



Trump Is Wrong About Undocumented Immigrants And Crime

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May 1, 2017

The White House denounced a federal judge last week who enjoined the president's executive order denying certain federal grants to sanctuary cities, and it raised the case of Kate Steinle to illustrate why sanctuary cities are such a problem.

Almost two years ago, Steinle, a 32-year-old medical device sales rep from California, was shot and killed on a San Francisco pier. City police have charged an unauthorized immigrant named Juan Francisco Lopez-Sanchez who has confessed to killing her.

Her death led Donald Trump to denounce sanctuary cities such as San Francisco and call for tougher border security and deportations. But in reality, the facts of this tragedy do not support these policies:

- Lopez-Sanchez did not end up in San Francisco due to lax border security, and the case actually shows the opposite. In recent years, Border Patrol caught him each time he attempted to cross.
- Lopez-Sanchez only ended up in the city because the Justice Department ignored an Immigration and Customs Enforcement (ICE) request to take custody. The department has since changed its policies.
- ICE sent a request to the city to detain Lopez-Sanchez knowing that the city would only hold a person subject to a federal warrant. Yet ICE chose not to seek a warrant. Yet it has refused to change its policies.
- San Francisco's Sheriff's Department could not legally hold Lopez-Sanchez who had no history of violence. Investigators have since shown that he was not trying to kill Steinle.
- Lopez-Sanchez's mental illness is the relevant cause of the tragedy, not his immigration status. Yet even after a federal judge instructed that he receive care, none was apparently provided.

- This case is a tragic anomaly. Undocumented immigrants generally are half as likely as other people in the United States to commit these types of serious crimes.

Case highlights improving border security

Lopez-Sanchez is a Mexican national who had resided illegally in the United States on and off since at least 1991. In the early 1990s, he compiled various drug convictions in Arizona, Washington and Oregon. Immediately following his conviction for imitation drugs in Oregon in June 1994, the federal government took custody and deported him to Mexico.

A month later, he returned to Arizona and was arrested for violating his probation there. After the state released him, San Francisco arrested him for a \$20 marijuana purchase charge, but he failed to appear in court, and seven months later Washington convicted him of another felony drug charge. In April 1997, the federal government took custody and deported him again.

This period reflects the relative lack of border security in the 1990s. But after his first two deportations, he appears never again to have successfully snuck into the United States.

After his deportation in 1997, Border Patrol agents apprehended and deported him in January 1998. They caught him again in February 1998 at which point he was imprisoned for felony illegal reentry until his fourth deportation in March 2003.

In July 2003, Border Patrol apprehended him again, and he was imprisoned for felony reentry a second time until his fifth deportation in June 2009. Less than three months later, Border Patrol caught him a fourth time, and he was imprisoned until March 2015.

Thus, from 1997 to 2015, Lopez-Sanchez probably never crossed the U.S.-Mexico border without being caught. The case is hardly an example of the lack of border security. Indeed, he highlights the myth of border in security.

Case led to changes in federal prisoner policies

In March 2015, the Federal Bureau of Prisons (BOP) under the Department of Justice (DOJ) had custody of Lopez-Sanchez. DOJ told San Francisco that Lopez-Sanchez was due to be released, and San Francisco Sheriff's Central Warrant Bureau sent a request to pick him up from the prison for prosecution of his 20-year-old marijuana charge.

Lopez-Sanchez was arrested for his \$20 marijuana buy in 1995. In 2006, the San Francisco Board of Supervisors made marijuana the “lowest enforcement priority” and called for the state to legalize it. By 2015, the sheriff's department should have known that the city district attorney would decline to prosecute the 20-year-old marijuana charge.

DOJ could have referred Lopez-Sanchez to Immigration and Customs Enforcement (ICE) for deportation, but inexplicably, DOJ decided to honor the San Francisco request instead of a request from ICE that DOJ detain him for deportation. This is even stranger because DOJ never contacted San Francisco before Lopez-Sanchez's three other deportations.

On March 26, 2015, the transfer occurred, and DOJ sent an automated notice to ICE, which immediately sent a request to the city to detain him until they could pick him up, and the following day the San Francisco Superior Court predictably dismissed the charges against him. San Francisco never should have sent the request, nor should DOJ have transferred him.

The DOJ decision was the only reason that Lopez-Sanchez came to San Francisco in 2015, not a lack of border security or insufficient interior enforcement.

Attorney General Loretta Lynch announced in February 2016 that DOJ would no longer release individuals who may be deportable to localities without going through ICE first. In a letter, DOJ told the House Appropriations Committee, “Now, BOP offers ICE, instead of the states and municipalities, the first opportunity to take into custody and remove an individual.”

This is appropriate because ICE is best able to assess the immigration implications of a transfer. Committee Chairman John Culberson responded by declaring, “Had that policy been in effect last summer Kate Steinle would still be alive.”

San Francisco’s policy was legal

In 2015, San Francisco’s Administrative Code prohibited “use of any city funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals” unless “such assistance is required by the federal or state statute, regulation, or court decision.” (Section 12H.2) That section has since been amended to change “immigration status” to “release status.”

In a March 2015 memo, the Sheriff’s department interpreted the law to ban officers from providing “access to inmates in jail” or “release dates or times” to ICE unless the ICE request is supported by a court-issued warrant or a signed court order.

