



**United States Senate  
Committee on the Judiciary**

**hearing on  
“Oversight of the Administration’s Criminal Alien Removal  
Policies”**

**Testimony of  
Jonathan F. Thompson  
Executive Director  
National Sheriffs Association**

**December 2, 2015**

Good afternoon, Chairman Grassley, Ranking Member Leahy, and Members of the Committee. I want to thank you all for inviting me here to speak today. My name is Jonathan Thompson and I am the Executive Director of the National Sheriffs' Association. We represent more than 3,000 sheriffs nationwide, from the smallest rural county to the largest urban county. Nearly all sheriffs are elected and, as the only elected official whose sole responsibility is maintaining public safety, they have a unique relationship with their communities. The needs and concerns of that community are paramount to sheriffs.

Many of those concerns transcend the county line or jurisdictional boundary, including that which this hearing is focusing: the Administration's criminal alien removal policies. In my conversations with sheriffs across the country, it has become clear that the Administration's policies are putting sheriffs in an untenable position and, in the words of Chief Deputy Steve Henry of Pinal County, Arizona, "the current [immigration] policies are institutionalizing systemic national security deficiencies." In light of that analysis, let me be clear on one thing: Sheriffs support the goal of removing criminal aliens from this country and stand ready to assist our Federal partners in preserving our national security. But sheriffs will not act outside the bounds of the Constitution nor will they ignore their Oath of Office. Any policy advanced by the Administration must be unquestionably legal within both of those contexts. Otherwise, I must ask this: which law should sheriffs break?

Unfortunately, the Priority Enforcement Program's constitutionality is, at best, unclear. There have been no legal opinions on that question from the US Department of Justice nor from any State Attorneys General. Disagreement on that question has come from across the political spectrum. Attorneys all over the country have taken different interpretations, leading to a myriad of responses through local ordinances, laws, and policy directives (see attached "Florida Sheriffs' Association Legal Alert on ICE Detainers"). In the absence of a legal opinion, and given the litigation surrounding the previous Secure Communities program put forward by the US Department of Homeland Security, sheriffs are left with few options. First, refuse to work with the Administration on the Priority Enforcement Program. Second, participate only partially with the Priority Enforcement Program. Finally, full participation in the Priority Enforcement Program. Each of these options has different levels of risk to the community that dangerous criminal aliens will be released and wide range of liability implications. None of those is an acceptable option for sheriffs and the law enforcement community as a whole.

Our request is simple: The President should instruct the Attorney General to put forth a legal opinion on the constitutional questions surrounding the Priority Enforcement Program. To continue ignoring the questions simply furthers the view of some that the President does not support state and local law enforcement. In the absence of a legal opinion, however, it is imperative that Congress pass meaningful legislation pertaining to criminal aliens.

I'd like to call your attention specifically to the "Michael Davis, Jr., and Danny Oliver in Honor of State and Local Law Enforcement Act," to which NSA has given its support. The bill would strengthen information sharing between DHS and the FBI's National Crime Information Center (NCIC) database by requiring the inclusion of immigration violators, thus giving state and local law enforcement officers critical and consistent access to that information. It would give state and local law enforcement some immigration enforcement powers while also requiring them to share

biographical, biometric, and other identifying information about immigration violators with Federal authorities. The bill would direct DHS to increase available detention space for criminal aliens, alleviating the Department's ongoing struggle to find adequate space. Importantly, the bill creates clear guidelines for a criminal alien's custody transfer from a state or local agency to the Federal government, including time limits, reimbursement, detention, and transportation. It clarifies congressional intent regarding the 287(g) program and, perhaps most importantly to our discussion today, states a sense of Congress that issuance of immigration detainers evidences immigration officials' probable cause to believe there has been a violation of law. I commend Senator Sessions and Congressman Gowdy for their introduction of the bill.

The bill does not negate, however, that immigration enforcement is a Federal responsibility, rather than a state or local one. Too few criminal aliens are deported each year and the priorities for deportation are simply too narrow. Even worse, some criminal aliens otherwise subject to removal end up released back into our communities for lack of travel documentation or other bureaucratic excuses. The Arizona Sheriffs' Association issued a statement in August of this year highlighting three violent criminal aliens that ICE released in Arizona that same month (see attached "Arizona Sheriffs' Association Blast Release of Dangerous Criminal Aliens"). These criminal aliens were charged and convicted of crimes including aggravated assault, kidnapping, and murder. These are violent crimes and violent criminals who should be deported to their country of origin, not allowed to terrorize our neighborhoods.

