IACP 2006 – Immigration and State & Local Law Enforcement, "continued"

IACP 2006 – Immigration and State & Local Law Enforcement, "continued"

A Presentation To The International Association of Chiefs of Police

113th Annual Conference

Boston, Massachusetts

October 16, 2006

Panel:

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Florida Department of Law Enforcement
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Charlotte, N.C.

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An Overview Of The Current Situation

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Quick Review of Major Categories of Immigrants' Status:

1. **TEMPORARY STATUS**:
   Legally in U.S. temporarily and required to leave after a period of time.

2. **NEAR-PERMANENT, CONVERTIBLE STATUS**:
   Have entered the U.S. and are given the opportunity to "adjust" or convert to legal permanent residence after a few years.

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Immigrants' Status:

3. Legal Permanent Residence (LPR):

*Has the right to remain in the U.S. for entire life.

*After 5 years, right to naturalize and become U.S. citizen.

-After naturalizing, right to bring parents into the U.S. a permanent residents with opportunity for citizenship.

-No limit on numbers of spouse, dependent children, and parents of naturalized citizens into the U.S.

-Siblings and adult children (and their families) of naturalized citizens and adult children (and their families of LPRs are given preference in future admissions, but a subject to numeric caps.

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Immigrants' Status:

It is generally accepted that there are between 8 and 12 million illegal aliens in the U.S.

Discerning the actual number is impossible.

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RECENT DEVELOPMENTS: Dateline - 10/4/06

President Bush signed an immigration bill:

- $33.8 Billion
- Boosts USBP agents to 14,800
- Increase detention beds for illegal aliens to 27,500 (increase of 6,700)
- $1.2 billion for fence, vehicle barriers and other infrastructure

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In signing bill, President Bush again called for Congress to enact the "guest worker" and the "amnesty" provisions included in the Senate's "Comprehensive Immigration Reform Act" (CIRA, S. 2611)

The House opposes such approaches, and has included "enforcement options" in its proposals.

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Congress has also passed bill to build 698 miles* o fence along U.S. and Mexico border yet to be signed President, but he has indicated he will sign it.

(Bill passed 283-138 in the House and 80-19 in the Senate. *Senate proposal was to build 371 miles.) Fence estimated to finally cost between $2 Billion and $9 Billion.

--President being lobbied by groups to veto the bill;

-- Mexican government officials have sent a diplomatic note to Washington protesting the fence and have said they may complain to the United Nations

Meanwhile, the Mexican government has issued a "Guide" in comic book version that instructs immigrants on how to enter U.S. →

From the Mexican “Guide”...

"Try to walk during times when the heat is not as intense";

Thick clothing increases your weight when wet, and this makes it difficult t
swim or float."

If caught by Border Patrol, the book says, "Don't throw stones or objects at
the officer or patrol vehicles because this is considered a provocation. Raise
your hands slowly so they see you are unarmed."
It also recommends not running away from agents in pursuit.
It's better to be detained a few hours and repatriated to Mexico than to ge
lost in the desert," the guide states.

he book includes a disclaimer stating it doesn't promote crossing the borde
llegally, but it doesn't give information about legal steps to seek a U.S. visa

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Senate's CIRA provisions:

-- Most "temporary" immigrants will be given "convertible" status to become legal permanent residents (LPRs), which can lead to citizenship.

--When in "convertible" or LPR status, will have right to bring spouses and minor children into country, and they will get permanent residence along with the primary immigrant, and may become U.S. Citizens.

--When naturalized, the immigrant has the right to bring his parents into the U.S. as permanent residents with the opportunity for citizenship.

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CIRA provisions:

-- Amnesty and citizenship to 85% of the nation's current estimated 11.9 million illegal aliens:

-If in the U.S. for 5+ years (about 60%), alien would get immediate amnesty;

-If in the U.S. from 2-5 years (about 25%), could travel to one of 16 "ports of entry" where they can obtain amnesty and a work permit.

In total, about 10 million will receive amnesty *initially*.

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CIRA provisions:

-- Creates new "temporary guest worker" (H-2C) program.

Nearly all "temporary" guest workers will obtain the right to become permanent residents and then citizens.

Can enter U.S. at TGW if one has a job offer from a U.S. employer. Allowed to remain in U.S. for 6 years, but in 4th year can seek Legal Permanent Resident status. Will be granted if speaks English or enrolled in English class.

LPR status allows permanent stay in U.S. and opportunity to become a U.S. citizen (and vote in U.S. elections) after 5 years.

Spouses/minor children get LPR status when guest worker receives it.

