

DOMESTIC SECURITY AND ILLEGAL IMMIGRATION

A REVIEW AND DISCUSSION OF ISSUES

"I know of no safe depository of the ultimate powers of society but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion the remedy is not to take it from them but to inform their discretion."

Thomas Jefferson

FOUNDATION QUESTIONS

Would the presence of 12-20 million illegal/undocumented foreign nationals whose identities cannot be authenticated represent a domestic security issue?

Would an incapacity to identify and determine the criminal past and/or past criminal or terror association of 12-20 million people who had unlawfully entered the U.S. represent a domestic security threat?

Would the presence of thousands (and potentially hundreds of thousands) of people who had applied for and been granted citizenship or legal permanent resident status through fraud and false declaration create a domestic security threat?

If we knew (or should know) that a significant number of violent or organized criminals (MS-13, Zetas, 18th Street gang, Mexican Mafia, Hizballah, al-Qaida) were resident in the unknown illegal foreign national population would this represent a domestic security threat?

Would an inability to search foreign nation data bases for administrative background check and authentication of identity create a domestic security threat during the process of granting legal permanent residence (LPR) status or amnesty?

Is there truly a “rule of law” in the U.S. and should it be subordinated to the interests of foreign nationals illegally present in the U.S. or any other group?¹

DISCUSSION

Concerns have become more public and vocal on the complex issues involved with immigration and more particularly illegal non-immigrant entries into and visa overstays in the U.S.

Intelligent and well informed persons have come to completely opposite conclusions on the primary issues. Largely, not whether immigration and more particularly illegal immigration is a domestic security threat but rather, what will we and can we do about this threat?

No one solution appears to solve the complex problems abounding in the matter of illegal immigration. A great body of evidence is easily found in researching archival testimony to Congress and in statistical studies that have been published annually. As in our generally shared experience with any complex litigation there seems to be experts of differing opinions on all sides of the immigration debate.

In an effort to frame the discussion of illegal immigration there may be some general starting points. First and foremost we might recognize the primary mission of law enforcement; preventing crime (terror attack included). We know from experience that preventing crime requires the rigorous enforcement of law. A significant and overarching element of Florida law enforcement's crime prevention mission is to protect the State of Florida from terror attacks.

CONTEXT:

Among the salient fact, information and evidence that has been offered to date we could focus on a few elements that I believe are directly applicable to formulating a position on the matter of illegal immigration. I have attached a fact sheet that is a compilation of information from various sources that I believe represents some of the more critical concerns.

¹ “The rule of law, sometimes called “the supremacy of law”, provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application.” Black’s Law Dictionary, sixth edition, page 1332.

Socio-economic considerations have been intentionally omitted from this paper. Only those concerns directly affecting our law enforcement and domestic security mission have been included.

CONSIDERATIONS:

ARGUMENTS AGAINST IMMIGRATION LAW ENFORCEMENT

Enforcement of immigration law has been said to have a chilling effect on relations between the illegally present foreign national population and local law enforcement. In essence, the argument is that the illegally present foreign national will not report crime to the police if immigration laws are strictly enforced and there exists a potential that the illegally present foreign national would be detained or deported.

It has been stated that the 800k law enforcement officers of the U.S. cannot detain the large volume of illegally present foreign nationals that are currently resident in the U.S. if immigration law was strictly enforced.

Some have said that enforcement of the current law would separate families inasmuch as illegal foreign nationals may have children who now qualify as U.S. citizens born within the U.S.

Many argue that enforcement of immigration law is purely and exclusively a federal responsibility.

Finally, there is the statement that the majority of illegal foreign nationals in the U.S. are simply attempting to provide a better life for themselves. That other than the original federal law violation of entering the U.S. without inspection (EWI) or overstaying authority to visit the U.S. the illegal foreign national is not involved in criminal activity.

LAW ENFORCEMENT PERSPECTIVE:

Although there is some variation in positions from professionals in the law enforcement discipline on the matter of illegal immigration, I believe that as a whole we must be true to the discipline's ideals and principles and not allow our duties to be tainted by personal opinion or external influence.

Unbiased, unprejudiced and influence free enforcement of law is a keystone principle of professional law enforcement; an ideal inviolate. It sets the U.S. apart from other nations where corruption is incipient and palpable.

