

Nov-2017

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Recommended Citation

Tillinghast, David H. (2017). Working to Serve and Protect an Immigrant-Friendly Community: Why the Bridgewater State University Police Department Supports Massachusetts Senate Bill No. 1305. *Bridgewater Review*, 36(2), 17-20.

Available at: http://vc.bridgew.edu/br_rev/vol36/iss2/7

Working To Serve And Protect An Immigrant-Friendly Community: Why the Bridgewater State University Police Department Supports Massachusetts Senate Bill No. 1305

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Implicit in the term “national defense” is the notion of defending those values and ideals which set this nation apart. — United States Supreme Court, *United States v. Robel*, 389 U.S. 258, 264 (1967).

In the midst of a massive push on the federal level for more aggressive immigration enforcement, there are renewed calls for state and local police participation in immigration law enforcement. Indeed, a provision in the new federal policy (Executive Order No. 13769, 25 January 2017) allows for the deputization of state and local police, permitting them to enforce federal immigration law. At face value, the new policy seems eminently reasonable: it would add significant law enforcement resources in the effort to implement the nation’s immigration system. While on the surface this concept appears to make a good deal of practical sense, ultimately it is seriously flawed as a matter of policy.

There is no question that, in the aftermath of the September 11 attacks and all that has followed, Americans feel at risk in a way that they have never felt before, and thus many have argued that there is a greater need for creativity in the government’s strategies to protect the homeland. Security is at a premium in the post-9/11 world. Nevertheless, while the need for improved homeland security is a crucial consideration in today’s America, there are substantial countervailing public policy concerns

that weigh against the proposal to utilize state and local officers in the enforcement of federal immigration laws. For example, an increased state and local role in immigration enforcement is likely to alienate vulnerable immigrant communities to the detriment of local community policing strategies. Moreover, increased state and local immigration enforcement will distract officers from their primary mission, which is to serve and protect their local communities.

One legislative bill that is currently pending before the Massachusetts State Senate (Bill No. 1305, the *Safe Communities Act* [2017]) would strictly limit state and local cooperation with federal immigration authorities. The bill specifically includes college and university police departments, as well as other law enforcement agencies. Among other provisions, the bill stipulates that “No officer or employee of a law enforcement agency shall arrest or detain a person solely for immigration purposes.” The Bridgewater State University Police Department (BSUPD) supports this bill because it reflects our values and supports an important goal of the department: to create and maintain an immigrant-friendly campus environment.

Immigration Enforcement by State and Local Officers

“At 8:46 on the morning of September 11, 2001,” the *9/11 Commission Report* reads, “the United States became a nation transformed” (1). The devastating terrorist attacks on the World Trade Center towers and the Pentagon – perpetrated by 19 foreign nationals residing in the U.S. – turned the “self-confident and blithely liberal United States,” Princeton scholar Kim Lane Schepple writes in her 2004 article “Terrorism and the Constitution” (*University of Pennsylvania Journal of Constitutional Law*), into a nation “haunted by fear, more inward-looking, and less open to debate” (1023). Perhaps partly as a result of this new climate of fear, the U.S. has significantly changed its attitude toward immigrants. Post-9/11, much of the domestic response to the terror attacks has been a legal one. A major strategy in the “War on Terror,” for example, has been to greatly increase the enforcement of the nation’s immigration laws.

One aspect of the government’s focus on immigration enforcement is the proposal to use state and local police to

supplement federal resources devoted to that task. The 9/11 Commission, for instance, noted with approval the “growing role for state and local law enforcement” as part of the nation’s overall anti-terrorism strategy, including the formation of partnerships with federal law enforcement at “every stage of our border and immigration system” (390, 285).

The proposal to allow state and local police a greater role in immigration enforcement appears straightforward and simple enough: it is attractive as a substantial “force multiplier” which could be brought to bear on the immigration enforcement problem. There are only about 2,000 federal immigration agents nationwide, but, in theory, as Daniel Booth observes in his recent study in the *Harvard Journal of Law and Public Policy*, “Federalism on ICE” (2006), as many as 700,000 state and local officers could be authorized to assist in immigration enforcement efforts (1065). Despite its seeming advantages, however, the proposal to deputize state and local police to enforce immigration laws has proved controversial. Perhaps the most powerful of the arguments against the proposal is the substantially increased danger of racial and ethnic profiling by the police.

At issue, also, is the very real concern that limited local law enforcement resources will be distracted from their true mission, which is to prevent and investigate community-based crime and disorder. This is especially true in a period when declining state and local budgets have become the norm. The need for jail space, transportation, information technology, and staffing are all implicated in this issue.

Moreover, a major worry is that the enforcement of immigration laws by state and local police will chill the reporting of crimes by victims and witnesses. Police departments have

traditionally sought to maintain a degree of separation from federal immigration agencies. This has been done out of a sense that the principal mission of state and local police departments – maintaining public safety in the community – is hindered when members of immigrant communities who harbor strong fears of deportation begin to view state and local police as immigration agents.