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CIRA provisions:

While there are limits on TGW who can enter each year, the limits high and open ended:

-- 325,000 H-2C Visas year one;

--If demand for TGW is high, an additional 20% each following year:

Year Two: +65,000 = 390,000

Year Three: +78,000 = 468,000

Year Four: +93,600 = 561,600

etc.

Year Twenty: Potentially about 12 million.

As many as 70 million TGWs entering U.S. over the first two decad

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A 5/15/06 "Heritage Foundation" think-tank report by Robert Rector* indicates that the Senate's plan would result in far more than 10 million "amnesty" immigrants to enter the U.S.

Heritage estimates that over next 20 years, the bill will allow a conservative estimate of 103 million immigrants into the country, with an increase in costs to government for welfare, Medicaid, etc. at over $46 Billion per year. The number could be as high as 200 million immigrants.

"Senate Immigration Bill Would Allow 100 Million New Legal Immigrants Over The Next Twenty Years" The Heritage Foundation, WebMemo #1076, 5/15/2006, by Robert Rector.

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The U.S. Census Bureau reports that the nation's population will reach the historic milestone of 300 million on

October 17, 2006

at about 7:46 a.m. (EDT).

This comes almost 39 years after the 200 million mark was reached on Nov. 20, 1967.

Thus the Senate's approach could add immigrants totaling between 1/3 to 2/3 of the current U.S. population in the next 20 years!

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The Senate's CIRA is not popular in the House.

In September, 2006, the House endorsed provisions that would—

-- Deport gang members

-- Empower local law enforcement to arrest illegal aliens

The Senate opposed adding provisions to the comprehensive bill.

Little has happened to remove the House/Senate impasse.

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Efforts to reconcile the Senate and House approaches to immigration appeared to have stalled. A "lame duck" Congress could return to consider after November elections.

Various versions considered ALL of 2006.

Mid-Terms will change makeup of Congress.

Not likely that much will change before end of this year.

Immigration appears to be a big factor in several mid-term elections.

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Center For Immigration Studies Poll Results announced this morning:

WASHINGTON (October 16, 2006) – A new poll, using neutral language (no talk of "illegal aliens" or "amnesty"), finds intense voter concern over immigration in 14 tight congressional races.

The surveys were conducted by a polling company for the Center for Immigration Studies.

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Center For Immigration Studies Poll Major Findings:

53% of likely voters said immigration was either their most important issue or one of their top three issues, while just 8 percent said it was not at all important.

When told the actual number of immigrants here (legal and illegal) and the number coming (legal and illegal), and asked to put aside the question of legal status, 68 % of voters nationally thought immigration was too high, 21 % about right, and just 2 % thought it was too low.

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Center For Immigration Studies Poll Major Findings:

The U.S. House's option of across-the-board enforcement, causing illegals to go home (as opposed to Senate's "amnesty" & "guest worker" approach or the other option of mass deportation efforts) is voters' top choice.

44 % wanted enforcement that causes illegals to go home, the US House's approach, and another 20 % wanted large-scale deportations. 31 % supported legalization.

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Center For Immigration Studies Poll Major Findings:

Voters think lack of enforcement is reason for illegal immigration.

Three out of four voters in the nation agreed that the reason we have illegal immigration is that past enforcement efforts have before "grossly inadequate."

Voters strongly reject the argument that illegal immigration is caused by overly restrictive legal immigration policies.

To obtain details on the poll, contact CIS at:

Steven Camarota (202) 466 8185, Sac@cis.org

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H.R. 6095 'Immigration Law Enforcement Act of 2006" now
Senate would:

-- affirm the inherent authority of State and local law enforcement to assist in the enforcement of immigration law

-- assure that victims who are illegal aliens would not b subject to mandatory arrest by state or locals;

-- provide for more effective prosecution of alien smugglers, including adding 20 AUSA's

and

-- reform immigration litigation procedures

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"Notwithstanding any other provision of law and reaffirming the existing inherent authority of States, law enforcement personnel of a State or a political subdivision of a State have the inherent authority of a sovereign entity to investigate, identify, apprehend, arrest, detain, or transfer to Federal custody aliens in the United States (including the transportation of such aliens across State lines to detention centers), for the purposes of assisting in the enforcement of the immigration laws of the United States in the course of carrying out routine duties. This State authority has never been displaced or preempted by Congress...."

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Victim's protection:

"...Nothing in this section may be construed to require law enforcement personnel of a State or political subdivision of a State to--

(1) report the identity of a victim of, or a witness to, a criminal offense to the Secretary of Homeland Security for immigration enforcement purposes; or

(2) arrest such victim or witness for a violation of the immigration laws of the United States."