This feature of professional application of law above influence peddlers, beyond prejudice and to the exclusion of bias or favoritism is the foundation attribute of our nation's law enforcement lineage. Lady Justice is intentionally blind to external influence. Favoritism is strongly opposed in law enforcement and distasteful to law enforcement professionals. Therefore the suggestion that we should avoid enforcement of a particular law due to other influences or favoritism to a whole class of individuals (employers of illegally present foreign nationals, industries that profit by the presence of the illegal foreign national or the illegal foreign national themselves) is contrary to the sworn duties of law enforcement and an invitation to justifiable criticism from those we serve. Corruption of principled enforcement invites cynicism in law enforcement professionals as well as the public. Dispassionate enforcement of law is taught at our academies and is an attribute of a professional law enforcement officer.

The risk to the professional law enforcement officer in the rigorous enforcement of law is an accusation that we are insensitive. Certainly a balance must be struck between unequivocal enforcement and permissive law violation but there is no universal guide. Granting a "no enforcement" rule to a complete class of people (illegally present foreign nationals) is a slippery slope that breeds arrogance in the subject population and allegations of special treatment against law enforcement.

The performance of law enforcement duties, critical not only to public safety but also to domestic security, must be consistent. Our efforts across Florida, and ultimately across all states, must be uniform, jurisdiction to jurisdiction. Consistent application of law through professional enforcement efforts results in a clear and bright line expectation of certainty in the public we serve and criminal element we intend to deter. "Certainty" in the enforcement realm is as relevant as "certainty" and "swiftness" is in the formulation of effective punishment. If we fail at consistency, individuals surely will develop a sense of being able to manipulate the justice system by exploiting the inconsistent application of law and offering justification and rationale for favored treatment.

Failure to apply professional consistent enforcement to the continuing illegal presence of millions of illegal foreign nationals resident in the U.S. constitutes selective law enforcement for an entire class of people. Outright refusal to enforce immigration law when authorized to enforce this law constitutes a fea- sance violation; more particularly nonfeasance.

The argument has been made that unauthorized presence is a federal law violation and therefore a federal responsibility. This is offered as one reason that local and state law enforcement officers should not enforce this law. Certainly if a specific preclusion existed for a local or state law enforcement officer to enforce immigration law then local and state officers should avoid enforcement. However, the Immigration and Nationality Act (INA) is vast and offers many provisions related to local law enforcement interests. For instance, possession of a firearm properly encased within a vehicle in Florida by either a U.S. citizen or legal permanent resident is lawful. Possession of this same firearm, although legally encased and otherwise qualified for carry in Florida, if carried / transported by a foreign national illegally present is a federal violation, AND a potential direct threat to law enforcement. My question is why wouldn't we assist in the enforcement of this law based at least on officer safety concerns? Similarly, as a Sheriff's Office with coastal border we encounter vessels from time to time with excess numbers of people (12-25 people), portable fuel pumps, illegal fuel cells and large quantities of canned goods and water on board and other indicators of human smuggling. Who are these people and what are their intentions? The fact that the U.S. State Department identifies forty-two (42) foreign terror organizations and that these organizations are known to be exploiting our borders should be of critical concern to law enforcement. Six (6) of these organizations are either Latin or have Latin cells with access to Florida's coast. Certainly there should be a concern if not a duty for local and state law enforcement to better know who is landing on our shores. In my view, temporary detention of unknown subjects to determine origin and name is a duty during these suspicious landings. Scenarios with tangential immigration enforcement but explicit law enforcement safety, domestic security and duty performance considerations are potentially endless. Arguing against immigration enforcement in such scenarios is imprudent at least.

Opinions on the authority of local law enforcement to enforce federal immigration law remain diverse. One such opinion, though not binding on local law enforcement, issued by the Department of Justice Office of Legal Counsel (OLC) and announced by then Attorney General Ashcroft in 2002 acknowledges an inherent authority of state and local law enforcement officers to enforce civil and criminal immigration law violations. Also, federal district courts have found for the authority of state and local officers to enforce immigration law while in the performance of their routine duties (largely, traffic enforcement) and for the preservation of state sovereignty in the matter of illegal immigration into the states.

