



Just the Facts

IMMIGRATION ENFORCEMENT: A COMPLEX ISSUE

I oppose "sanctuary" policies. I believe a public entity such as a town, city, state, school district or Sheriff who officially enact sanctuary policies should have sanctions imposed on them. I believe anyone who is in this country illegally and is committing crimes should be deported. I believe the United States has an absolute right and responsibility to secure its borders and protect its citizens. That should end the debate about where I stand on these topics.

However, my personal feelings aren't always compatible with what I am legally allowed to enforce under the "rule of law". Although I took an oath to uphold the Constitutions of the United States and the State of Colorado, as well as enforce the laws of the state, there is a distinct difference between the US Constitution and federal statutory laws. My jurisdictional authority to enforce laws is limited to state and local laws. Peace officers in Colorado have no authority to enforce federal law. If I did, I would be busy arresting pot shop owners who are unquestionably violating *federal* narcotics laws and illegal aliens who are violating *federal* immigration statutes. However, as a law enforcement officer I am **REQUIRED** to comply with the laws as written and interpreted by the courts, regardless of my personal or political views. Public opinion, social media and stories and letters written in the local newspapers are not law, and cannot be the basis for law enforcement actions.

With respect to federal immigration laws, the United States Supreme Court struck down Arizona's state immigration legislation on the basis that federal immigration laws preempted state law. The federal government has the authority to regulate immigration and aliens. Federal immigration officers, not state or local officers, have the authority to determine the immigration status of people in this country. Local and state law enforcement officers have no authority to enforce federal immigration laws.

To dive deeper into this issue, the administrative ICE "detainers" signed by ICE agents (not judges) that were previously relied upon by Sheriffs to hold ICE detainees, violate the Fourth Amendment because ICE agents provide no probable cause for the detention and no judicial review is required. Several individuals, including illegal aliens, prevailed in federal civil lawsuits and received significant judgments against Sheriffs who held them against their will pursuant to an ICE detainer. The Constitution, including the Fourth Amendment, protects anyone on US soil, including illegal and undocumented individuals from an illegal arrest and detention. You and I may not like it, but I have to comply with it because I took an oath to uphold the US Constitution. I am also not willing to subject the taxpayers of Garfield County to lawsuits that could cost them hundreds of thousands of dollars because ICE lacks the facilities to hold their detainees and would rather transfer their responsibilities to county jails.

Another layer of complexity is the fact that ICE can only *request* that a Sheriff hold their detainees because according to the courts, the "Anti-commandeering clause" in the Tenth Amendment (state's rights), says that the federal government lacks the authority to force local and state governments to use their resources on federal responsibilities (remember "a matter of federal concern"). It is the same principal as the Third Amendment that prohibits the federal government from quartering soldiers in your home against your will. The Feds oftentimes use the threat of withholding federal funds from the states in an attempt to gain compliance for a variety of issues, but they cannot force local governments to comply. Therefore, by accepting the responsibility of holding ICE detainees, the liability of civil litigation falls on me and the taxpayers of Garfield County, not ICE.

Because ICE agents won't obtain a warrant signed by a judge establishing that they have probable cause that the person they want the Sheriff to detain committed a criminal offense (something local law enforcement officers are required to do with every arrest they make), they have conveniently shifted the burden of their responsibility to Sheriffs. The public misconception that Sheriffs don't want to cooperate with ICE, is a popular but incorrect talking point. We will detain anyone, given the proper legal authority. The Garfield County Sheriff's Office as well as most Sheriff's Offices across the state cooperate with ICE to the extent the laws allow us to, just as we do with any law enforcement agency, local, state or federal. For example, we have 3 deputies assigned to the local ICE office in a task force that focuses on illegal alien gang members. When someone is jailed, we notify ICE by submitting biometrics to them under the Secure Communities program. When ICE has an interest in an inmate, we keep them advised of that inmate's status and notify them of that inmate's release date and time and allow ICE to take custody of them. We can't detain them longer than is necessary to release them, but we give ICE ample time to do their job.

The primary responsibility of ICE is immigration enforcement. Local law enforcement's primary responsibility is to enforce local and state laws, but cooperation amongst all law enforcement agencies should not be hampered by public policy or opinion. Anyone who works in any organization knows that they have a specific job description with different responsibilities from other people in the organization (the editor of the paper doesn't deliver papers, the circulation department does). The description of the local law enforcement officer does not include *be an ICE agent*. Although ICE is severely resource deficient, their resource issues are not mine. Due to limited manpower in our area, ICE agents are oftentimes unavailable or unable to work after hours or on weekends so they can't take custody of inmates being released during those times. By contrast, the Sheriff's Office works 24/7 and the fact that ICE doesn't, does not translate into refusing to cooperate. It translates into what I am Constitutionally allowed to do.

In conclusion, despite my personal feelings as a citizen of the United States or the conflicting public opinions on immigration issues in this country, Sheriffs do not establish public policy or enact laws. That's what Legislatures and Congress do. Sheriffs enforce laws as written. We fully cooperate with ICE and all other law enforcement agencies, but that does not mean we have the legal authority to arrest or detain individuals accused of federal administrative violations.

Lou Vallario
Garfield County Sheriff

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