Throughout my testimony, I have been critical of the policies put forward by this Administration and the challenges those policies create for sheriffs and other law enforcement professionals. I do want to recognize the many employees of the Department of Homeland Security and elsewhere who are committed to the mission of removing criminal aliens from this country. I, and the sheriffs of this country, recognize that those individuals are equally hampered by these policies. I applaud the efforts of those individuals in local field offices who work each and every day to collaborate with sheriffs and other law enforcement agencies. For example, if Sheriff Ted Kamatchus of Marshall County, Iowa, were here, he'd tell you that he works very well with his local ICE Field Office. He would also tell you, however, that it is the Administration's responsibility to help sheriffs better identify potentially dangerous aliens, to ensure detention and removal processes are consistent, and to establish policies that do not unduly burden our local jails or our communities.

I again encourage this Committee and the Congress to take meaningful steps to find solutions to these problems and untie the hands of state and local law enforcement in immigration enforcement. I encourage you to join us in asking the President to have the Attorney General issue a legal opinion on the Priority Enforcement Program. Sheriffs remain committed to working with our Federal partners to develop better policies on the removal of those criminal aliens and, ultimately, keep our communities safe. Thank you for inviting me to share our perspectives today and I stand ready for your questions.



BILL BOHNYAK  
SHERIFF  
DARE INSTRUCTOR



STATE OF VERMONT  
ORANGE COUNTY SHERIFF'S OFFICE  
11 VT. ROUTE 113  
CHELSEA, VERMONT 05038



TELEPHONE  
(802) 685-4875  
FAX  
(802) 685-3204

December 1, 2015

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Leahy:

As the Sheriff of Orange County, Vermont, and a member of the National Sheriffs' Association Board of Directors, I write to you today to express my concerns with current immigration policies and the challenges those policies pose for sheriffs.

As the chief law enforcement officer in Orange County, I took an oath to protect and serve its citizens. The threat of illegal immigration to those citizens is very real but the Federal government has enacted policies that do not effectively address the problems. Too often, I am told of Immigration & Customs Enforcement not showing up at local jails to take custody of a criminal alien. Too often, I hear of violent criminal aliens being released back into communities rather than being deported. Too often, I hear the tragedies of those criminal aliens committing further acts of violence. It is our communities that are paying the price for ineffective immigration policies.

Senator Leahy, you have always been a great supporter of law enforcement in Vermont and across the country. I hope that we'll continue working together to ensure that immigration policies enacted by the Federal government are reasonable and just.

Sincerely,





## ARIZONA SHERIFFS ASSOCIATION

1910 W. JEFFERSON • PHOENIX, ARIZONA • 85009  
TELEPHONE: (602) 252-6563 • FACSIMILE: (602) 254-0969

LEON WILMOT, YUMA COUNTY SHERIFF, PRESIDENT

August 17, 2015

### ARIZONA SHERIFFS ASSOCIATION BLAST RELEASE OF DANGEROUS CRIMINAL ILLEGALS

The Arizona Sheriffs Association blasted ICE for the release of three dangerous criminal illegals into Arizona last week. On Tuesday, August 11<sup>th</sup>, 2015 law enforcement agencies were notified with a brand new alert system that 3 violent criminal illegals were released into Arizona by ICE. For years, Sheriffs across America have publicly criticized ICE for never notifying them when they have released thousands of dangerous foreign criminals into their counties.

**Just last week in Arizona, ICE started the Law Enforcement Notification System (LENS) to notify Arizona law enforcement of the release of criminal illegals.** This first such notification of three dangerous criminal illegals has Arizona Sheriffs angry and concerned for the publics' safety.

Musa Salah Abdelaziz Abdalla of Sudan, Dennis Valerievitch Tsoukanov of Russia and Nasser Hanna Hermez of Iraq were all released into Arizona this past month. These foreigners have been charged and convicted of the following crimes; aggravated assault, kidnapping and murder.

The Sheriffs of Arizona have been forced to deal with many challenges due to lax enforcement of Criminal rules for U.S. immigration policies. We appreciate ICE finally starting this notification, yet it places all law enforcement in untenable position by not being transparent and notifying the public we are sworn to protect. These bureaucratic excuses that these dangerous foreign criminals may not be returned to their country of origin since they lack travel documents are not acceptable. We demand that these criminals be deported from the US and back to their home country.

By simply notifying Sheriffs of the release of dangerous criminals doesn't address the core problem that these dangerous criminals remain in America. We call on the President and Congress to require the Department of Homeland Security (DHS) to broaden the eligibility categories for deportations and direct the US State Department to require foreign nations to receive their citizens that we have determined must be deported from the United States.

