American Immigration Council

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FACT SHEET

The "Mass Influx" Declaration: Potentially Tapping State and Local Police to Carry Out Immigration Law

In 1996, Congress passed a law giving the federal government the power to declare an emergency relating to a "mass influx" of migrants. When this emergency provision is enacted, the government can both disburse funding to states and localities dealing with the "influx" and delegate authority to local law enforcement agents in those areas to enforce some aspects of federal immigration law. In other words, local police officers around the country could be enabled under this law to carry out the functions of a federal immigration officer.

On January 23, 2025, the law was invoked for the first time. Acting Homeland Security Secretary Benjamine C. Huffman declared a "mass influx" affecting the entire United States for at least 60 days, authorizing the Department of Homeland Security (DHS) to deputize local law enforcement to conduct immigration enforcement in all 50 states.

Because this is the first time the law has been invoked, the powers it unlocks are not fully understood. This fact sheet offers a summary and initial analysis of the impact of the Trump administration's "mass influx" declaration, based on the statute and associated regulations.

This factsheet explains:

- The "Mass Influx" declaration
- Delegating authority to state and local law enforcement
- 103(a)(10) vs. 287(g)
- Practical considerations and concerns

"Mass Influx" Declaration

The 1996 law gave the Attorney General the power to determine that "an actual or imminent mass influx of aliens [is] arriving off the coast of the United States, or near a land border." When the Department of Homeland Security was created after 9/11, this power was inherited by the Homeland Security Secretary.

The 1980s and early 1990s had seen multiple large migration events off the coast of Florida (the Mariel Boatlift in 1980, and the Haitian Coast Guard crisis of the early 1990s), and in 1986 Congress first authorized federal immigration authorities to request assistance from local law enforcement and reimburse them for their help. In 1995, President Clinton first declared an "immigration emergency" to address rising numbers of Haitians arriving by boat; the Immigration and Naturalization Service entered into agreements with some local Florida law enforcement agencies to assist in immigration enforcement, and later reimbursed the state for assistance with another immigration issue. However, after the 1996 "mass influx" law was passed, the federal government did not act on it for nearly 30 years.

The January 23 memo changes that, finding that "an actual or imminent mass influx of aliens is arriving at the southern border of the United States." While the memo acknowledges that current border crossings represent "a major reduction from the peak over the last four years," Acting Secretary Huffman writes that numbers are "still too high," and therefore it is fair to declare them a mass influx.

Regulations related to the "mass influx" statute require the federal government to set limits on the emergency authorities they invoke, setting a start and end date and geographic boundaries within which those powers may be used. The January 23 memo defines the start date as immediate and the end date as 60 days from signing "unless extended." Citing alleged threats posed by new arrivals to the safety and welfare of all U.S. citizens, the memo declares that the mass influx creates an emergency in "all 50 States," even Alaska and Hawaii.

Delegating Authority to State and Local Law Enforcement

By invoking a "mass influx" emergency under this law, the Department of Homeland Security is claiming the power to authorize state and local law enforcement agencies throughout the U.S. to act as federal agents for the purposes of carrying out federal immigration law. This could include such agencies making arrests of suspected unauthorized immigrants; detaining immigrants; placing immigrants into immigration court proceedings; and potentially even issuing orders of expedited removal or carrying out deportations—though any of these could face legal challenges. Florida Governor Ron DeSantis, for example, stated on January 24 that Florida law enforcement agencies and local police would be able to conduct deportations.

However, there are important requirements and limitations restricting how, exactly, the federal government and state and local law enforcement agencies can go about this, and what they can do.

Regulations require the federal government to sign a written agreement with any state or local agency it delegates authority to under this law. This agreement must include:

- A description of which authorities are being delegated and what kinds of assistance the state/local agencies are providing
- A designated time period the agreement will be in effect
- A requirement that any authorities being exercised by state or local agents "be at the direction of [DHS]"
- A requirement that any agents operating under this agreement adhere to "applicable immigration law enforcement standards and procedures, civil rights law, and sensitivity and cultural awareness issues"
- An agreement to create a complaint process to report any misconduct by state and local agents

The regulations also require that any agents deputized under these agreements receive training in immigration law and civil rights, but the federal government has discretion to waive this training requirement. Even without training, the regulations specify that state and local officers are still "required to adhere to applicable policies and standards of [DHS]," including those governing due process, and that state and local officers must act "at the direction" of DHS when they perform immigration functions.

