



Kansas Sheriffs Association

PO Box 1122, Pittsburg, KS 66762

Phone: (620) 230-0864

Fax: (620) 230-0866

Sheriff Sandy Horton, Ret., Executive Director

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Chairman John Barker and Members of the Committee on Judiciary -

The Kansas Sheriffs' Association provides this neutral testimony on House Bill 2466 - An Act concerning municipalities; relating to sanctuary ordinances and resolutions and the prohibition thereof. All Kansas Sheriffs enforce Kansas laws with respect to citizens and non-citizens alike. Likewise, they actively comply with the enforcement of Federal enforcement laws.

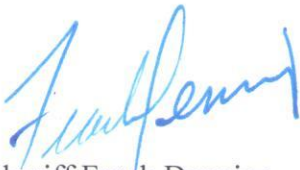
The United States Supreme Court has held that illegal immigrants in our country are entitled to many Constitutional rights and protections, just like United States citizens. With respect to ICE Detainers (DHS Form I-247), several courts such as *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305 (D. Or. 2014), and *Galarza v. Szalczyk*, 745 F.3d 634, 2014 WL 815127 (3rd Cir. 2014) have recently ruled on the Fourth Amendment rights of illegal aliens. These courts separately examined 48 hour hold requests on the DHS Form I-247 when they are based only upon a "reason to believe" an individual is subject to removal. On several grounds the courts concluded that these specific types of detainer requests were not mandatory in nature and were not based on probable cause to arrest or detain the person. Rather, they were requests based solely upon an unspecified "reason to believe" that the individual was subject to removal (which is not a crime). Under these circumstances, if a local law enforcement officer complies with the ICE Detainer he subjects himself, his agency, and the County to liability for violating a detainee's Fourth Amendment rights. This is consistent with the Kansas Statute - without an arrest warrant issued by a judge, K.S.A. 22-2041 requires officers to have probable cause to justify a warrantless arrest.

The National Sheriffs' Association would also like Federal warrants on immigration. "We would like to know the terms on which they are asking local Sheriffs to hold somebody." This type of information is not available as part of the Federal Detainer request.

The Major County Sheriffs' Association, those counties with a population of 500,000 or more (Johnson County), also mirrors the concern of NSA and KSA. Sheriffs have been sued and held liable for honoring ICE Detainers. ICE has remained silent on this issue. MCSA reports, "...about 36,000 convicted criminal aliens were released from detention while awaiting the outcomes of deportation proceedings. This included 193 homicide convictions, 426 sexual assault convictions, 1,075 aggravated assault convictions and a staggering 9,187 dangerous drug convictions. The majority of these convictions must be dealt with by our Sheriffs on a daily basis. This is unacceptable. ICE must not only clarify the use of detainers with state and local law enforcement, but it must also enforce the law when it comes to dangerous criminals within our nation's borders."

Therefore if an Ice Detainer is based only on a "reason to believe" that a person is subject to removal by ICE, law enforcement cannot legally detain them on that ground alone. ICE has been asked to correct the problem by supporting these ICE Detainers with proof of probable cause.

Sheriff's Office Deputies fully cooperate with ICE Detainer requests in all other circumstances. Specifically, suspected aliens are detained for ICE Agents when the detainer request is based on: (a) removal proceedings and a Notice to Appear or other charging document is served; (b) a valid warrant for removal (issued by a Judge); or (c) an Order of Deportation or Removal. When this occurs, the local ICE office is notified and they conduct a Federal investigation to confirm the status of the individual, and whether or not they will place an ICE detainer on the inmate.



Sheriff Frank Denning
KSA Legislative Chair