

## FACT SHEET

# STATE AND LOCAL AUTHORITIES & THE MILITARY IN IMMIGRATION ENFORCEMENT

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Upon entering office, President Trump issues several Executive Orders on immigration, several of which having implications for state and local governments. While immigration enforcement primarily falls under federal jurisdiction, states and localities play a significant role in how these policies are implemented on the ground. This memo provides an overview of the state's role in immigration enforcement, key concerns with such cooperation, and the legal parameters governing the federal use of military forces in this context.

## WHAT'S THE ROLE OF STATES AND LOCALITIES IN IMMIGRATION ENFORCEMENT?

The federal government, through agencies like U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), is constitutionally charged with enforcing immigration laws. States and localities are not prohibited from collaborating with federal authorities and are [generally not required to](#). Today, the most common forms of cooperation that states provide to the federal immigration authorities are through:

- ▶ [287\(g\) Agreements](#) which allow local law enforcement to perform immigration functions under ICE supervision;
- ▶ Cooperation in the [Secure Communities](#) program which facilitates biometric data sharing between federal and state databases to identifying undocumented individuals;
- ▶ The use of [ICE Detainers](#), which are requests made by ICE to local law enforcement to hold individuals for immigration processing until they can be transferred to federal authorities; and
- ▶ Requests from DHS to facilitate enforcement actions in their state or locality.

The federal government may also have indirect funding tools to influence state and local government decision-making in these areas. Under the first Trump administration, the DOJ conditioned [Byrne Justice Assistance Grant](#) funds - the leading source of federal justice funding to state and local jurisdictions - in cooperation with federal immigration enforcement. The policy was challenged in the courts leading to mixed outcomes at the circuit court level. Although the Biden administration abandoned these efforts, Trump will likely revive them and may seek Supreme Court resolution. Trump-era policies also included incentives, such as prioritizing [COPS Hiring Program](#) grants for jurisdictions complying with immigration enforcement, a practice upheld by the Ninth Circuit. The next Trump administration could re-up these strategies while also attempting to condition cooperation to broader federal funding to immigration-related compliance, such as education loans and FEMA grants.

## WHAT DO PRESIDENT TRUMP'S EXECUTIVE ORDERS SAY ON STATE/LOCAL COOPERATION?

The Trump administration has made it a strategic priority to expand the role of state and local authorities in immigration enforcement while simultaneously broadening the scope of who can be deported. To date, key directives include:

- ▶ [287\(g\) Expansion](#). This program authorizes state and local law enforcement officers to perform federal immigration enforcement duties, including identifying, detaining, and initiating deportation proceedings against noncitizens.

- ▶ [Attacks on Sanctuary Policies](#). Trump's orders direct the Department of Justice (DOJ) and the Department of Homeland Security (DHS) to penalize jurisdictions that limit cooperation with immigration enforcement. The DOJ has followed with a [series of related directives](#) that signal their intent to go after federal funding and taking legal action.
- ▶ [Homeland Security Task Forces](#). The administration mandated the creation of Homeland Security Task Forces (HSTF) in every state, ostensibly aimed at addressing human trafficking, dismantling drug cartels, and combating transnational crime. HSTFs are directed to facilitate closer cooperation between federal and state agencies on immigration-related matters.
- ▶ [Invoking Little Known Provision to Request Help from the States](#). DHS declared a "mass influx" of migrants, a designation that allowed the agency to invoke a little-known authority to request—though not compel—state and local governments to assist in federal immigration enforcement efforts.

Together, these measures seek to increase state and local involvement in federal immigration enforcement, effectively deputizing local authorities while escalating deportation efforts nationwide.

## WHAT ARE SOME OF THE HISTORIC FLASHPOINTS SURROUNDING THIS RELATIONSHIP?

The relationship between the federal government and the states has historically involved a number of thorny issues. Some of these include:

