the immigration or tax codes. Naturally, police have the authority to arrest foreign nationals who have committed crimes and may report them to federal immigration authorities for possible deportation.

Why is a distinction made between civil and criminal law enforcement?

In general, legal codes apply either civil sanctions or criminal penalties to conduct depending on their nature and severity. The federal immigration code includes both criminal and civil sections. State and local police have generally assisted the federal government in enforcing criminal provisions of federal immigration law, including statutes relating to human trafficking. However, they generally do not enforce civil provisions, such as residing in the U.S. without lawful immigration status. This is because state and local police officers lack recognized legal authority to enforce civil immigration laws; immigration law is complex and state and local police lack the requisite expertise and data access to determine someone's status; and doing so would hurt their efforts to fight crime and protect our communities. If immigrants fear that having contact with state and local police could lead to their own deportation, they will stop reporting crimes, criminals will roam free to prey on other vulnerable victims whom they assume they can intimidate into silence, and all our communities' residents will be at risk.

State and local police lack the authority and capacity to enforce civil immigration laws on their own. They also worry that enforcing civil immigration laws could hurt their crime-fighting mission by silencing crucial sources of information in the community. However, state and local law enforcement can take on new immigration enforcement duties if they enter into an agreement with the Department of Homeland Security (DHS) and receive training. In some communities, these arrangements remain focused on the law enforcement's primary mandate to rid our communities of dangerous felons by screening convicted criminals for immigration status, and in others they have cast a much wider net to ensnare ordinary undocumented workers. In all these arrangements, despite having additional authority and duties, state or local police remain dependent on federal immigration authorities to actually pick up, process (including through possible trial and appeal), and deport anyone they detain on immigration violations.

What is a Memorandum of Agreement (MOA)?

Under section 287(g) of the Immigration and Nationality Act, the Secretary of Homeland Security can enter into an agreement with a local or state law enforcement entity to deputize

officers to help the Department of Homeland Security enforce federal immigration laws.¹ The MOAs set out the scope and nature of the arrangement, including the training state and local agents are to receive before they begin, to whom they report in the DHS and how, and which immigration laws they are authorized to enforce. Each MOA is different but in general they allow certain designated state or local police officers to perform the functions of an immigration officer to investigate, apprehend, or detain an individual who has violated federal immigration laws. The officers may be part of a standalone task force that includes an immigration enforcement component, or part of the general police force.

Are all MOAs the same?

No. There are a number of states and cities that have entered into MOAs, and state and local officials are free to negotiate the terms of the agreement. The majority of the MOAs focus on screening inmates in jails for immigration status. Still others, however, give state and local police broad authority to investigate the immigration status of anyone they come across, even those who are reporting crimes.

What are some concerns with implementing MOAs?

Almost any MOA has the potential to undermine community policing, either by the powers it bestows on local police or the way it is communicated to the immigrant public. Nonetheless, some state and local law enforcement agencies who oppose broad deputization of police to enforce immigration laws have still implemented MOAs in their local jails. Communities considering any type of MOA should proceed cautiously and ensure that public safety remains the number-one concern of policymakers and police.

How do police departments enter into an MOA?

A request is made by a local or state police authority to enter into an agreement with the DHS unit responsible for immigration enforcement, known as Immigration and Customs Enforcement or ICE. After a period of negotiations, a Memorandum of Agreement is written that defines the scope and limitations of the immigration enforcement authority that state or local police officers will have under the agreement.

What is the role of local advocates in the negotiation of an MOA?

Members of the community who understand how an MOA will impact immigrant residents should communicate those concerns to the police and policy-makers prior to ratification of an MOA. In particular, advocates concerned about the impact such an agreement will have on crime reporting among immigrants should make these problems known to local officials. Public safety is a goal that everyone shares, and local officials should travel down the path of negotiating an MOA with this goal in mind. Once they understand the damage that local enforcement of immigration laws can have on community policing and crime reporting by immigrants, they may think twice about pursuing an MOA or significantly limit its scope. In fact, many police officers and police officials are well aware of the effects that local police

¹ The agreement is now made between Immigration and Customs Enforcement, not the Department of Justice (DOJ) as originally contemplated. For a list of existing MOAs, see http://www.ice.gov/partners/287g/Section287_g.htm. For the content of those MOAs, check the website of the Yale Law School's Work and Immigrant Rights Advocacy Clinic (www.law.yale.edu/wirc). It is also worth noting that additional steps may be necessary depending on the jurisdiction, like a vote by the state legislature.

enforcement can have on the community and are an advocate's best ally in making the message to policy-makers and the public.

If an MOA is inevitable, what safeguards need to be in place?

