

Attachment #6
Steve

CROSS-DESIGNATION PROGRAM

DRAFT PROPOSAL

ORANGE COUNTY SHERIFF'S DEPARTMENT

Sheriff Michael S. Carona

April, 2005

The tragedy of September 11, 2001, has caused federal, state and local law enforcement to reevaluate their respective operations as well as the process by which these various entities share and disseminate information. The investigation of this horrific act showed some of the terrorists had prior contact with local enforcement. Continued investigation and communication also revealed that federal law enforcement had no knowledge of these contacts.

Legislation introduced by U.S. Representative Charlie Norwood identifies the magnitude of the immigration problem and, if passed, would affirm the current authority of state and local law enforcement to enforce federal immigration laws.¹ Representative Norwood revealed that there are 400,000 individuals in the United States who have received and ignored their final deportation orders and that 80,000 of these offenders had criminal convictions. He also called attention to the fact that there are only 2,000 agents assigned to Immigration and Customs Enforcement (ICE) who are charged with locating and apprehending violators of immigration laws. The State of California is home to some of these criminal foreign nationals.

The California Department of Corrections (CDC) reports a current prison population of 162,000 inmates, of which over 17,650 are convicted foreign nationals. Of these, 1,575 are convicted foreign nationals who have committed felonies in Orange County, were arrested by Orange County law enforcement, and were tried and convicted by Orange County prosecutors in Orange County court rooms. The average yearly cost to house just one inmate in the California prison system is \$31,000 (approximately 547 million dollars per year for all convicted alien offenders in California).²

LOCAL LAW ENFORCEMENT AND IMMIGRATION

Locally, the Orange County Sheriff's Department averages 66,000 bookings per year with an average daily inmate population (ADP) of 6,000. A recent survey of the Orange County Jail population revealed a daily average of 618 foreign nationals with immigration holds, which is about 10.52% of the total inmate population.³ The costs to house these 618 foreign nationals with immigration holds is \$48,846.72 per day or 17.8 million dollars per year.

In addition to the high cost of incarceration it is important to consider other unquantifiable costs inflicted upon crime victims and society every time a criminal act is committed. Many of these criminal foreign nationals prey upon and intimidate other members of the immigrant community. The criminals know their illegal acts will not likely be reported to the police if victimized members of the immigrant community fear being deported.

There are currently 350 suspects, wanted in California for murder and other serious felonies, who have fled the United States and are currently living in Mexico. Armando

¹ Congressman Charlie Norwood introduces the Clear Act, H.R. 2671, News Release July 9, 2003.

² California Department of Corrections, Facts and Figures, Margot Bach, March 2005.

³ Orange County Sheriff Department, Inmate Records Manager Tracy Carroll, March 2005.

Garcia (A.k.a. Jose Arroyo Garcia) who is wanted for the 2002 murder of Los Angeles Deputy Sheriff David March, fled to Mexico to avoid prosecution. In Orange County last year (2004), two Mexican nationals were arrested by the Regional Narcotics Suppression Team for possession of 34 pounds of a substance they intended to sell in lieu of methamphetamine (estimated street value of 1.5 million dollars).

Currently, there are some deputies working in specialized units who have limited knowledge of immigration laws and have used that knowledge to identify and arrest criminal aliens. In 2003, the Orange County Sheriff's Gang Team arrested a local gang member for assault with a deadly weapon. He was later identified as a foreign national. The suspect was deported, but he soon returned to the United States. He was again located and identified by the Sheriff's Gang Team. Deputies contacted Immigration and Customs Enforcement and a warrant was issued for USC 1326, Immigration Violation. This is just one example of how deputies, armed with knowledge of immigration law, can work with federal officials to identify and remove criminal alien offenders.

Historically, immigration has been seen as a federal problem. However, in a post-September 11th world, coupled with the current efforts in the War on Terrorism, it is irresponsible for local governments to ignore matters of national security when they involve criminal alien offenders. Authority for state and local enforcement of federal immigration laws is found in the Immigration and Nationality Act.

Immigration and Nationality Act (INA)

Section 287(g) of the Immigration and Nationality Act, 8 U.S.C.1357(g), allows the Attorney General to enter into a written agreement with a state, or political subdivision of a state, whereby state or local officers can be trained and authorized to perform certain functions of an immigration officer. There are currently two states, Alabama and Florida, which have implemented Cross-Designation programs under this statute and have adopted a Memorandum of Understanding (MOU) with the United States Department of Homeland Security (DHS) as outlined under this section. Both states have reported successful programs with limited problems and no legal challenges. Due to the success of their program, Alabama recently doubled the number of Cross-Designated Troopers⁴. In California, the Los Angeles County Board of Supervisors approved the Los Angeles County Sheriff's Department to implement a Cross-Designation program in its jails.

Section 287 of the Act requires that agreements under this section be consistent with state and local law. There are three related statutes in the State of California; (1) Law Enforcement Cooperation with INS (CPC 834b); (2) Racial Profiling (CPC 13519.4); and (3) Misdemeanor Arrest (CPC 836.5).

California Penal Code Section 834b - Law Enforcement Cooperation with INS

⁴ NBC13.com, February 21, 2005.

Section 834b provides in part that, "Every law enforcement agency in California shall fully cooperate with the United States Immigration and Naturalization Service regarding any person who is arrested if he or she is suspected of being present in the United States in violation of Federal Immigration Laws." Agencies are required to (1) attempt to verify the status of the person; (2) notify the person of his or her apparent status as an alien; and (3) notify the Attorney General of California and the Immigration and Naturalization Service.⁵

The Orange County Sheriff's Department maintains compliance with this section by maintenance of a jail program that allows ICE officers to conduct immigration interviews inside of the Sheriff's custody facilities.

California Penal Code Section 13519.4 - Racial Profiling

Subsection (e) of 13519.4 reads, "A law enforcement officer shall not engage in racial profiling." Subsection (d) defines racial profiling as, "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped."⁶

Any enforcement action taken, or any agreement entered into, must be consistent with this section. Enforcement action taken based on race and general appearance alone, without more, would be a violation of this section.

California Penal Code Section 836.5 – Misdemeanor Arrest Without a Warrant

Subsection (a) of CPC 836.5 provides, in part, "A public officer or employee, when authorized by ordinance, may arrest a person without a warrant whenever he has reasonable cause to believe that the person to be arrested has committed a misdemeanor in his presence which is a violation of a statute or ordinance which the officer or employee has a duty to enforce."

Illegal entry is a misdemeanor under section 275 of the Immigration and Nationality Act.⁷ Arguably, the crime of illegal entry is complete at or near the time of entry and is not a continuing offense. Absent a detention/arrest at the time of entry, local law enforcement would not be able to arrest under 836.5.

Immigration and Nationality Act (INA) Enforcement Authority/Criminal Violations

⁵ California Penal Code, Section 834b, Law Enforcement Cooperation with INS

⁶ California Penal Code, Section 13519.4, Racial Profiling

⁷ 8 U.S.C. 1325 Illegal Entry (Misdemeanor)



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