They are also, importantly, still bound by the Immigration and Nationality Act and the regulations governing federal immigration law, which puts some limits on which officials can perform which functions. For example, asylum screening (credible fear) interviews—something that federal law and regulation require be available to anyone who expresses fear of return to their home country, even during "expedited removal"—can only be conducted by a specially trained U.S. Citizenship and Immigration Services asylum officer. The first Trump administration's efforts to delegate trained Border Patrol agents to conduct these interviews instead of U.S. Citizenship and Immigration Services were blocked in court.

As of January 27, no written agreements between the federal government and state or local agencies delegating immigration enforcement under this law have been published.

The regulations also allow the federal government to give money to states and localities to compensate them for assistance offered during an "immigration emergency." However, the specific fund identified in the regulations—the "Immigration Emergency Fund"—currently has no money in it. While Congress has authorized the Homeland Security Secretary to transfer up to $20 million to the fund from other parts of DHS's budget, further reimbursement funding may have to come from Congress itself. It is not clear whether the law also allows DHS to reimburse states and localities through other accounts.

103(a)(10) vs. 287(g)

The federal government has previously used a different provision of immigration law, 287(g) of the Immigration Nationality Act, to delegate immigration enforcement to some state and local law enforcement agencies. As of December 2024, U.S. Immigration and Customs Enforcement (ICE) had 287(g) agreements with 135 state or local law enforcement agencies across 21 states. One of President Trump's first executive orders in his second term directed DHS to use these agreements to the full extent of the law, which likely means expanding these to more jurisdictions.

Like the "mass influx" delegation, 287(g) requires a written agreement. However, while training is mandatory before agents can engage in immigration enforcement under 287(g), the training can be waived under the 103(a)(10) provision—which may make it a more appealing option to local law enforcement agencies who want to start engaging in immigration enforcement immediately.

Under the language of the 103(a)(10) provision, local agencies receive federal funding for undertaking immigration enforcement. Although some aspects of 287(g) agreements, such as training or detention capacity, *may* be funded by the federal government, those agreements typically do not offer local law enforcement agencies significant funding—and sometimes even cost them more money. This could make 103(a)(10) agreements more enticing and lucrative for local law enforcement agencies than 287(g) agreements, likely increasing the number of local agencies who will be willing to engage in federal immigration enforcement through this "mass influx" provision.

Finally, 287(g) agreements permit state and local law enforcement officers to question, arrest, and detain people for suspected immigration violations, and to (in some cases) place people in removal proceedings. They do not give police officers power beyond that point.

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Practical Considerations and Concerns

The use of state and local law enforcement agents can be a powerful force multiplier for immigration enforcement, especially when it comes to the arrest of immigrants within the United States. In the past decade, approximately 70 to 75 percent of federal immigration arrests in the interior of the United States have been handoffs from local law enforcement agencies. When the federal government has local cooperation, its ability to arrest, detain, and deport large numbers of immigrants is greatly enhanced.

However, the resources offered by state and local law enforcement agencies are still finite—few agencies have empty detention facilities lying around. Furthermore, resources spent on immigration enforcement will be taken away from other things, including the

investigation and prevention of violent crime. Since state and local governments can't engage in deficit spending the way the federal government can, agencies are often on a tighter budgetary leash.

There are also considerations of community trust and public safety. Local officials have long reported that when local police engage in immigration enforcement actions, immigrant communities become too afraid to report crimes or cooperate with criminal investigations. The fear that engaging with local police or other local public institutions could lead to immigration detention and deportation ultimately undermines social cohesion and safety in those communities.

Programs that allow local police to do the work of federal immigration agents also have a track record of increasing racial profiling by local police of people from certain minority groups, regardless of citizenship status. For example, at least two Department of Justice investigations of 287(g) agreements found that local law enforcement involvement in federal immigration enforcement resulted in increases in racial profiling of Latino people, including U.S. citizens, in North Carolina and Arizona.

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Federal immigration law is also famously complicated, and it is extremely difficult for agents on the ground, especially without proper training, to know who is removable and who is not. In practice, this has often resulted in errors and over-enforcement—including the arrest and detention of U.S. citizens.

It remains to be seen exactly how the Department of Homeland Security will use its authority under the "mass influx" provision to enable local law enforcement agencies to directly engage in immigration-related enforcement, including which jurisdictions will sign agreements. The American Immigration Council will continue to track this provision as its authority is used to enter into new agreements, and encourages local groups or people to reach out with additional information as these agreements unfold.