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Aside from the recent action, hardly any change from a year ago.

Until Congress reaches agreement and enacts more; and President signs provisions into law, same basic issues.

Same lack of clear answers and approaches.

Meanwhile, tempers and frustrations grow...

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Local and State AUTHORITY

– Authority to enforce CRIMINAL immigration provisions is generally accepted, subject to limits of state law.

– Authority to enforce CIVIL immigration violations is generally uncertain—probably NOT authorized in most states.

– Approaches vary from state-to-state.

– Use of 287(g) has shifted more toward the "booking" process and less on the "encounter" and "enforcement" aspect

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Current 287(g) agreements:

Florida Department of Law Enforcement;
The State of Alabama;
The Los Angeles County Sheriff's Department;
The San Bernardino Sheriff's Department;
The Riverside County Sheriff's Department;
The Arizona Department of Corrections,
and
The Mecklenburg County Sheriff's Department.

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While 287(g) offers an excellent means of effecting state or local enforcement of immigration law,

those receiving the empowerment under 287(g) require four to six weeks of training...

...this means the participating agencies must make a substantial commitment to the mission for which the immigration powers are being granted

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Even if authority is established by state law, policy issues & concerns remain:

- How will officers receive training on the very complex immigratio laws?
- Duality: Is it civil or criminal? Is the "detainer" placed by feds based on civil or criminal violation?
- Diversion of resources from local mission
- Exposure to costs and liabilities.
- Impact on community relations and trust in immigrant communities
- How to best respond to local pressure to "DO SOMETHING" in view of perceived federal inaction or under-action to help secure borders and improve domestic security

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With or without immigration violation being a part of an arrest or detention,

remember the

CONSULAR NOTIFICATION OBLIGATIONS

upon the arrest or detention of any foreign national

--Notification is mandatory or optional depending on the foreign county

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Sanctuary Cities issue—

- Declaring "sanctuaries" arguably runs afoul of §642 of the IIRIRA* which requires state and local agencies to share information with Immigration and prohibits such information from being restricted.

- Some jurisdictions counter that requiring the reporting of unauthorized aliens to federal authorities infringes on states' 10th Amendment right to sovereignty.

*Illegal Immigration Reform and Immigrant Responsibility Act of 19

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Sanctuary Cities issue:

According to 2004 Congressional report:

–Alaska and Oregon prohibit or restrict state and local officers' involvement in federal immigration enforcement;

– 31 Cities or Counties had sanctuary policies.

--Congressional Research Service Report:
"Enforcing Immigration Law: The Role of State and Local Law Enforcement" 3/11/2004.

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"Absconders" being listed in NCIC

-- Both criminal and civil

--Will prompt state or local "response"

("Absconders" are unauthorized or criminal aliens or non-immigrants who violated immigration law and have been ordered deported by an immigration court.)

--Congressional Research Service Report: "Enforcing Immigration Law: The Role of State and Local Law Enforcement" 3/11/2004.

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Training is essential.

Not all violations are criminal.

Example:

Mere illegal presence in the U.S. is a civil, not criminal, INA violation.

Criminal violations include bringing in and harboring certain undocumented aliens (8 USC 1324) and

re-entry of aliens previously excluded or deported (8 USC 1326).

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State and locals generally cannot arrest solely for illegal presence (it's a civil violation);

Entering the country illegally is a federal misdemeanor (criminal), but the act of entering illegally is not a continuing act.

--Does state law allow your officers to arrest for this misdemeanor offense committed outside the officer's presence?

In contrast, aliens previously deported who enter or are found in the U.S. are committing a continuing offense.

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Determining one's status is not always easy...

Discerning whether "civil" or "criminal" may be confusing...

Determining validity of documents is not easy...

Requires training

"Round ups" of illegal aliens in some communities have resulted in U.S. Citizens being arrested wrongly.

(Liability $$$)

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The ongoing immigration debate has produced a myriad of local approaches and issues.

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Major Cities Chiefs' 9 Point Position Statement (6/7/06):

1. Secure The Borders
2. Enforce Laws Prohibiting Hiring Illegals
3. Consult With and Involve Local Police Agencies In Decision-Making
4. Local involvement voluntary
5. Incentive based, with full federal funding
6. No reduction or shift of current fed funding
7. Clearly state local authority
8. Remove civil detainers from NCIC
9. Committed to full enforcement against criminal violators regardless of immigration status

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Today's remaining speakers will...

- Discuss the "sanctuary" issue
- Review some local approaches
- Address concerns that are universal
- Seek to identify trends in 287(g) and other options
- Identify some federal resources and options you may not know exist
- Engage in question/answer session to discuss items of concern

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PLEASE REMEMBER:

"Nothing provided today should be considered legal advice. You should seek out advice of counsel familiar with your state laws."

