

Implementation of Section 133 of IIRIRA

Background

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Section 133 amended the Immigration and Nationality Act (INA) by adding Section 287(g). Section 287(g)(1) permits the Attorney General to enter into written agreements with a State (or State subdivision) so that qualified State (or State subdivision) officers can perform designated functions of immigration officers.

The legislation requires the Attorney General, as represented by the Immigration and Naturalization Service (INS), to enter into a written agreement with the State or local subdivision in order to delegate the functions. The INS is to train and supervise the officers operating under the terms of the agreement who are considered to be under color of Federal law. The functions are to be carried out at the expense of the State or local jurisdiction.

Issues

There is a great deal of concern about this level of cooperation between INS and local law enforcement from community and advocacy groups, particularly in the Hispanic community. The fear is that it will lead to violations of civil and constitutional rights on the part of insufficiently trained and perhaps wrongly motivated local police, and that it will add to the fear among members of being deported as a result of reporting or serving as a witness to a crime.

There is also an intense level of interest among some law enforcement agencies and members of Congress (particularly in Southern California, and rural Iowa, Nebraska, Georgia, and Texas) in empowering local officers to question, arrest, and remove illegal immigrants within their jurisdictions.

2. The INS is acutely aware of the possible problems involved in implementing Section 133. While the force-multiplier effect might provide needed assistance in rural areas, there is a likely potential for overwhelming down-line INS resources such as transportation and detention. This could result in a repeated scenario of individuals arrested by a local officer and released by INS. Given these concerns and constraints, INS has chosen to proceed with a cautious and measured approach.

Status

INS is proceeding along three tracks: a pilot project with Salt Lake City to gain on-the-ground experience with this new opportunity; a dialogue with community and law enforcement groups across the country to clarify issues and concerns; and an assessment of required down-line resources to support broader implementation.

Pilot Project

The Attorney General and Senator Hatch agreed last year that a pilot project would be conducted in Salt Lake City. After negotiations at the local level among INS, the Police Department, and community representatives, and at the national level within the Department of Justice (including the Civil Rights Division and the Community Relations Service), a Memorandum of Understanding (MOU) has been prepared for signature by the INS Commissioner and the Salt Lake City Mayor, pending City Council consideration. A companion MOU between INS and Salt Lake County is also being negotiated, and is tentatively scheduled for signature on the same day.

The Salt Lake City MOU allows a small group of selected, trained, and supervised police officers to conduct immigration questioning and execute immigration arrests only after a lawful arrest has been made on state criminal grounds or repeat municipal offenses. It also allows identified officers to arrest individuals who are listed in an automated criminal database (the Deported Felon File), provide transportation of INS detainees to INS-designated sites, and provide case processing assistance.

INS data base ?
The Salt Lake County MOU would allow selected, trained, and supervised sheriff's deputies to provide transportation of INS detainees to INS-designated sites, and provide case processing assistance.

The one year pilot project will be the subject of both process and impact evaluations. In addition, Police Chief Ruben Ortega has created a steering committee of community representatives, the Mexican consul, local and federal enforcement agencies, the U.S. Attorney, and a representative from Senator Hatch's staff to oversee and guide project implementation.

Dialogue

After implementation of the pilot project, INS will expand its discussions with community groups and law enforcement officials to determine the best way to proceed. Based upon these discussions, and interim learnings from the pilot project implementation experience, proposed plans for implementing Section 133 will be published in the Federal Register for public comment.

A briefing on the Salt Lake City pilot project is being scheduled for Congressional representatives on August 11 at 10 a.m., and for community groups at 2 p.m. on the same day.

where ?

(301) 592-9025

287(g)

Hatch is concerned w/ ~~former~~ ^{convicted} people ~~arrested~~ on drug offenses; deported; returned.

~~* Local police don't have enough detention space to~~

→ Police say that they recognize them

~~* Felons~~ are not supposed to come back into the country.

Shortage of detention space.

Hatch joins a crime summit mtg. in Salt Lake City

Community work group in Salt Lake City
Ortega (police chief)

Local police
Local advocates
Mayor's office

Contact some

Grassley
Latter

Barbara Huey