

Executive Order: Border Security and Immigration Enforcement Improvements

Sheriff Jeff Easter
Sedgwick County Kansas

Executive Order

- ▶ Explanation of the Order that directly effects Law Enforcement
- ▶ Section 2 subsection (e):
- ▶ “cooperate fully with States and local law enforcement in enacting Federal–State partnerships to enforce Federal immigration priorities, as well as State monitoring and detention programs that are consistent with Federal law and do not undermine Federal immigration priorities.”

Executive Order

- ▶ Section 10 “Federal–State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.”
- ▶ Currently, for local law enforcement to be able to enforce Federal law, we are a part of a Federal Task Force

Executive Order

- ▶ To be on the Federal Task Force the local law enforcement member is deputized by the Federal Government
- ▶ This allows for the LEO to enforce Federal Law
- ▶ Federal LEO's are immune from law suits, by deputizing the LEO, they are now immune from a law suit in theory
- ▶ Training on Immigration Laws will be needed
- ▶ We do not know what the plan is on how to accomplish this task

Executive Order

- ▶ Section 10 subsection (a)
- ▶ “In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287 (g) of the INA (8 U.S.C. 1357 (g)).”

Executive Order

- ▶ Section 10 subsection (b):
- ▶ “To the extent permitted by law, and the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287 (g) of the Immigration and Nationality Act, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.”
- ▶ We don’t know what this means or how it will be accomplished.
- ▶ Could impact our call load and answering calls for service that we conduct on a daily basis

Executive Order: Enhancing Public Safety in the Interior of the United States

- ▶ Section 2
- ▶ (a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;
- ▶ (b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;
- ▶ (c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;
- ▶ (d) Ensure that aliens ordered removed from the United States are promptly removed; and
- ▶ (e) Support victims, and the families of victims, of crimes committed by removable aliens.

Executive Order: Enhancing Public Safety in the Interior of the U.S.

- ▶ Section 9. Sanctuary Jurisdictions.
- ▶ (a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure threat jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

8 U.S.C. 1373

- ▶ (a) In general Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
- ▶ (b) Additional authority of government entities Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- ▶ (2) Maintaining such information.
- ▶ (3) Exchanging such information with any other Federal, State, or local government entity.
- ▶ (c) Obligation to respond to inquiries The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.
- ▶ **The Sedgwick County Sheriff's Office does not violate 8 U.S.C. 1373**

Sheriff Office Policy

General Order 107.00

- ▶ Subject Admission Standards
- ▶ IV. Illegal Aliens
- ▶ A. Individuals arrested solely for the charge of "Illegal Alien" or on a BICE detainer will not be accepted. Aliens may be accepted for admission and processing only if they are arrested on violations of other federal, state or local laws.
- ▶ B. Illegal Aliens will be accepted from or on the authority of the Bureau of Immigration Control and Enforcement (BICE) if they are able to provide paperwork showing the inmate has had judicial review.
- ▶ C. If a BICE detainer is received it will be placed in the inmate file but the detainer will not in any way delay the release of the inmate.

Sheriff Office Policy

General Order 110.00

- ▶ Release Procedures
- ▶ IV. Releases After Intake Processing
- ▶ A. All inmates who are housed in the facility will be released through property release.
- ▶ B. The property corporal will check to see the proper documentation to authorize a release is present. They will check the computer and inmate paperwork to ensure:
 - ▶ 1. All holds and charges are cleared by:
 - ▶ a. A properly executed standard release form.
 - ▶ b. Telephone release form.
 - ▶ c. District court and municipal bonds/releases are present and executed properly.
 - ▶ d. Outside holds are released with appropriate paperwork.
 - ▶ e. KADR, if applicable, completed.
 - ▶ 2. There are no outstanding warrants on the inmate which need to be served.
 - ▶ 3. If a BICE detainer is on file, an email will be sent notifying the agency of the pending release. The inmate's release will not be delayed pursuant to 107.00 Admissions Standards.

