



What Authority Do Sheriffs Have Relating to Immigration Law?

Recently, there has been increased interest in the topic of how local governments work with federal immigration authorities. As Colorado Sheriffs, we've received inquiries on how our jails cooperate with Immigration and Custom Enforcement (ICE.) Some have claimed that Colorado Sheriffs offer sanctuary to illegal immigrants in their custody. Let us clear the air.

Sheriffs hold the rule of law as sacred. We are elected with the authority to enforce the laws of Colorado and to protect the rights guaranteed in the federal and state Constitutions.

Our jails serve two distinct purposes. One is a judicial function, the other is a detention function.

Under our judicial function, we hold persons accused of a crime awaiting trial, if a court has not authorized their release. This includes persons taken into custody on warrants issued by a judge or persons arrested by a peace officer under a probable cause arrest. If the court authorizes the arrestee's release, we must release them.

Under our detention function, we uphold sentences for persons convicted in state criminal courts, almost exclusively on misdemeanor charges. State law mandates how "good time" is earned and awarded to convicted inmates. Again, once their sentence is completed, we must release these persons, unless there is another order from a judge requiring us to hold them on other charges.

In the US, states also hold fugitives wanted from other states who are subject to extradition proceedings from another state. We also hold persons who have arrest warrants from the federal government.

Outside of legally recognized exigent circumstances, we cannot hold persons in jail at the request of a local police officer or a federal agent. To do so, would violate the 4th Amendment to the US Constitution.

While Colorado Sheriffs do not have the authority to enforce federal laws, we do work cooperatively with a large variety of federal law enforcement agencies. At times, we participate in federal task forces and other times, we share information on potential federal crimes with those federal law enforcement agencies. This includes sharing information on all arrestees in our jails with the FBI and ICE. This gives them the opportunity to determine which arrestees might also be wanted by federal authorities or who might be in violation of our federal immigration laws.

If federal authorities present us with a warrant or other detainer, signed by a judge or a magistrate, we hold those persons for federal authorities to pick up. However, the courts have ruled that we have no authority to hold arrestees on administrative holds that have not been reviewed and approved by federal judges or magistrates.

Sheriffs have informed ICE that in order to comply with the 4th Amendment, we must get judicially approved holds or warrants. However, at this time, ICE chooses not to do this.

Various courts have ruled that holding someone on ICE detainers alone is a Fourth Amendment violation. Listed are the cases:

The 9th US District Court: ICE detainers out of Clackamas County Oregon; Miranda-Oliveras v Clackamas County Case #2014 WL 1414305

The 3rd US court, 3 Garcia v Szalczyk 745 F.3d 364

Settlement of proposed lawsuit from the 10th US Circuit Court, Valdez-Sandoval v Walcher (2014). This case was settled prior to the case being formally filed.

Recently, some have chosen to accuse Sheriffs of providing sanctuary to illegal immigrants, simply because we are complying with the Constitution, as determined by federal courts. This is an absolutely unsubstantiated and ridiculous claim.

Sheriffs are defenders of the rule of law and we take seriously our collective oaths of office to uphold and protect the Constitutions of our state and our nation.

We continue to cooperate with federal immigration officials, but we cannot violate the Constitution in the name of convenience.



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