ICE has been releasing these criminal illegal immigrants into local communities, that we as Sheriffs are sworn to protect. You don't have to be the Sheriff or a uniformed patrol deputy to realize that these dangerous criminals will reoffend and victimize our Arizona families. The Arizona Sheriffs Association stands united against the release of dangerous criminal illegals into American communities. They must be deported now, never to return to the United States again.

Respectfully,

Leon N. Wilmot  
Yuma County Sheriff  
President, Arizona Sheriffs' Association

Paul R. Babeu  
Pinal County Sheriff  
Vice-President, Arizona Sheriffs' Association

# FLORIDA SHERIFFS ASSOCIATION

## LEGAL ALERT



### ICE DETAINERS

Two recent cases from federal courts call into question the validity of detaining inmates based solely upon a detention order of Immigration and Customs Enforcement, ("ICE") when no probable cause otherwise exists to support their seizure. In these cases, the courts ruled that ICE detainers are not mandatory and will not shield county jails from liability arising from the detention of an individual pursuant to an ICE detainer alone, without a warrant or deportation order.

The plaintiffs in both cases were detained under ICE detention orders, DHS Form I – 247, which indicated that an investigation had been initiated to determine whether they were subject to removal and deportation. The counties operating the jails were found liable based upon a finding of an unlawful seizure notwithstanding their compliance with a federal regulation, 8 CFR § 287.7, cited in Form I – 247 that provided apparent authority for the continued detention of the inmates.

In *Galarza v. Szalczyk*, no. 12-3991, 2014 WL 815127 (3d Cir. Mar. 4, 2014) the plaintiff (Galarza) had been arrested on a drug offense. Although a surety posted bail, Galarza was held because of an immigration detainer mistakenly describing Galarza as a suspected "alien" and a citizen of the Dominican Republic. He was released three days following his arrest when he was able to convince ICE officials that he was a United States citizen and not an illegal alien.

In *Miranda-Olivares v. Clackamas County*, Case No. 3:12-cv-12317-ST, 2014 WL 1414305 (D. Ore. April 11, 2014) the plaintiff had been arrested on a domestic violence restraining order. Bail was set at \$5000, and although her family was able to pay the premium of \$500 for her release, they were told by the jail staff that Miranda-Olivares could not be released because of a detainer. She pled to the offense and was sentenced to time served. However, because of the detainer she was delayed an additional 19 hours before being released to the custody of ICE agents.

In both cases, the courts held that there was no authority to detain either individual. Importantly, Form I – 247 was recognized as a notice issued to federal, state, or local law enforcement agencies informing them that ICE intends to assume custody of an illegal alien and *requesting* that an agency maintain custody of an individual. Due to the absence of probable cause, the courts held that neither Galarza nor Miranda-Olivares could be detained when they were otherwise lawfully entitled to be released.

As expected, the counties asserted defenses that they were relying upon the ICE retainers and the apparent authority of the federal government to require their detention. However, in each case, liability was established because the continued detention was unlawful.

As a result of these cases, sheriffs should be aware that any detention of an ICE detainee without probable cause may subject the sheriff's office to liability for an unlawful seizure. A suspect may be detained if Form I – 247 indicates that a warrant of arrest for removal proceedings has been served or that ICE has obtained an order of deportation or removal (see attached form). In either case, jail staff should

request a copy of the warrant or the order of deportation to determine that probable cause in fact exists for the continued detention.

It may also be helpful to give ICE notice when possible of the detention of a suspected illegal alien and the anticipated release date. Upon receipt of an ICE detainer, jail staff should contact an ICE office and notify their staff of the conditions under which a detainer will be honored and the approximate date, if known, when the inmate is expected to be released. This notice may provide ICE with an opportunity to meet the conditions required for detention or to respond to the jail to take custody of the inmate on or prior to the release date.

Questions concerning this legal alert should be directed to the Sheriff's legal advisor or may otherwise be directed to Wayne Evans, General Counsel for the FSA, at [revans@anblaw.com](mailto:revans@anblaw.com), 850 561 3503.

365994





## ARIZONA SHERIFFS ASSOCIATION

1910 W. JEFFERSON • PHOENIX, ARIZONA • 85009  
TELEPHONE: (602) 252-6563 • FACSIMILE: (602) 254-0969

LEON WILMOT, YUMA COUNTY SHERIFF, PRESIDENT

An Open Letter to the Administration

August 5, 2015

### ARIZONA SHERIFFS ASSOCIATION TAKES STAND WITH SHERIFFS THROUGHOUT THE UNITED STATES AGAINST GAPS IN FEDERAL PRIORITY ENFORCEMENT PROGRAM

The Arizona Sheriffs Association joins sheriffs across the United States and the National Sheriffs Association to "Give the Feds a Courthouse PEP Talk" on August 5<sup>th</sup>. We call on the Administration in Washington D.C. to use the power of the Executive Order, as it has done many times before, to require the Department of Homeland Security (DHS) to share information more effectively with state and local law enforcement when it comes to the Priority Enforcement Program (PEP), thus broadening the eligibility categories for deportations, and increasing reimbursement levels for state and local agencies that house criminal aliens on behalf of the Federal Government.