If our reluctance to enforce federal immigration law is simply our effort to avoid the "politics" and personal attacks upon ourselves in this controversial

arena we are better served to enforce the law. We currently enforce federal law relative to bank robbery, child exploitation, drug trafficking and smuggling, human trafficking and smuggling, kidnapping, murder and others. Domestic security considerations now attendant to illegal immigration and absconder law flaunting gives rise to at least equal enforcement standing for law enforcement of immigration law at all levels of government. Law shopping on which laws to enforce and which laws to ignore is at least a violation of our oaths and ethically wrong. Cynicism develops when our laws are offered for sale by employers who in the interest of marginal profits hire the illegal and insist that government look the other way. Current law (Immigration and Nationality Act) provides adequate consideration for employers unable to fill jobs with American citizens, Legal Permanent Residents or legal visitors/workers. For instance, employers may apply for foreign worker legal status under the Bureau of Citizenship and Immigration Services. Form I-129, "Petition for Nonimmigrant Worker" (H-1B, H-1C, H-2A, H-2B, H-3, L-1A, L-1B, O-1, O-2, O-3, P-1, P-2, P-3, Q-1 or R Visa) permits an employer to pay a fee of \$190 plus either \$1500 or \$750 depending upon the number of workers employed in the employer's business (after certifying to the Department of Labor that the employer has been unable to fill the job(s) with U.S. citizens or other legal workers). The employer then may be permitted to secure workers from candidate countries to fill positions on a temporary, long term basis. The argument that we must have illegal foreign nationals to fill the non-skilled labor jobs of this nation appears to be an argument based on flawed reasoning. Filling these jobs requires following an established process and existing law rather than the abandonment of both law and process.

The argument that enforcement of immigration law by local law enforcement would have a chilling effect on the reporting of crime to police by foreign nationals illegally in the U.S. is more troubling. It is impossible to prove the negative; that some event or circumstance will not occur if we impose a specified action. For instance, how much crime did we prevent in any given patrol tour by our visibility? We do not know the answer to this question.

The reporting of crime is a personal decision. There is circumstance which orients a person more towards avoiding contact with the police. This may range from cultural predilection (such as that known to exist for foreign nationals originating from Mexico and other developing nations), to lacking confidence in law enforcement to resolve the instant issue, to those who are involved in criminal activity and choose to remain anonymous and keep their own criminal activity secret.

To ignore violations of law on any pretext, for a complete class of persons (i.e. illegal foreign nationals) is to risk charges of gross nonfeasance. Strong and persuasive a priori argument is clear that there would be no victimization to report of illegal foreign nationals if the illegal foreign national had not entered and/or remained illegally within the country.

The putative argument that a chilling effect is created if immigration law is enforced also suggests a quid pro quo relationship between a law enforcement agency head and the community of illegally present foreign nationals. Negotiating law enforcement of one law (non-enforcement of immigration law) in the hopes of acquiring information on the violation of other laws (victimization of illegally present foreign nationals) seems to create a critical condition that we are attempting to avoid. If we are willing to accept that enforcement of immigration law may well capture a future Mohammed Atta and thus potentially deny a future terror attack what are we giving up in the further under-reporting of crime to law enforcement. Review of statistical information clearly concludes that the vast majority of crime reported (approximately 80% annually) is property crime (burglary, larceny and motor vehicle theft). From a purely practical view, forfeiting the report of a property crime (typically the clearance rates for these crimes are in the 16%-20% realm) for the capture of persons illegally present in the U.S. and who may well represent a threat seems a reasonable bargain. We would also be reinforcing the deterrence message and clearly stating our commitment to the "rule of law" by enforcing all law while exercising situational (as opposed to wholesale) discretion.

Either the existing immigration law is worthy law or it is flawed, bad law. If the law is worthy it bears enforcing. If the law is flawed then it should be immediately amended or rescinded. Regardless of the condition of the law or the legal status of the U.S. population, victimization surveys consistently reflect that only an estimated 42% of all crime occurring in the U.S. is reported to the police. Whether a person is legally resident in the U.S. or not, less than half of the crime occurring in the nation is reported to law enforcement. This will not improve by a refusal to enforce existing law. In fact, a persuasive argument may be made that a published refusal to enforce existing law erodes public confidence in law enforcement agents and creates a perception that law enforcement cannot be trusted to consistently apply lawful authority to known crime. It would follow that a view would be created that law enforcement functions on bias and gross discretion while practicing favoritism by class distinctions. It would seem a reasonable proposition to conclude that such a refusal only further reinforces the cultural predilections

of nationals from emerging countries by punctuating their perceptions that law enforcement cannot be trusted to properly enforce law. Certainly U.S. citizens regularly receive the attention of law enforcement for violation of law, whether for civil or criminal violations. Refusing to enforce violations of law committed by illegal foreign nationals is clearly unjust and a form of discriminatory practice against U.S. citizens who receive full attention from law enforcement for violations of law.