Police need to win the trust of the communities they serve to effectively maintain public safety and confidence.

even terrorism. (The federal government has recognized this wisdom as well, by creating the special S, T, and U visa categories, allowing otherwise unauthorized aliens to remain in the U.S. for a term of years if they provide information concerning criminal or terrorist organizations, have been victims of human trafficking, or have been abuse victims).

Moreover, because most undocumented immigrants are members of minority groups, state and local immigration enforcement will, at best,

The BSU Police Department supports Senate Bill 1305 because it wants to ensure that a person’s right to file a report or receive police services is not contingent on citizenship or immigration status. The department values the diversity of the community it serves and makes every effort to ensure that its campus is a safe space for immigrants, both documented and undocumented.

This is an essential element of the “community policing” philosophy to which many state and local police departments subscribe. Good information is a vital law enforcement tool: if immigrants are at odds with law enforcement, the police lose valuable relationships that can lead to information that prevents crime, disorder, or

increase the numbers of confrontations between state and local officers and minorities. But, what is worse, the use of police officers as part-time, de facto immigration agents will undoubtedly encourage some of them to engage in or increase racial or ethnic profiling. Of course, when police officers stop a person solely on the basis of his or



her racial or ethnic heritage, they act illegally. Undeniably, in U.S. constitutional jurisprudence, no form of discrimination has been condemned more roundly than invidious discrimination based on a person's race or ethnicity. In a more practical sense, targeting people in this way does little to enhance homeland security. Yet, as Katherine Culliton writes in her 2004 essay in the *University of the District of Columbia Law Review*: "immigration enforcement and unconstitutional profiling of Latino immigrants in the name of national security has become the new status quo" (144). The routine and permanent participation of state and local police in immigration enforcement may also increase the troubling likelihood of racial profiling in non-immigration contexts and outside of periods of actual or perceived national danger.

It is for all of the reasons set out above that some localities have adopted "sanctuary" policies prohibiting

police from cooperating with federal immigration authorities. As legal scholar Laurel Boatright notes, these are sometimes referred to as "don't ask, don't tell" policies ("Clear Eye for the State Guy," *Texas Law Review* [2006], 1648). Sanctuary policies have come under attack, however, on various constitutional and public policy grounds. A 2006 lawsuit against the Los Angeles Police Department (LAPD), for example, asserted that, because "it was Congress's purpose and objective to promote the enforcement of U.S. immigration laws and the detection and apprehension of illegal aliens by eliminating the restrictions on the free flow of information between federal, state, and local officials," LAPD's sanctuary policy is preempted by federal law (*Sturgeon v. Bratton*, California Superior Court, 1 May 2006). Nevertheless, the number of localities adopting such policies has only increased since September 11, 2001.

A further argument against the use of state and local officers in immigration enforcement is that the diversion of limited state and local police officers' time to the enforcement of federal immigration laws will inevitably result in the diminution of resources devoted to ordinary law enforcement functions, including those on which U.S. homeland security policies depend. These include the protection of critical infrastructure, and service as all-important "first responders" forming the front line of defense to protect the nation's cities and towns.

Massachusetts Senate Bill No. 1305

If adopted, Massachusetts Senate Bill 1305 would establish uniform statutory guidelines for state and local interaction with federal immigration authorities. Enactment of the bill would essentially codify in law the Commonwealth's stance in response to the issues discussed in this paper. For certain, it



would definitively bar state and local participation in immigration enforcement: because police officers are creatures of state government, they cannot exercise any authorities exceeding the brief established for them by the state.

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In the aftermath of September 11, 2001, as the United States has hastened to fortify domestic security throughout the nation, Americans' philosophy on immigration has changed drastically. As part of the overall tightening of immigration law enforcement, the national government has proposed to federalize state and local police to assist in the enforcement of federal immigration laws. While this proposal is appealing at first blush, there are critical concerns that accompany state and local enforcement of federal

immigration laws. The proposal has the potential to blur the lines of authority and accountability that characterize the American dual-sovereignty model of federalism. It may also encourage racial and ethnic profiling.

In a practical sense, there is the question of whether community policing efforts will be jeopardized. Police departments contend that their communities will become less safe if undocumented immigrants stop reporting crimes because they fear deportation. This is why scores of municipalities have adopted immigration sanctuary policies limiting the ability of local officers to cooperate with federal authorities.

State and local police officers, as first responders, should concentrate on protecting their communities against crime and terrorism and decline the federal government's invitation to enforce immigration laws. Massachusetts Senate Bill No. 1305 would make this non-participation philosophy state policy. The Bridgewater State University Police Department supports Bill 1305, which reflects our desire and duty to support, serve, and protect all people, regardless of their immigration status.



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