"The statements provided by today's speakers are not necessarily the official positions of their employing agencies."

Mark Newbold, Legal Advisor
Charlotte-Mecklenburg Police Department
Charlotte, N.C.

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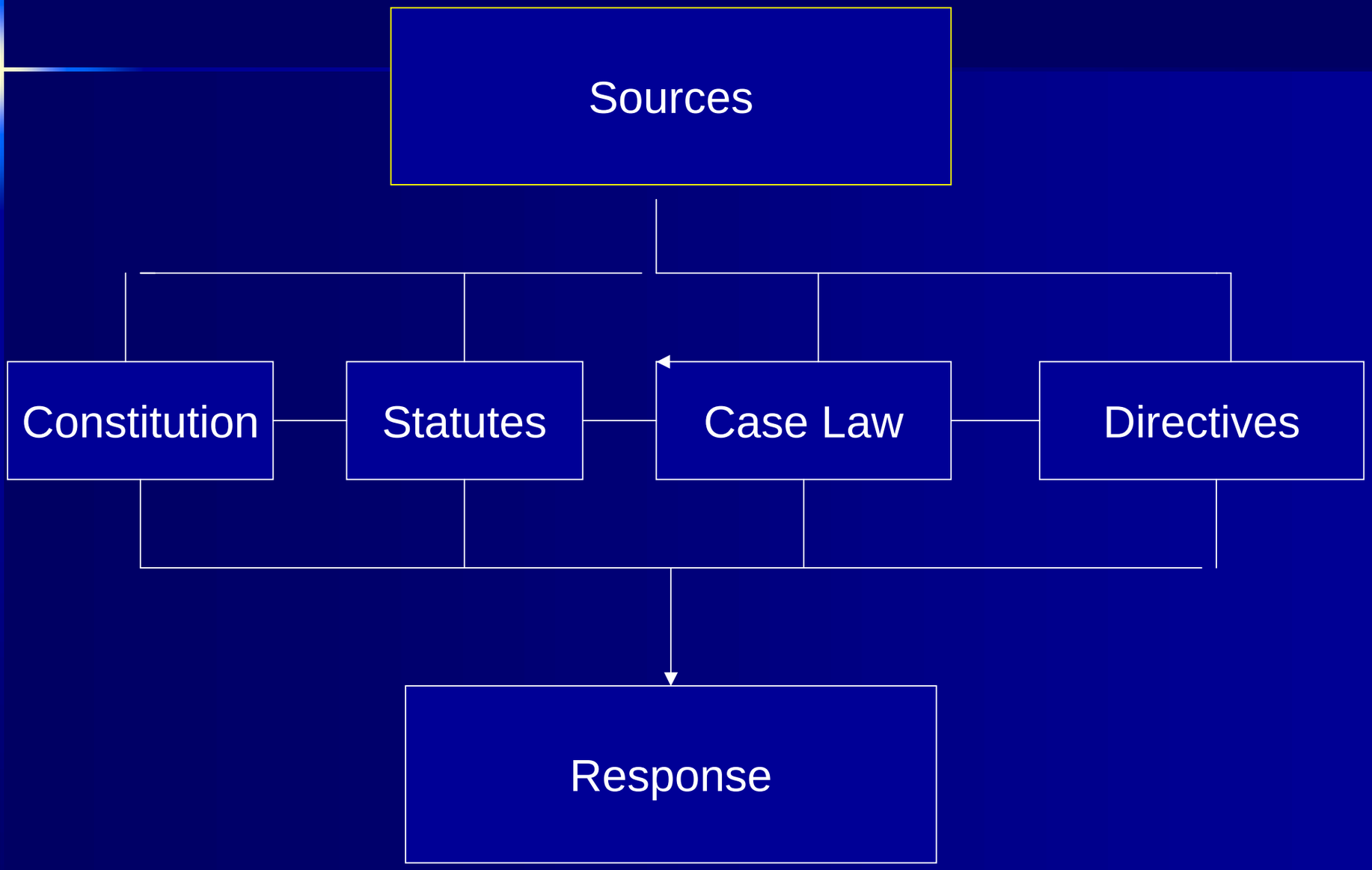
Charlotte-Mecklenburg Police Department
Charlotte, N.C.

"Sanctuary"

Right thing to do?