Law enforcement professionals who rely on the argument that enforcement chills the relationship between the foreign illegal population and law enforcement have generalized their concern. The Immigration and Nationality Act (1952 as amended) is vast. There are many enforcement features within the Act. Are we to avoid arresting known criminals who are also illegally present foreign nationals? Shall we ignore gross violations of illegal hiring practices within the worksite brought to our attention by concerned citizens? Shall we permit a foreign national illegally present to possess a firearm, otherwise permitted for citizens? If immigration absconders are contacted are we to ignore them or detain and report the absconder's presence to I.C.E.? Shall we ignore foreign nationals violating our borders by incursion?

Most agency heads would agree that we should not initiate wide area "round ups" where farm fields or processing plants are checked and searched for illegally present aliens.²

However, we have a duty to thoroughly pursue regular contacts with individuals suspected of being illegally present in the U.S. (such as requiring identity documents on traffic stops which provides us the opportunity to check for arrest warrants or officer safety warnings).

It could also be argued that worksite enforcement at a minimum for critical sites (power plants whether nuclear or fossil fuel, schools, hospitals, utility companies, water plants, etc.) should occur. Such enforcement deters attempts by illegal foreign nationals to remain in the country but avoids the direct contact with the illegal. Checking employment records against the federal data bases with Social Security Administration and Labor Department (Wage and Hour) even for farm labor or processing plant employees does not require direct prior contacts with the employees and thus the chilling effect would be minimized or eliminated.

To further reduce the "chilling effect" of immigration law enforcement we might gain benefit by formulating a domestic security strategy to encourage

² The sheer volume of visa types (230), complexity of immigration law and the absence of local authority to stop subjects to inquire on their legal status militates against local **independent** enforcement action.

illegal foreign nationals to report serious crime. Some inducements may exist for cooperative assistance. For instance, if an illegal foreign national agrees to cooperate in the perfection of complex domestic security investigations (reporting extremists and/or organized criminal activity) a legal temporary work sponsorship might be offered by the government. The T-Visa program is premised on illegal foreign nationals cooperating in prosecution of crime and offers the illegal foreign national the possibility of LPR or citizenship status. Such an incentive would likely work to the benefit of law enforcement as we have seen similar benefits in use of confidential sources in virtually all organized criminal enterprise enforcement efforts. Some innovation in this arena may advance mutual interests.

Regardless of the assessment of whether we can affect greater or lesser reporting of crime from the illegal foreign national population there are practical problems that must be resolved by local law enforcement. Recent data analysis for Collier County suggests that a significant percentage of our crime can be attributed to foreign nationals illegally present in the U.S.

Founded on the number of self admitted illegal foreign nationals incarcerated in the Collier County Sheriff's Office jail system (expressed as a proportion of total jail inmate population) we estimate that at least 22% of our crime can be attributed to illegal foreign nationals. We estimate the expense of this population to be approximately \$9 million annually. A current review of outstanding felony arrest warrants reveals that approximately 40% (39.8%) of ALL felony warrants (720 of 1805 felony warrants) are for the arrest of illegally present foreign nationals. Similarly, but more alarmingly, for ALL murder arrest warrants approximately 60% (58.8% or 10 of 17 subjects) are judged to be illegally present foreign nationals and 88% (15 of 17 wanted subjects) are warrants issued for the arrest of foreign nationals. When the illegally present foreign national is both the alleged criminal and the victim of crime the situation is exacerbated by the presence of both. In plain terms, if the foreign national was not illegally present s/he could not commit criminal acts and similarly, if not illegally present the foreign national victim could not be victimized. By extrapolation, the crime picture in Collier County would be significantly improved without the presence of illegal foreign nationals.

At the very least and taken in the most favorable light, the illegal foreign national contributes un-necessary public expense and direct threat to Collier County when viewed from the perspective of crime. Costs of judges, juries, prosecutors, public defense, investigations, depositions, victim services, victim compensation and court affiliated costs all militate toward reducing this un-necessary expense through rigorous enforcement of existing law.