The Sheriffs of Arizona have been forced to deal with many challenges due to lax enforcement of Criminal rules for U.S. immigration policies. This lax enforcement has cost Arizona taxpayers roughly 30 million dollars during this past fiscal year in Arizona.

During FY 2014, according to ICE, they conducted 315,943 removals. Everyday Immigration Customs Enforcement (ICE) asks local Sheriffs to 'detain' an inmate, yet they fail to provide rational, legal authority to do so, or the common sense answer to the basic question of why a County Sheriff should detain an individual. Without that legal authority, Sheriffs risk enormous legal liability. Detaining a suspected felon without rationale poses the most risk for the local community.

If the Department of Homeland Security rescinds that order, and permits the release, the question becomes one of community security and risk to the citizenry of our communities. This ongoing federal trend was reported on by reporter Stephanie Slifer **CBS News** on May 13, 2014,

*The U.S. Immigration and Customs Enforcement (ICE) released 36,007 convicted criminal aliens last year who were awaiting the outcome of deportation proceedings, according to [a report issued Monday by the Center for Immigration Studies](#). The group of released criminals includes those convicted of homicide, sexual assault, kidnapping and aggravated assault, according to the report, which cites a document prepared by the ICE.*

*A majority of the releases were not required by law and were discretionary, the organization says. According to the report, the 36,007 individuals released represented nearly 88,000 convictions, including:*

*193 Homicide convictions  
426 Sexual Assault convictions*

*1,160 Stolen Vehicle convictions  
9,187 Dangerous Drug convictions*

*303 Kidnapping convictions  
1,075 Aggravated Assault convictions*

*16,070 Alcohol /Drugged Driving convictions  
303 Flight Escape convictions*





## ARIZONA SHERIFFS ASSOCIATION

1910 W. JEFFERSON • PHOENIX, ARIZONA • 85009  
TELEPHONE: (602) 252-6563 • FACSIMILE: (602) 254-0969

KC CLARK, NAVAJO COUNTY SHERIFF, PRESIDENT

*In a statement which accompanied the findings, Jessica Vaughan, the director of policy studies for the Center for Immigration Studies, called the number of criminal aliens released "shocking." "This information is sure to raise concerns that, despite professions of a focus on removal of criminal aliens, Obama administration policies frequently have allowed political considerations to trump public safety factors and, as a result, aliens with serious criminal convictions have been allowed to return to the streets instead of being removed to their home countries," Vaughan said. <http://www.cbsnews.com/news/report-36k-criminals-freed-while-awaiting-deportation/>*

ICE has been releasing these criminal aliens into the communities, we as Sheriffs are sworn to protect. They have refused to notify us of when they are being released and what type of criminal records they have. By failing to share this information, it puts our communities at great risk. A prime example of this is if a U.S. citizen is convicted of a sex offense, they are required to register with the County Sheriff's Office as a sex offender. The County Sheriff's Office then sends out community notifications letting the public know where the sex offender will be living and the type of sex offense he or she was convicted of. If ICE releases a criminal alien who has been convicted of a sex offense, they have refused to notify our office and therefore the criminal alien never registers as sex offender yet they are living in our communities.

Sheriffs across the United States want to work with the DHS but there appears to be either a complete lack of will to establish those procedures, or a complete desire to put the onus on the local County Sheriff to make a gut-instinct decision regarding how long to hold someone. Last year, the Arizona Sheriffs spent roughly 30 million dollars in detaining and prosecuting criminal illegal aliens due to the lack of the United States Attorney's willingness to prosecute these individuals for committing crimes in our communities and without local law enforcement intervention these individuals would have been cut loose in society with no consequences, only to continue to commit crimes again.

The Arizona Sheriffs Association stands united against gaps in federal Priority Enforcement Program. For more information about the PEP Talk for Action visit: [www.sheriffs.org/PEP-talk](http://www.sheriffs.org/PEP-talk).

Respectfully,

Leon N. Wilmot  
Yuma County Sheriff  
President, Arizona Sheriffs' Association

Paul R. Babeu  
Pinal County Sheriff  
Vice-President, Arizona Sheriffs' Association