

Immigration Enforcement – “Back to the Future”

By Steven W. Hooper

If you thought the creation of U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) in 2003 marked the first time that U.S. Customs (USC) officers were charged with enforcing immigration laws, you would be mistaken. In 1890 the USC Supervising Special Agent reported that during the last fiscal year, the agency made 639 immigration related arrests while making only fifty-four arrests for violations of customs laws. The Department of Treasury and U.S. Customs were responsible for federal immigration enforcement long before a separate agency was established to control the flow of people across our borders. So as movie character Emmett “Doc” Brown might say, we need to go “back to the future” and explore the role of U.S. Customs in enforcing our nation’s first federal immigration laws.

In 1789, there was no federal oversight of the immigration process. Each state established and enforced their own laws related to immigration. State immigration officials and U.S. Customs officers coordinated their activities and usually met immigrants on arriving vessels or on the docks of steamship companies. The states each had their own criteria for rejecting immigrants with the majority excluded for health reasons or the inability to support themselves.

In 1819 as the number of immigrants arriving in the United States from Europe rose, Congress passed the Steerage Act to ensure their safety. This was the first law regulating the conditions on ships transporting immigrants to the United States. This law also required the captain of ships arriving from foreign ports to deliver a list of passenger names and demographic information to the Collector of Customs. Thanks to U.S. Customs enforcement of this law, many people can now trace the arrival of their ancestors into the United States using “Passenger Manifests”.

In 1875 the U.S. Supreme Court issued a decision that changed everything. The court held that the immigration process was a federal responsibility and that the

states had no power to establish or enforce immigration laws. The Federal government was now responsible for the immigration process even though they did not have the resources nor the facilities to assume these new responsibilities.

In New York, the nation's largest port processing the largest number of immigrants, the Federal government contracted with the State of New York to process immigrants at Castle Garden in 1875. This state immigration facility had been in use for this purpose since 1855.

With this temporary fix in place to manage immigration, Congress began to address the long-term supervision of the immigration process and the increasing concerns of unchecked immigration and the admission of undesirable immigrants into the United States. In 1875 with the passage of the Page Act, the first restrictive federal immigration law was on the books. This law prohibited unfree contract workers from entering the United States as well as women for immoral purposes.

The United States experienced a large influx of Chinese laborers on the West Coast during the building of the transcontinental railroad. When the nation's economy took a downturn, the public pressed Congress to restrict the number of additional Chinese laborers entering the country. The public was concerned that these laborers were suppressing wages and taking jobs that should be made available to United States citizens. In 1882 the Chinese Exclusion Act was passed and signed into law. This law prohibited the immigration of Chinese laborers for a period of ten years.

Nine years later in 1891, Congress passed an Immigration Act which established a Superintendent of Immigration within the Treasury Department and established additional restrictions on those who could enter the United States. This Act provided few new field personnel but did allow for the development of standard operating procedures and policies for immigration.

The next year the Immigration Act of 1892 levied a head tax of fifty cents on each immigrant. This Act also excluded the entry of "idiots, lunatics, convicts, and persons likely to become a public charge". The Geary Act of that same year

reinforced and extended the ban on Chinese laborers and required that Chinese residents carry a resident permit. The law also provided for the arrest of violators by U.S. Customs officers, Internal Revenue officers and U.S. Marshals.

The task of administering the immigration laws very quickly began to overwhelm U.S. Customs especially at the large ports of entry on the east and west coasts. U.S. Customs was immediately expected to enforce these new immigration laws with very limited additional staffing.

The position of Chinese Inspector was created within USC to enforce the Chinese Exclusion Act. These new investigators reported to the local Collectors of Customs and later to Customs Agents in Charge. At large offices, U.S. Customs officers were assigned to Chinese Bureaus that specialized in enforcing immigration laws. On our land borders, U.S. Customs mounted patrol officers enforced immigration laws even after the Border Patrol was established in 1915.

As 1890 approached, the public and lawmakers became concerned about operations at Castle Garden claiming that immigrants were not protected from various grifters and predators and that state inspectors were not selective enough when deciding who to allow to enter the United States. Castle Garden had processed eight to almost ten million people during its 35 years in operation, but the State of New York and the Federal government could not reach a deal to allow the Federal government to take over and run the facility.

The Federal government decided to establish a temporary facility for immigration processing on the Battery in New York at a building known as the U.S. Customs Barge Office. This building was built in 1880 for use by U.S. Customs for the inspection of cabin passenger luggage from foreign destinations arriving in New York. The building was also used as a base for U.S. Customs boarding officers, inspectors, and boat crews. This facility began operations in 1890 and was used until 1892 when a new permanent immigration complex was opened on Ellis Island.

At this new complex, 119 of the Immigration Service's entire staff of 180 were employed leaving U.S. Customs to take the lead at other ports of entry. In 1897

the original wooden Ellis Island immigration facility was destroyed by fire. While a replacement facility was being built on Ellis Island, immigration inspections were again performed at the Barge Office.

In 1900 immigration operations began again in a new brick and steel building on Ellis Island. The facility was closed to immigration processing in 1924. Over twelve million immigrants passed through Ellis Island on their journey to America during this period.

In 1903 the responsibility for enforcing the immigration laws was transferred from the Treasury Department to the new Department of Commerce and Labor. By 1910, U.S. Customs role as America's *de facto* immigration agency had ended. A separate immigration agency was now adequately staffed and able to fully assume the responsibility of immigration enforcement. U.S. Customs officers would be relieved of this important duty for about one hundred years until history repeated itself in 2003.

In 2003 the Immigration and Naturalization Service (INS), now part of the Department of Justice (DOJ), was combined with the USCS and placed in the new Department of Homeland Security (DHS). The former functions of USCS and INS would be divided between CBP, ICE and U.S. Citizenship and Immigration Services (USCIS). History had repeated itself. Both customs and immigration services again resided in a single Cabinet Department.

Who knows what the future will hold for CBP and ICE? But as old "Doc" Brown might say "The future is unwritten. It's what we make of it. So, make it a good one."



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