History of the Change in Policy

- ▶ In 2014, *Galarza v. Szalczyk* was heard in the United States Court of Appeals, Third Circuit
- ▶ **FACTS:**
 - Nov. 20, 2008: Ernesto Galarza (a U.S. citizen) & three others arrested for drug offense in Allentown, PA
 - Detective prepares criminal complaint & contacts ICE in accordance with Allentown's policy to notify that a suspected alien subject to deportation had been arrested
 - Galarza transported to Lehigh County Prison
 - Nov. 21: ICE Agent Mark Szalczyk files immigration detainer with Prison
 - Not accompanied by warrant, PC affidavit, or removal order
 - Nov. 21: surety company posts bail on Galarza's criminal allegation
 - Nov. 24: detainer removed at 2:05 p.m.; Galarza released at 8:30 p.m.
- ▶ **ANALYSIS:**
 - (County argues that detainer is *mandatory*, not a request)
 - **ICE detainer = request**
 - Based on case law; commented that ICE detainers refer to them as "requests" or as part of an "informal procedure"
 - "...no provisions of Immigration and Nationality Act ("INA") authorize federal officials to command local or state officials to detain suspected aliens subject to removal" p. 640
 - Request to detain on behalf of federal government
 - Federal immigration agencies: detainers are not mandatory

History of Policy Change

- **Tenth Amendment**

- Anti-commandeering principle
 - Designed to prevent Congress from passing off responsibility for its choices to the states p. 643–644
- “federal government cannot command the government agencies of the states to imprison person of interest to federal officials” p. 643
- Federal detainer commanding a local law enforcement agency to detain an individual on behalf of the federal government would violate the anti-commandeering principle of the 10th amendment
- Would be at state expense

- ▶ **CONCLUSION:**

- Detainer section – 8 C.F.R. § 287.7 – authorizes issuance of detainers as **requests** to local law enforcement agencies
 - **Does not compel LEAs to detain suspected aliens**

History of Policy Change

- ▶ Miranda-Olivares v. Clackamas County, No. 3:12-CV-02317-ST, 2014 WL 1414305 (D. Or. Apr. 11, 2014).
- ▶ § 1983 civil rights action – United States District Court, District of Oregon
- ▶ **FACTS:**
 - Mar. 14, 2012: Maria Miranda-Olivares arrested for violating DV restraining order
 - County notified ICE of arrest
 - Mar. 15: ICE sent Jail immigration detainer
 - Not accompanied by warrant, PC affidavit, or removal order
 - Mar. 15: bail set at \$5,000
 - Mar. 16 – Mar. 30: Miranda-Olivares and family members told four or five times that Miranda-Olivares would remain detained even if paid bail
 - Remain detained on ICE detainer
 - Mar. 29: pled guilty to criminal charge, released on probation
 - Mar. 30: released from Jail to DHS custody
- ▶ **ICE detainer not mandatory**
 - 8 C.F.R. § 287.7 only requests compliance in detaining suspected aliens
 - Does not mandate detention
 - “shall” in § 287.7 refers to time period; all other parts use “request”

History of Policy Change

- **Tenth Amendment** requires that detainer be deemed a request
 - To assist with detention and removal...request for information about when alien will be removed from custody
- California Attorney General: ICE detainers enforceable at discretion of agency holding individual arrestee
- Jail at liberty to refuse ICE's request
- ▶ **Fourth Amendment**
 - New hold for ICE detainer lacked probable cause
 - Violated Miranda-Olivares's Fourth Amendment rights
- ▶ **Due to these court cases, Detainer's were changed to Request's by ICE.**

Meetings with ICE Supervision

- ▶ On June 11, 2014 we met with the local ICE supervisor
- ▶ Was told by supervisor coming into the U.S. illegally is not a crime but is a civil procedure for removal
- ▶ Long debate on this issue but ICE is the experts
- ▶ We found out in 2016 it is actually a misdemeanor crime to enter the U.S. illegally however, is not really pursued by ICE in Kansas

