



How America's 1996 Immigration Act Set the Stage for Increasingly Localized and Tough Enforcement

Yalidy Matos, Rutgers University-New Brunswick

On September 20, 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act, a vast and comprehensive law focused on border security, illegal immigration, and enforcement in the interior of the country as well as at the border. One key provision of the 1996 legislation is Section 133, "Acceptance of State Services to Carry Out Immigration Enforcement," which authorizes the Director of the U.S. Immigration and Customs Enforcement to enter into agreements with state and local law enforcement agencies called Memorandums of Agreement. These agreements permit designated state and local officers to perform immigration law enforcement functions otherwise under federal jurisdiction.

After the terrorist attacks on September 11, 2001, the 1996 legislation opened the way for state-based efforts to reinforce immigration enforcement in the interior of the United States, not just along exterior international borders. According to the National Conference of State Legislatures, in 2005, forty-five immigration-related laws were enacted in twenty-five different states, and by 2015 there were 490 laws on the books in forty-nine states. Although the 1996 Illegal Immigration Reform and Immigrant Responsibility Act served as the legal foundation for increasing sub-federal level enforcement, the 9/11 emergency in 2001 served as a catalyst speeding both the federal and state governments to police immigrants not only on the southern border, which was the previous chief focus, but also across the interior of the United States. In 2002, Florida became the first state to sign an immigration enforcement agreement with the federal government, under the 287(g) program.

Cooperative Immigration Enforcement Models

When it comes to cooperative immigration enforcement, there are three kinds of models for agreements between federal authorities and states and localities:

- A **task force model** allows deputized officers to question and arrest those they believe to be undocumented immigrants.
- A **jail enforcement model** allows deputized officers to place immigration detainers on noncitizens who have been arrested on state or local charges.
- A **hybrid model** includes aspects of both.

After 2005, more and more localities entered into Memorandums of Agreement with the federal government, and by late 2006, jail enforcement models started to become the norm. Flows of federal funds to interior programs make evident the increasing localization of immigration enforcement. In 2005, federal funding for these programs was \$5 million, but between 2010 and 2013 it reached a high point of \$68 million. Between January 9, 2018

2014 and 2016, federal funding for interior enforcement has remained steady at \$24 million.

According to the most up-to-date Immigration and Customs Enforcement fact sheet, the U.S. Immigration and Customs Enforcement authority has agreements with 60 law enforcement agencies in 18 states, all of which have jail enforcement models. In addition, federal authorities have trained and certified more than 1,822 state and local officers to enforce immigration law.

In certain jurisdictions, the focus of enforcement has expanded well beyond apprehensions of immigrants thought to be criminals and security threats. A key expansion was ignited by a program signed with Jim Pendergraph, Sheriff of Mecklenburg County, North Carolina, who described his county's goal as "apprehending as many unauthorized immigrants as possible, on the belief that unauthorized immigrants were more likely to commit more crimes." This assumption – that undocumented immigrants commit more crimes than citizens – is not substantiated by research, yet it remains the rationale invoked by many supporters of tough immigration enforcement.

The Secure Communities Program

Memorandums of Agreement represent only one of two ways in which Immigration and Customs Enforcement and state and local agencies work together. A second, related collaborative approach is embodied in the Secure Communities program, under which Immigration and Customs Enforcement agents can run federal immigration checks on every individual booked into a local county jail and then send fingerprints from the Federal Bureau of Investigation to Department of Homeland Security for all undocumented immigrants found in this way in jurisdictions operating under the Secure Communities program.

Originally advertised as focusing just on the most violent "level one" offenders, the Secure Communities program started in 2008 as a pilot experiment during the George W. Bush administration, after Congress provided the Department of Homeland Security and Immigration and Customs Enforcement with new funding to "improve and modernize efforts to identify aliens convicted of a crime..." Secure Communities efforts began in October 2008 in Texas and North Carolina, and by October 2011 during the administration of President Barack Obama the program had expanded from 14 jurisdictions to 1,595 jurisdictions in 44 states and territories. Indeed, the expansion of the Secure Communities program was an important reason that deportations of undocumented immigrants spiked during the Obama administration.

Secure Communities efforts aroused opposition among policymakers, law enforcement officials, and immigrant rights advocates, who criticized racial profiling and increasing apprehensions of nonviolent offenders. In 2014, President Obama terminated Secure Communities and replaced it with the Priority Enforcement Plan. But on January 25, 2017, President Donald Trump reinstated Secure Communities by executive order.

Nevertheless, a resurgence of tough local immigration enforcement under Trump builds on longstanding state and local enforcement efforts to deport not only violent "criminal aliens" but also undocumented immigrants who have committed minor offenses or none at all. Although often unnoticed, the present-day geography of immigration enforcement all across America has roots in a pivotal and important piece of Congressional legislation put on the books long ago, in 1996, to encourage localities and states to work with national immigration authorities.

January 9, 2018

<https://scholars.org>

January 9, 2018

<https://scholars.org>