The answers to the remaining major arguments can be more briefly answered.

Refusing to enforce law because a family may be affected by the removal of a family member who is illegally present in the U.S. is an additional slippery slope and profoundly corruptive. In fact, a form of noble cause corruption is created in such a circumstance in which the argument is posited that the end (preserving the family intact) justifies the means (ignoring the enforcement of law). Though we will always be sensitive to such an outcome of separating family members wanted for law violation it is dangerous to base our enforcement decisions on this outcome only. In the situation of illegal immigration such a circumstance of family separation may be repeated millions of times and the refusal to enforce law could be epidemic for a complete class of people (the illegally present). We are not permitted such law enforcement license when arresting burglars, thieves, dead beat dads, traffic offenders or other scofflaws.

The fact that people have trespassed into the sovereign U.S. to make a better life for themselves and their families is usually offered as the motive for the violation of immigration law. I believe that this motive inspires most of the foreign nationals illegally present, but not all. Regardless of motive I believe that law enforcement professionals must remain dedicated to the proposition that such a circumstance must be dispassionately resolved in favor of law enforcement. Otherwise, all enforcement efforts must be weighed against the measure of motives. The most frequently mentioned application of this excuse for the flaunting of immigration law violation is for Mexican Nationals illegally entering and remaining in the U.S. However, we are reminded that poverty is not exclusive to Mexico but is found in virtually every nation including the U.S. and some nations are noted for abject poverty. For instance, Mexico is ranked by the United Nations on its' development index as having only 9.9% of its' population "living below \$1 a day" whereas Ethiopia has 26.3%, Mali has 72.3%, Zambia 63.7%, Zimbabwe 56.1%, Madagascar 61.0%, Bangladesh 36.0%, Nigeria 70.2%, Nicaragua 45.1% and El Salvador 31.1%. In fact, Mexico ranks above the poverty stricken countries of Haiti, Yemen, Cambodia, Morocco, India, Egypt, Honduras and 83 other nations on the poverty index. If the argument is that illegal non-immigrants from Mexico should enjoy special consideration due to poverty alone there appears to be many countries in that line that would stand before Mexico in prominence for consideration. Our current immigration law offers relief by measured visitor quota for poverty in accepting persons into the U.S. from the various nations afflicted.

The argument that the only law violation committed by persons illegally present in the U.S. is the original violation of entering without inspection or

overstaying lawful authority is also wrong. All foreign nationals are required to register their current location with the federal government while in the U.S. There is no exception for foreign nationals illegally present. In addition to this crime, there are the crimes associated with false identity, fraudulent application for driver licensing, obtaining driver licensing through fraud, possession of false documents (fraudulent driver license, social security or other official documents such as forged visa or passport – documents necessary to acquire a driver license in most states), driving without license, tax evasion, welfare fraud/obtaining welfare benefits while illegally present and potentially many more.

Finally, the thought that we can not detain nor officially remove 12-20 million people illegally present in the U.S. would likely be at issue if we were attempting to mechanically remove each of these persons. However, the 800,000 law enforcement officers of the U.S. arrested people in the lower end magnitude (14+ million people, 2004 calendar year) of this number in recent years demonstrating a capacity to perform at this level. Importantly though, it should not be necessary to physically arrest and remove each of these illegally present foreign nationals if attrition through worksite enforcement is permitted to function as it should. Clearly, illegal foreign nationals could neither remain in the U.S. nor would they have incentive to remain, if they were unable to find employment (or access welfare system benefits).

The current law, though un-necessarily vast and complex, could insure the gross reduction of illegally present foreign nationals IF we enforce the law and properly resource our federal enforcement agencies to perform the necessary duties involved. Until such time as sufficient federal resourcing occurs local and state law enforcement must voluntarily step forward to assist with management of concerns in controlling the population of illegally present foreign nationals. It is far easier for terror to hide in a population of 12-20 million people than to have the desired anonymity in a smaller population of 1-2 million.³

Don Hunter
Sheriff, Collier County, FL.

³ There were an estimated 3.2 million illegally present foreign nationals in the U.S. in 1986 at the time of the last amnesty. Congressional Research Service, Library of Congress, [CRS Report for Congress](#), September 15, 2004.