Meetings with ICE Supervision

- ▶ Discussed alternatives with ICE to author a probable cause affidavit like all other LEO agencies
- ▶ ICE refused to complete probable cause affidavits
- ▶ The Sheriff Office conducted four (4) other meetings with Ice on 8/5/15, 3/13/16, 6/14/16 and 9/8/16.
- ▶ All reasonable alternatives to resolve this issue were dismissed and the policy was implemented
- ▶ Discussed with ICE on 8/5/15 the Sedgwick County Jail being an ICE Under 72 hour holding facility

Meetings with ICE Supervision

- ▶ ICE utilized an outside audit team to conduct an inspection at the Sedgwick County Jail from 5/3/16 to 5/5/16
- ▶ In June of 2016 we sent back the corrective actions form to ICE
- ▶ I was informed by the ICE supervisor not to worry about some of the corrective actions the inspection group pointed out, because ICE makes the determination if they want to house with us
- ▶ SCSO has been waiting on a answer since last June
- ▶ ICE will not give us an answer nor return our phone calls at this point

Moreno v. Napolitano

Ruling on Sept. 30, 2016

- ▶ Class action challenging ICE's authority to issue detainers
- ▶ ICE—via Congress—"has authority to arrest and detain any individual whom ICE has probable cause to believe is a removable alien." at *1
- ▶ **FACTS:**
 - U.S. citizen Jose Jimenez Moreno in custody of Sheriff of Winnebago County, IL
 - ICE issued immigration detainer
 - Lawful permanent resident Maria Jose-Lopez serving sentence at federal correctional center in Tallahassee, FL
 - ICE issued immigration detainer
- ▶ **ANALYSIS:**
 - 8 U.S.C. § 1226(a): "an alien may be arrested and detained" while awaiting a removal decision, but the arrest must be pursuant to "a warrant issued by the Attorney General."
 - Exception: 8 U.S.C. §1357(a)(2) – allows for warrantless arrest only if ICE has "reason to believe" that the suspected removable alien "is likely to escape before a warrant can be obtained for his arrest"
 - "likely to escape" = "likely to evade detention by immigration officers"
 - No individualized determination as to individual's likelihood of escape before warrant can be issued
 - Court – ICE has plenty of time to obtain a warrant while subject still in custody

Moreno v. Napolitano

- Especially because it is Defendants' position that they make, and always has made, a probable cause determination before detainer issued
- Courts frown on categorical determinations such as a whole group's likelihood of escape
- ICE's issuance of detainers without warrants goes beyond statutory authority to make warrantless arrests
- Court encourages that ICE issue warrants of arrest and serve them upon alien

► CONCLUSION:

- “Because the immigration detainers issued under ICE's detention program seek to detain subjects without a warrant—even in the absence of a determination by ICE that the subjects are likely to escape before a warrant can be obtained—the Court will enter judgment for Plaintiffs declaring the immigration detainers issued against Plaintiffs void.” at *9
- Defendants given opportunity to file a motion to stay effect of judgment pending appeal

Moreno v. Napolitano

- ▶ The Judge in this case ordered the Chicago Office of ICE to no longer issue “Detainers”
- ▶ This office controls ICE agents in several states including Kansas
- ▶ This order means ICE in Kansas cannot issue detainers, however, they still are
- ▶ ICE had the opportunity to file an appeal to stay the judgment, however, we do not know where if a stay was filed

State Legislation

- ▶ In 2016, a house bill was introduced to force Sheriff Office's to hold illegal aliens for an additional 48 hours and honor the detainer in whole
- ▶ Sheriff's across Kansas asked that the legislators place into this bill, immunity from law suits that would possibly occur from this bill.
- ▶ Language was drafted that held the State of Kansas responsible for paying all costs associated with the lawsuit including any judgment pay out
- ▶ Legislators did not pass this bill