Article 1 Section 8 and the 10th Amendment

Legal Analysis



Back to the Basics

- U.S. Const. Article I, Section 8,
- U.S. Const. Article VI, cl. 2
- U.S. Const. 10th Amendment

Federal Law

- **8 USC Section 1373**

  Communication between government agencies and the Immigration and Naturalization Service

  - **A governmental agency cannot restrict its employees from providing immigration information to INS**

Case Law

New York and Giuliani v. United States and. Janet Reno,

179 F.3d 29 (2nd Cir. 1999)

Directives
Executive Orders

- Restricting language
  - –Review 1373

- Restriction already imposed?
  - –Look to state public record's law
  - –Look to any other statutory language that permits restriction.

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Lt. Eric Edwards, Phoenix Police Department
Phoenix PD Legal Counsel
Phoenix, AZ

2006 IACP IMMIGRATION UPDATE
Lt. Eric Edwards Phoenix PD

2006 Immigration Legislation

- Introduced – Approx. 550
- Passed – 78
- States enacting - 33

2006 IACP IMMIGRATION UPDATE
Lt. Eric Edwards Phoenix PD

Enacted Bill Trends:

Law Enforcement- 9 bills 7 states

Trafficking- 13 bills 9 states

Identification/Driver's License- 6 bills 5 states

Employment- 17 bills 9 states

Legal Services- 5 bills 5 states

Omnibus- 1 bill 1 state

Public Benefits- 13 bills 8 states

Voting- 6 bills 6 states

Miscellaneous- 6 bills 5 states

Education- 3 bills 3 states

2006 IACP IMMIGRATION UPDATE
Lt. Eric Edwards Phoenix PD

Arizona HB 2580, Chpt. 380 – Enacted

13-3906. Processing arrestees; citizenship determination; notice

A. AFTER A PERSON IS BROUGHT TO A LAW ENFORCEMENT AGENCY FOR INCARCERATION, THE LAW ENFORCEMENT AGENCY SHALL DETERMINE THA PERSON'S COUNTRY OF CITIZENSHIP. IF THE PERSON IS NOT A UNITED STATES CITIZEN, THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE PERSON'S COUNTRY OF CITIZENSHIP OF THE PERSON'S DETENTION IF THE PERSON DOES NOT WAIVE NOTIFICATION OR IF THE PERSON'S COUNTRY O CITIZENSHIP REQUIRES NOTIFICATION REGARDLESS OF THE PERSON'S WAIVER OF NOTIFICATION. THE LAW ENFORCEMENT AGENCY SHALL DOCUMENT THE NOTIFICATION TO THE PERSON'S COUNTRY OF CITIZENSH AND ANY WAIVER OF NOTIFICATION.

B. THE FAILURE OR INABILITY OF A LAW ENFORCEMENT AGENCY TO PROVIDE THE NOTICE REQUIRED BY THIS SECTION DOES NOT:

1. AFFECT THE ADMISSIBILITY OF ANY STATEMENTS, THE VOLUNTARINESS OF A GUILTY PLEA OR THE VALIDITY OF A CONVICTION.
2. AFFORD A DEFENDANT ANY RIGHTS IN ANY PROCEEDING RELATED TO DEPORTATION, EXCLUSION OR DENIAL OF NATURALIZATION.

2006 IACP IMMIGRATION UPDATE
Lt. Eric Edwards Phoenix PD

Phoenix Arizona Proposed City Charter Initiative

Sec. 11. B.

The police department of the city shall enter into a cooperative agreement with the United States Department of Homeland Security to designate officers as immigration officers qualified to investigate, apprehend, and detain aliens in the United States to the fullest extent consistent with State and Federal law

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287(g) CORE STUDIES -- typical training segments

Class	Hours
Nationality Law	12
Immigration Law I –Non-Immigrants	12
Immigration Law II- Immigrants	10
Removal Charges	20

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Principal Security Specialist,
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287(g) ADDITIONAL STUDIES – to fit the mission

Document Examination
Cross Cultural Communications
Victim/Witness Awareness
Fraud Investigations
False Claims to US Citizenship
Consular Notification
Human Rights Violators
Alien Processing
Terrorism and Case Studies
Alien Smuggling/ Human Trafficking
Other Related Subjects

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Jack Penca, Chief Counsel
Law Enforcement Support Center, U.S. Immigration & Customs Enforcement
Williston, VT

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I. Law Enforcement Support Center

A. Established in 1994
B. Responsibilities
   1. **Status**
   2. **Identity**
C. Nlets Immigration Alien Query (IAQ)
D. NCIC Immigration Violators File (IVF)
E. Investigative Services Branch

II. Visas available to crime victims or those providing assistance to law enforcement

A. S Visa
B. T Visa
C. U Visa

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Questions and Discussion

(End of IACP 2006 Presentation)