- ▶ **Civil Rights and Due Process Violations**. State involvement in immigration enforcement can expose local actors to lawsuits over civil rights violations, such as racial profiling and the unlawful detention of U.S. citizens. These actions carry considerable legal and reputational risks for states. For example, successful and very costly lawsuits against localities have repeatedly found that prolonged detention of individuals in compliance with "detainer requests" violate due process rights, as detainers do not constitute legally valid arrest warrants.
- ▶ **Legal Preemption and State-Laws on Immigration**. The doctrine of federal preemption bars states from encroaching on areas traditionally reserved for federal authority, such as immigration enforcement. In recent years, states like Texas ([SB4](#)) and Arizona ([Proposition 314](#)) have advanced legislation testing new approaches to circumvent it, clearing a path for local officials to enforce federal immigration laws. While these measures are being challenged in the courts, a Trump DOJ could shift its posture in the litigation, potentially having significant impacts on immigration enforcement in the U.S.
- ▶ **Public Safety Concerns**. Multiple studies indicate that state and local participation in federal immigration enforcement undermines public safety by deterring immigrant communities from reporting crimes, thus eroding trust in law enforcement. For example, distrust of law enforcement may prevent [domestic violence survivors](#) from reporting their abusers, fearing immigration consequences.
- ▶ **Local Economies and Other Considerations**. Close ties to federal immigration enforcement can harm local economies, particularly in areas reliant on immigrant labor, and disrupt American families in mixed-status households. Such consequences often become politically sensitive, posing challenges for elected officials balancing enforcement with constituent concerns.

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- ▶ **Pushing the Envelope on the National Emergency Authority**. Trump has declared a [national emergency](#) at the southern border. The Department of Defense will be required to send personnel to the border, erect barriers, and provide and operate drones and other surveillance measures. Historically, military personnel have been deployed in support roles, such as surveillance and logistics, rather than direct law enforcement - which is [generally prohibited](#) under federal law - but observers are concerned that Trump could enmesh the military with immigration policy objectives by ordering it to conduct civil law enforcement on U.S. soil.

- ▶ **Use of the Alien Enemies Act.** Trump has directed the DOJ Attorney General and the DHS Secretary to take “all appropriate action, in consultation with the Secretary of State, to make operational preparations regarding the implementation of any decision [he decide] to invoke the [Aliens Enemies Act](#).” The Act is a wartime authority that states that the president may detain or deport the “natives and citizens of an enemy nation.” This authority has been used against German, Austro-Hungarian, Japanese, and Italian immigrants during the World Wars. To date it has not been invoked, but if it is it could be used to justify the targeting of immigrants without a hearing and based only on their country of birth or citizenship.
- ▶ **Use of the Insurrection Act.** This law, which was not in the Trump administration’s Day 1 executive orders, allows a president to deploy federal troops to suppress civil unrest, rebellion, or interference with federal law. It has rarely been invoked and requires clear justification. Historical examples include its use during the Civil Rights Movement (1960s), Hurricane Hugo (1989), and the Los Angeles Riots (1992). President Trump considered invoking the Insurrection Act during nationwide protests stemming from the killing of George Floyd but ultimately refrained.
- ▶ **Use of the National Guard.** States and territories play a key role in the use of the National Guard, as governors generally control their activation and deployment. However, in certain circumstances, the president can federalize the National Guard if needed to provide support during national emergencies. When the National Guard has been federalized, they are [prohibited](#) from participating in law enforcement activities. While to date National Guards have not been federalized, Trump did consider using this power in his first term to restore order following the killing of George Floyd.

## TO DATE, WHAT HAVE STATE AND LOCAL OFFICIALS SAID IN RESPONSE?

- ▶ [Police Chief Todd Schmaderer, Omaha, NE](#): “The Omaha police department has no plans to participate in any raids...Omaha police officers do not and will not stop individuals to check their legal status.”
- ▶ [Police Chief Brian O’Hara, Minneapolis, MN](#): “It would have a very chilling effect on our ability to provide public safety in the city if people were afraid to call the Minneapolis police because they think we’re going to call Immigration on them...We have no interest in people’s immigration status.”
- ▶ [Las Vegas Metropolitan Police Department](#): “Officers will not stop and question, detain, arrest, or place an immigration hold on any individuals on the grounds that they are an undocumented immigrant.”
- ▶ [Chicago Police Department](#): “The Chicago Police Department will not assist or intervene in civil immigration enforcement in accordance with the city of Chicago Municipal Code.”
- ▶ [Police Chief Chris Bailey, Indianapolis, IN](#): “IMPD has not been asked to take part in immigration sweeps, nor do we have any intention of doing so - this is not our role.”
- ▶ [Sacramento Police Department](#): “The Department will not initiate police action based solely on an individual’s immigration status.”

## CONCLUSION

When determining their role in cooperating with federal immigration authorities, states and localities must carefully balance federal cooperation, community impact, and legal obligations. Through its new executive actions, the Trump administration has made it clear that expanding the role of states and localities in immigration enforcement is central to its strategy for its immigration crackdown. By understanding these dynamics and their implications—such as increased racial profiling, family separation, and the disruption of mixed-status families—governors and mayors can develop informed policies that protect public safety while fostering trust within their communities.