If public officials are insistent that some type of arrangement be made with ICE, advocates can seek to limit the scope of the MOA so that it does the least damage to community policing as possible. Focusing on specific mandates like checking the status of individuals who have been convicted of certain felonies, limiting the immigration law provisions a local officer can enforce, and limiting the situations when the MOA goes into effect are all good examples. Another useful way to protect the community is by mandating that the locality track and evaluate how the program is used, and set up an independent commission with a mechanism for input by the affected community to study the way in which police officers are apprehending individuals and at what point the person is turned over to ICE. Perhaps most importantly, whether or not an MOA is in place, it is vitally important that a binding public commitment be made that police will not investigate the immigration status of victims or witnesses of crimes.

The best approach is to ensure that the scope of the MOA is limited to focus on convicted criminals rather than ordinary undocumented workers. An accurate public education campaign must be mounted; clear accountability measures must be in place for officers who run afoul of the agreement or of other federal, state, or local laws; and a fair evaluation of the program must be conducted before it can be reauthorized. Otherwise, even a limited MOA will do lasting damage to community policing.

Do state and local police officers need to be trained before they can enforce immigration law?

Under the MOA, state and local police officers must be adequately trained on immigration laws and enforcement prior to exercising their new authority. State or local officers participating in the MOA generally undergo a five-week training session conducted by the same trainers that ICE agents use.² The state or local officers engaging in immigration enforcement will then be directed and supervised by an ICE officer.

Are communities safer if they engage in an MOA?

Communities are safer if the police are able to work together with all residents to investigate and solve violent crimes and to prosecute and remove violent criminals from our midst. MOAs, like any other form of collaboration between federal authorities and state or local police on immigration enforcement, can cause a severe "chilling effect" on police-immigrant community relations that undermines trust in the authorities and the willingness of immigrant victims/witnesses to come forward. Moreover, communities that have had experience with MOAs have documented instances of racial profiling, discrimination, and mistakes that lead to unlawful arrests. This is costly because of the use of resources and may lead to costly lawsuits. This is one more reason that many police chiefs object to this program.

Generally speaking, MOAs will not help keep our communities safer. They are more often thrust upon communities by anti-immigrant policy-makers than by police who have true public

² It is important to point out that Immigration and Customs Enforcement agents receive a 17-week course to adequately enforce immigration law.

safety priorities in mind. State and local police know they already have the authority they need to refer criminals to ICE for deportation, and most agree that being on the lookout for civil immigration law violators impedes their ability to gather information about real crimes and criminals from immigrant residents. The MOA, therefore, is most often a political response rather than sound public policy.

Some state and local police have attempted to limit the scope of their MOAs so that they are more consistent with their criminal enforcement priorities, but there is no evidence that even these agreements have improved public safety.

What are the rights of immigrants in an MOA jurisdiction?

There are a number of rights afforded to individuals in the U.S. regardless of their immigration status. These include the right to remain silent, to be free from illegal search and seizure, to be free from illegal questioning, et cetera. Localities may also have particular laws that bear on the question of the rights of someone being questioned by a law enforcement officer. In areas where an MOA has been signed, immigrant communities should engage in considerable public education campaigns to be aware of the factors that such a person needs to keep in mind, including the types of questions that he or she needs to answer, when confronted by any type of law enforcement officer.³

What can a community member do if s/he has a complaint about the way the MOA is being implemented or about the conduct of a police officer?

The county or city that engages in the MOA should have a complaint form readily available for the community to access. If the locality is unwilling to develop a complaint procedure, advocates should develop a complaint form (see example of a complaint form in on page 49 in resource #2 –toolkit- listed below) and develop a system to collect this information. Other communities have also set up hotlines that community members can call to speak to lawyers or law students that are experienced in immigration law and criminal procedure.

There are many public policy arguments against implementing MOAs in our communities, ranging from the fiscal impropriety of using state and local police to carry out a federal function, to the increased likelihood of civil rights violations, to the destruction of community policing. An MOA is not a panacea for our nation's broken immigration system, and it will not substitute federal action on immigration reform. The proliferation of MOAs across the nation demonstrates the frustration of local communities with the congressional failure to act on immigration reform. Still, local residents must make sure their officials do not make poor choices based on emotion and rhetoric rather than the facts.

³ For an extensive explanation of the rights of an individual, see the American Civil Liberties Union documents at: <http://www.aclu.org/safefree/general/17444res20040528.html>

For more resources on local enforcement of immigration laws, see:

1. <http://www.immigrationforum.org/documents/TheDebate/EnforcementLocalPolice/Backgrounder-StateLocalEnforcement.pdf>
2. <http://www.nclr.org/content/resources/detail/41508/>
3. <http://www.appleseeds.net/Publications/ReportsToolkits/ForcingOurBluesintoGrayAreas/tabid/97/Default.aspx>
4. http://www.nilc.org/immlawpolicy/LocalLaw/locallaw_limiting_tbl_2007-10-11.pdf
5. <http://www.immigrationforum.org/DesktopDefault.aspx?tabid=567>
6. <http://communityresourcebank.org/DesktopDefault.aspx?tabid=383>
7. http://www.aifl.org/ipc/special_report/sr_022107.pdf

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