

ISSUE BRIEF

No. 3642 | JUNE 19, 2012

Illegal Immigration: House Sends Strong Signal with Increased Funding for Section 287(g) Program

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On June 7, the House of Representatives passed H.R. 5855, the 2013 U.S. Department of Homeland Security Appropriation legislation. A key element of the 2013 appropriation bill is the significantly increased appropriation for the Section 287(g) program from \$5.4 million in 2012 to over \$68 million in 2013.

With the decision by the U.S. Supreme Court on Arizona's Senate Bill 1070 coming any day, it is important for Congress to send a message that, regardless of that decision, states and localities will have a role to play in tackling America's illegal immigration problem.

Section 287(g). In 1996, Congress created Section 287(g) programs, which allow state and local law enforcement entities to enter into agreements with ICE to "act in the stead of ICE agents by processing

illegal aliens for removal." Before they could participate, state and local law enforcement officers would sign Memoranda of Agreement (MOAs) with ICE and undergo a five-week training course, background check, and mandatory certifications.

Section 287(g) was a solid improvement in terms of enforcing immigration laws. Before it was created, a state or local law enforcement officer who apprehended an individual who could not demonstrate legal presence in the U.S. would simply notify ICE and wait for them to come and take the individual. In practice, this meant that most illegal immigrants went free and immigration laws were not enforced.

However, for the first six years of the program, ICE failed to use the powers authorized in Section 287(g). It was not until 2002 that ICE began entering into MOAs with state and local law enforcement agencies.

For participating cities and states, Section 287(g) has been a critical tool for enforcing America's immigration laws, because it has become a force multiplier for the under-resourced ICE. In the first seven years after ICE started using the authorities under Section 287(g), more than 60 state and local agencies entered into MOAs resulting

in roughly 1,000 law enforcement officers being "deputized" to enforce federal immigration law. Even more important, over 120,000 individuals were identified as illegal immigrants under the program.

Earlier this year, the Obama Administration moved to kill the Section 287(g) program.

Leaving States in the Cold. Through its legal attack on immigration enforcement programs in Arizona and Alabama, the Obama Administration is taking the position that the Constitution gives the federal government sole authority over illegal immigration. This sole authority preempts states from enacting any legislation addressing illegal immigration problems.

Congress clearly provided state and local governments with the ability to leverage Section 287(g) to enforce federal immigration law. Yet the Obama Administration has gone beyond its executive branch power to enforce the law by ending the Section 287(g) program.

Beyond its erroneous understanding of the Constitution, the Obama Administration's flawed stance would mean that the federal government could cease all border security operations and that states and localities would be forced to stand by

This paper, in its entirety, can be found at <http://report.heritage.org/ib3642>

Produced by the Douglas and Sarah Allison Center for Foreign Policy Studies

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idly as millions of illegal immigrants put severe strains on their welfare, health care, infrastructure, and educational systems.

Until Congress repeals Section 287(g) or ceases to fund it, the Obama Administration is obligated to enforce the law.

Moving Forward on Section 287(g). Although not a panacea in itself to America's illegal immigration problem, Section 287(g) is one of the most useful and efficient tools to curtail illegal immigration. It is clear that the Obama Administration, along with its legal assault on state

and local immigration enforcement laws, does not respect the rights of states or the important role they play in curbing illegal immigration. Nor does it acknowledge Congress's ability to allow states to assist the federal government with immigration enforcement.

With its recent vote, Congress reasserted its legislative authority to preserve the ability of state and local law enforcement agencies to use the Section 287(g) program. Many local law enforcement agencies may decide not to use the program, but the House action to

ensure that those that do can continue to do so is a strong signal to the Obama Administration. It is now up to the Senate to act and follow up on the House's good work in funding Section 287(g).

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