

The Illegals Among Us

Looking at 'clear' instructions from the courts to police agencies

by Robert D. Park

The events of September 11, 2001, what led up to them, and what has followed, have raised grave concerns over how our immigration laws are enforced. In 1996, Congress passed a law which gives power to state and local police to make arrests “of aliens not lawfully present in the United States.”

If there is confusion over this law, it lies in the belief that police must ask the U.S. Attorney General to enter into an agreement and seek deputization of police officers as INS agents. Yet, under these provisions, no such agreement or training is “required.”

Now comes the INS seeking help from the nation’s police in arresting 314,000 absconded aliens under deportation orders (who are clearly “not lawfully present in the United States”). The question arises in some quarters: do police already have the authority to do so? It is possible that some states may not allow it. If so, that should be remedied legislatively.

Quoting the 1996 statute in part:

8 USC 1537 (g)...(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State: (A) to communicate with the Attorney General regarding the

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immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or (B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

Police agencies across the nation who want to help [in the apprehension of illegal aliens] are receiving little or no assistance from the INS.

If this means what it says, why doesn’t the INS take this opportunity to inform the press, public, and police of the fact? Perhaps then INS would get the cooperation it seeks and the American public would be better served.

Court Review of This Provision

Section 133, Illegal Immigration Reform and Immigrant Responsibility Act (8 USC 1357), has, on two occasions, been examined by the U.S. Tenth Circuit Court of Appeals which concluded that the arrests made by police of aliens “not lawfully present in the United States” were lawful arrests.

The introduction to *U.S. v. Ontoniel Vasquez-Alvarez*, 176 F.3d 1294 (10th Cir. 1999), cert. denied, USSC No. 99-5643, Oct. 4, 1999, states that “Ontoniel Vasquez-Alvarez (‘Vasquez’) was arrested by an Edmond, Oklahoma, police officer. The arrest was based solely on the fact that Vasquez was an illegal alien...” The Court then analyzed the law in question, writing in part:

Significantly, however, Congress provided that a formal agreement is not necessary for state and local officers to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States... [This] collection of statutory provisions

evinces a clear invitation from Congress for state and local agencies to participate in the process of enforcing federal immigration laws.

In the other case, *U.S. v. Jose de Jesus Santana-Garcia and Gonzalo Alonso Ruiz-Tovar*, No. 00-4087 (10th Cir. 2000), a Utah state trooper made arrests which the Court upheld. In neither case had any agreement between the arresting agency and the U.S. Attorney General been entered into.

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Florida, for instance, the Commissioner of the Florida Department of Law Enforcement is told by one INS official in Washington, "...Under federal law, the only people who can enforce federal immigration law are immigration officers." Another says in order to receive the authority, "...the agency requires local police departments to train as INS agents..." and, "...it involves a memo of understanding with INS and DOJ (Department of Justice)..."

So why isn't this "clear invitation from Congress" clear? •