House Resolution 83

- ▶ On January 3, 2017 HR 83 was introduced to Congress
- ▶ Prohibits the receipt of Federal financial assistance by sanctuary cities, and for other purposes

Sanctuary County

- ▶ Sanctuary State, City or County is not clearly defined nor spelled out in any court case or by the Federal Government
- ▶ The term derives from Center of Immigration Studies website, which is a partisan non-government website
- ▶ Sedgwick County supposedly qualifies by this websites definition due to not honoring Ice “detainers”
- ▶ Our contention is we do book for the detainer/request if other charges exist, thus honoring a portion of the detainer/request
- ▶ We place the hold in the computer and email ICE at time of release for them to pick up the illegal alien
- ▶ ICE chooses to not pick up the illegal alien and they are released

Congressional Research Service

- ▶ William A. Kandel an Analyst in Immigration Policy conducted a CRS Report for Committees of Congress
- ▶ 1/10/17 the report was completed
- ▶ ICE & Enforcement and Removal Operations have the primary responsibility for locating removable aliens and ensuring that aliens directed to depart from the U.S. do so
- ▶ ‘Sanctuary’ jurisdictions – jurisdictions that have expressly defined or limited the jurisdiction’s roles regarding immigration enforcement by passing resolutions, executive orders, or local ordinances (Sedgwick County has not done this)

Congressional Research Service

- ▶ No “generally agreed upon” definition for a sanctuary jurisdiction because of the range of such enforcement policies
- ▶ Policies range from limiting cooperation with ICE (typically regarding the cooperation with detainers” to restricting what types of information the local agency can inquire about or share with ICE
- ▶ Some jurisdictions restrict information regarding individuals with little to no criminal activity (SCSO does not do this)

Congressional Research Service

- ▶ Some sanctuary jurisdictions cite federal court decisions
- ▶ Decisions that find holding an alien solely on the basis that an ICE detainer could violate the Fourth Amendment, potentially subjecting law enforcement to liability for doing so (SCSO has made this argument due to court case rulings and sheriff's paying out)
- ▶ Center of Immigration's website states four (4) states plus Washington D.C., dozens of cities and hundreds of counties are Sanctuaries
- ▶ The term itself has no formal definition and there exists no official list of sanctuary jurisdictions.

Additional Information

- ▶ In 2014, I was notified that I would be sued if I continued honoring the “detainer”
- ▶ Detainer language has been changed to “request” due to court rulings
- ▶ ICE sent new paperwork called “Immigration Detainer – Request for Voluntary Action”
- ▶ ICE checks the boxes that apply
- ▶ ICE advises this fulfills the probable cause affidavit
- ▶ Through our research we have not found a court case being filed to challenge this paperwork

Where do we go from here?

- ▶ The paperwork does not encompass all the avenues that we come into contact with illegal aliens
- ▶ If a illegal alien is arrested on DUI, the new paperwork does not cover this or any new arrest, just charged or convicted illegal aliens
- ▶ This form also states: (This request takes effect only if you serve a copy of this form on the subject, and it does not request or authorize that you hold the subject beyond 48 hours

Where do we go from here?

- ▶ This request arises from DHS authorities and should not impact decisions about the subject's bail, rehabilitation, parole, **release**, diversion, custody classification, work, quarter assignments, or other matters
- ▶ This section of the new detainer/request is very confusing because it says it should not impact the person's **RELEASE**
- ▶ So does this mean we can release and it should not impact us, such as being labeled an Sanctuary County

Two Options

- ▶ The SCSO could start honoring the new “request” in it’s totality and risk being sued as pointed out in previous slides
- ▶ Second option, continue on the path of not honoring the 48 hour hold section of the “request” only
- ▶ This puts at risk millions of dollars given to Sedgwick County every year once it is qualified in Congress and passed

Commissioner Input

- ▶ I am asking the Commissioners to give me input on what direction they would like to see the Sedgwick County Sheriff's Office take on this very politically charged issue