One big myth in this case is that San Francisco did not detain Lopez-Sanchez after it dismissed the marijuana charge. In fact, the city continued to hold him for nearly three weeks based, the Sheriff’s department claimed, on a confusion over whether his federal prison term was complete. It claimed that “federal transportation orders reflected two conflicting release dates.”

This confusion is baffling because DOJ had literally just released him to San Francisco custody. In any case, during this time, it contacted DOJ to confirm that he had completed his federal prison time and was not the subject of any active warrants. Finally, on April 15, the Sheriff’s department released him without informing ICE.

Steinle’s family filed a wrongful death lawsuit against San Francisco for its decision not to inform ICE of Lopez-Sanchez’s release. A district court judge dismissed the claims against the city because it found, in part, that they did “not plausibly allege that Steinle’s death resulted from a violation” of law.

The only possibly relevant federal statute bans any policy that would prevent city employees from transmitting information regarding the immigration status of the individuals, not their

release dates. “Given that ICE issued a detainer request for Lopez-Sanchez well before his release, there is no question that ICE was aware of Lopez-Sanchez’s immigration status,” the court concluded.

Thus, San Francisco could not have been in violation of the law.

Case highlights flawed ICE detainer policy

San Francisco has pointed to two court decisions on detainers that, if courts in San Francisco followed the same logic, could make the city liable for damages if it honored ICE detainers.

First, a federal district court decision in Oregon found that ICE detainers cannot be the basis of further detention of a noncitizen and that the county violated the detainee’s Fourth Amendment rights by detaining her without probable cause.

Second, in allowing a suit by a wrongfully detained U.S. citizen to proceed, the Court of Appeals for the Third Circuit has also found that “immigration detainers do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal.” The First Circuit issued a similar ruling on a preliminary manner a similar case.

In light of the fact that this area of law is so fraught—as a recent Congressional Research Service review found—San Francisco explicitly stated that it would honor any judicial warrant. In this case, ICE would have had no difficulty providing a judge with probable cause that Lopez-Sanchez was in the United States illegally if it had sought a warrant.

Moreover, ICE already *knew* San Francisco’s policy—it had refused 98 percent of all ICE detainer requests the year before and the sheriff had met with ICE officials to tell them that it would not honor their detainers—yet the agency still chose not to seek a warrant in this case. The city held Lopez-Sanchez for three weeks after the initial detainer, so the agency cannot claim that it had insufficient time to seek a warrant.

ICE has simply chosen not to seek warrants because it believes it should not have to, even if they know that the person will be released. That was a mistake.

Throughout the 19 days that Lopez-Sanchez was detained, as the judge in the Steinle lawsuit put it, “ICE took no further action to detain or deport Lopez-Sanchez other than issuing the detainer request.” Unlike DOJ, ICE has still not altered its policies in response to the Steinle death.

Killer’s mental health is more relevant than his criminal history or immigration status

When San Francisco released Lopez-Sanchez, he had no history of violence. His earlier convictions were non-violent drug offenses, and his only offenses in almost two decades were immigration violations.

While Lopez-Sanchez is a clearly unstable person, he was not a serious criminal. His first conviction was for huffing toxic chemicals. He then attempted to sell heroin and was caught in less than a month. Then he was convicted for selling fake drugs.

After each of his last three deportations, he was almost immediately caught at the border. Neither the city nor the federal government had any reasonable basis for concluding that Lopez-Sanchez posed a threat to anyone other than himself.

The White House's statement claims that Lopez-Sanchez "gunned down innocent Kate Steinle." But the public facts indicate that the shooting was an accident.

Lopez-Sanchez claims to have found the gun, which was stolen, and to have taken sleeping pills and been shooting at sea lions. Witnesses observed him "acting bizarrely" before the shooting, and investigators determined that the gun was "clearly aimed at the ground," and the bullet ricocheted off the pavement and travelled at least 90 feet before hitting Steinle.

Lopez-Sanchez's mental health is much more relevant than his criminal history or his immigration status. Indeed, a federal judge who sentenced him recommended that the government send him to "a federal medical facility as soon as possible." That apparently never happened.

Undocumented immigrants do not increase crime

The key question is whether states and localities should—even if they don't have to legally—aid the federal government in removing people who are not violent criminals.

The president believes that the Steinle case proves that a general crackdown on unauthorized immigrants is warranted. But the reality is that, as a recent Cato Institute report found, unauthorized immigrants are much less likely than other people in the United States to commit these types of serious crimes.

We know this because they are three times as likely to be incarcerated in state or federal prisons as native-born Americans, excluding those who are jailed solely for immigration offenses.

This conclusion fits with a lot of other research finding that increases in immigration are correlated with lower crime rates. Moreover, research has shown that when crackdowns on immigrants occur—even when it is targeted at those with contact with law enforcement—it has no positive effect on crime rates.

For example, multiple researchers found that when Secure Communities—a program that automatically contacted ICE after an FBI background check by local police—was rolled out, the areas where it was implemented first saw no greater reduction in crime than areas where it was not implemented.

This means that the deportees were no more crime-prone than the population at large—probably because the actual criminals were already being deported.

As I have written before, a crackdown on undocumented immigrants could actually increase crime because immigrants help reduce crime in various ways, including through intervening to stop crimes as they are happening or acting as witnesses against criminals.

Given the complicated relationship between police and their communities, the research supports allowing localities the opportunity to decide how to handle immigration status and release information about immigrants they encounter.

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