

RESOLUTION 4-4-03

DIGEST

Federal Immigration Laws: Enforcement by California Authorities

Adds Penal Code section 777c to forbid state and local law enforcement agencies from stopping, arresting or detaining persons solely for suspected or alleged violations of the civil provisions of the federal immigration laws.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

None known.

Reasons:

This resolution adds Penal Code section 777c to forbid state and local law enforcement agencies from stopping, arresting or detaining persons solely for suspected or alleged violations of the civil provisions of the federal immigration laws. This resolution should be approved in principle because there is no California statutory authority for an officer to arrest for illegally remaining in the United States, and because requiring California peace officers to make such arrests would seriously tax already meager public resources.

Since early 2002, United States Attorney General John Ashcroft has been pressuring states to use state and local police officers to enforce federal immigration laws. (Schmitt, *Local Cops, INS Can Become Partners*, S.F. Chronicle (April 4, 2002) p. A-3.) This resolution makes express what is currently implicit in California law and expressed in a 2002 California Legislature Resolution: California cannot legally or financially do this. (Assem. Joint Res. No. 57 (2001-2002 Reg. Sess.))

The field of immigration is preempted by federal law set forth in the Immigration and Naturalization Act. (8 U.S.C. § 1101, et seq.; *DiCanas v. Bica* (1976) 424 U.S. 351, 354.) Absent special circumstances, an unauthorized entry into the United States is a misdemeanor and violation is complete at the time of entry. (8 U.S.C. § 1325 (a); *United States v. Pruitt*, (9th Cir. 1983) 719 F.2d 975, 978, cert. den. 464 U.S. 1012 (1983).) Once the illegal immigrant has passed the border, continuing to stay in this country is not a crime, but rather a civil offense. (*Gonzales v. City of Peoria*, (9th Cir. 1983) 722 F.2d 468, 476.) INS detentions prior to deportation are civil detentions and have no criminal implications. (*United States v. Drummond* (11th Cir. 2001) 240 F.3d 1333, 1336, citing *United States v. Cepeda-Luna*, (9th Cir. 1993) 989 F.2d 353, 355-356.) Thus most immigration violations are civil in nature. The California Legislature has declared that state and local law enforcement agencies, which normally handle only criminal offenses, lack authority to stop, arrest or detain persons based on suspected or alleged violations of these civil federal immigration laws. (Assem. Joint Res. No. 57 (2001-2002 Reg. Sess.)) Furthermore, enforcing civil immigration laws would strain local law enforcement resources and adversely affect the enforcement of state and local laws. (*Ibid.*)

This resolution provides that, in general, state and local officers shall not stop, arrest or detain persons based solely on violations of the civil federal immigration laws. However, when the INS issues a “detainer” (in essence a civil arrest warrant [see, 8 U. S. C. § 1356 (d)]) this resolution would allow state officers to make the arrest, but only for the limited time provided for in the detainer. This resolution adequately balances the federal need to act quickly to pick up dangerous illegal immigrants with the state’s need to preserve its sovereignty and budget.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Penal Code section 777c to read as follows:

1 §777c
2 State and local law enforcement agencies shall have no legal authority to stop, arrest, or
3 detain persons based solely upon suspected or alleged violations of the civil provisions of the federal
4 immigration laws, except when detention is mandated pursuant to a detainer issued by the
5 Immigration and Naturalization Service and only for the period of time authorized by the detainer.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: State and local law enforcement agencies lack legal authority under California law to stop, arrest, or detain persons based upon suspected or alleged violations of the civil provisions of federal immigration laws, but they are pressured to do so by the United States Department of Justice.

This Resolution: Adds a provision to the Penal Code to state explicitly that state and local law enforcement agencies lack the legal authority to stop, arrest, or detain persons based upon suspected or alleged violations of the civil provisions of federal immigration laws, except when detention is mandated pursuant to a detainer issued by the Immigration and Naturalization Service and only for the period of time authorized by the detainer.

The Problem: The United States Department of Justice has adopted a policy of encouraging state and local law enforcement agencies to enforce federal civil immigration laws. The Justice Department's plans authorize local and state law enforcement agents to arrest and detain persons without any cause to believe those persons have committed any crime, other than violating immigration status requirements which, for the most part, are civil in nature. The assertion that states have inherent authority to enforce civil immigration laws is contrary to long-standing policy that civil immigration laws are the purview of federal immigration officers, and presents both practical and federalism concerns.

State and local law enforcement agencies have objected to the Justice Department's efforts to enlist them as agents of the federal government for matters in which they are not trained. The California Police Chiefs Association has urged the Justice Department that "in order for local and state law enforcement organizations to continue to be effective partners with their communities, it is imperative that they not be placed in the role of detaining and arresting individuals based solely on a change in their immigration status." Negative impacts on local law enforcement agencies include:

Distraction of limited resources from the communities that they serve.

Discouragement of members of immigrant communities to provide valuable information to local law enforcement agencies, making it more difficult to enforce state and local laws and to protect communities from terror and violent crime, resulting in loss of community sources and an adverse impact on anti-terrorism efforts.

Misuse of the talents of local law enforcement agencies by redirecting efforts in federal areas in which they are not trained.

Because of these concerns, the legislature passed Assembly Joint Resolution No. 57, introduced by Assembly Members Diaz and Firebaugh, on June 28, 2002, relative to immigration law enforcement. AJR 57 directed the Chief Clerk of the Assembly to transmit a copy of the resolution to United States

Attorney General John Ashcroft. Whereas AJR 57 stated the reasons why state and local law enforcement agencies do not have the authority to enforce the Justice Department's demands, this resolution urges the Legislature to codify the role of state and local law enforcement agencies with respect to the enforcement of federal immigration laws.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Jeffrey L. Bleich, Munger, Tolles & Olson LLP, 33 New Montgomery, 19th Floor, San Francisco, California, 94105, telephone (415) 512-4000, fax (415) 512-4077, e-mail bleichjl@mto.com

RESPONSIBLE FLOOR DELEGATE: Scott McMillen