

Testimony of Michael Sharma-Crawford
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Neutral testimony on HB 2466
Kansas House Committee on the Judiciary
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Good afternoon Chairman Barker and Members of the House Judiciary Committee. I am Michael Sharma-Crawford and I appreciate the opportunity to discuss HB 2466 prohibiting sanctuary ordinances by municipalities.

As way of background, I am a former law enforcement officer and an immigration attorney practicing out of the Kansas City area. I frequently handle complex immigration proceedings.

For instance, in June of 2002, my partner and I sued Seward County for unlawfully detaining a non-citizen. That case was heard in the District of Kansas and later at the 10th Circuit Court of Appeals. In the end, we came to an agreement with Seward County on how they would treat detainees and non-citizens and they paid a small amount of money to our client.

Seward County wasn't evil or malicious; they thought they were interacting with the Federal government (Immigration and Customs Enforcement) properly, one government to another. The problem was a lack of understanding of the law surrounding detainees and pressure by ICE to make things easier for them.

Since ICE's nearest office is in Wichita, agencies in Southwest Kansas had settled into the pattern of holding non-citizens on detainees until ICE could make their weekly run out west. However, this meant that individuals were held longer than the 48 hours commanded by the regulations.¹ This practice stopped after our lawsuit but it was not the end of problems with detainees.

Detainer is a misnomer. There is no force or effect behind the piece of paper which is usually faxed over to a jail. It is a "request for cooperation, not custody."² However, jails inherently want to assist their federal law enforcement brethren and they agree to hold individuals with detainees. Unfortunately, the jails aren't paid by ICE to hold non-citizens on detainees. Additionally, there is great confusion as to when the 48 hours begins and ends.³ Invariably communications issues arise; a judge orders release, but that paperwork takes a day to process, then another day to remember to call ICE and, lo and behold, the 48 hours is up. But, ICE is insistent

¹ 8 C.F.R. §287.7

² *State v Montes-Mata*, 208 P.3d 770, 775 (Kan App 2011)

³ "an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody for a period not to exceed 48 hours." 8 C.F.R. §287.7(d).

that they want that person held. In this lies the quandary; if the jail acquiesces to ICE's insistence then they, not ICE are liable.

In 2012, the Clackamas County Jail in Oregon held Maria Miranda-Olivares for 2 weeks solely on an ICE detainer. That lawsuit settled against the jail for \$30,000.⁴ In the weeks and months that followed, jails across Kansas agreed not to honor ICE detainers except in some extreme circumstances. Fearing lawsuit, tired of not being paid, those Kansas Sheriffs made policy decisions that were in the best interest of their departments and the communities they served.⁵ This bill actively interferes with the sound policy decisions of those local Sheriff's.

This is a complex area of the law with multiple players and agencies each wanting to do the right thing but none being able to properly judge the legal landscape. The legal ramifications of HB 2466 would be an increase in lawsuits against local governments. In addition, HB 2466 does not address the loss of money spent on holding individuals on a request by ICE.

Thank you for your time and I stand ready for questions when appropriate.

⁴ <http://portlandlawcollective.com/victory-settlement-in-ice-detainer-case-that-changed-jail-practices-across-oregon/>

⁵ In discussions with the Sheriff of large Kansas County, it was estimated that that department lost over \$30,000 by not being paid for holding non-citizens on detainers.