

Executive order on undocumented immigration prompts uncertainty, fear in Shawnee County

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President Donald Trump's executive order on undocumented immigrants has prompted concern among the immigrant community and in local government.

The **Jan. 25 order** threatens to pull federal funding from "sanctuary jurisdictions" and broadens immigration enforcement efforts at the federal and local levels.

Shawnee County

County officials are fighting the label "sanctuary county."

An Immigration and Customs Enforcement document lists five Kansas counties that it says limit cooperation with the federal agency.

Shawnee, Sedgwick, Butler, Finney and Harvey counties won't honor an ICE detainer without probable cause, a warrant or a court order.

County counselor Jim Crawl said the Shawnee County Jail will hold a person suspected of being undocumented if ICE sends a warrant or a court order, but a detainer alone is not sufficient to hold someone beyond the original reason they were arrested.

In March 2014, the 3rd Circuit Court ruled local agencies could be liable if they hold a person based on a detainer and the person sues. In that case, a Pennsylvania county held a man with an ICE detainer. Authorities later determined he was a U.S. born citizen and he sued citing Fourth Amendment protections.

The ruling prompted Shawnee County to review its policy, Crawl said. In late May 2014, the county notified ICE that it wouldn't hold undocumented individuals based solely on a detainer. In response to the 3rd Circuit Court ruling and other federal opinions, hundreds of counties across the U.S. also changed their policies. Detainment criteria varies widely. Some counties require additional documentation such as an order. In others, the seriousness of the original arrest is the determining factor in contacting ICE officials.

Crawl and jail director Brian Cole both said last week Shawnee County isn't a sanctuary jurisdiction.

The county communicates and cooperates with ICE, but it needs legal justification to hold someone, Crowl said. The ICE detainer is a request, he said, whereas a warrant or order has legal backing.

Counties that hold people without probable cause are exposing themselves to potential civil rights cases, Crowl said.

He described the requirement for a warrant or order as a “work around” that protects ICE’s interest in immigration enforcement while also protecting the county and its taxpayers from potential lawsuits.

Crowl said his office has received many calls about the “sanctuary” categorization since the executive order threatens to withdraw federal funding from the county. At this point, the order isn’t clear on which jurisdictions would be affected or what funding could be withdrawn.

Crowl said the county is monitoring information released by the federal government.

The politics are a little bit ahead of the practical issues, Crowl said.

“Sanctuary city”

Part of the complexity behind the order is that no legal definition of a sanctuary city exists, said Christopher Lasch, a University of Denver law professor specializing in immigration.

The absence of a legal definition has resulted in an ongoing rhetorical battle and misconceptions.

Some cities and municipalities have adopted ideological stances, declaring themselves welcoming and inclusive cities.

Hundreds of other places, such as Shawnee County, recognized the legal problems with a detainer request following federal court decisions.

While the Trump administration accuses these jurisdictions of flouting the law, they’re actually complying with the law, Lasch said.

Still others have come out with varying positions of how involved local law enforcement is in immigration enforcement. In cities such as Los Angeles, police won’t ask about immigration status.

Lasch said he believes the Trump administration is relying on legal uncertainties and vagueness to cause fear in local jurisdictions so they capitulate.

The day after the executive order was signed, Miami-Dade County reverted back to accepting detainer requests. That demonstrates the fragile rule of law, Lasch said.

The perceived risk of federal cuts is scary, but those cuts might not even be allowed, Lasch said. Funding conditions can’t be coercive and any cuts would have to be reasonably related to the reason for the cut. Cuts also would come from Congress, Lasch said.

There’s a slew of problems with what the administration says it’s going to do, he said.

Community

“I’m concerned,” said Consti Garay, director of local organization VIDA Ministries. “There are fears and many questions our population has about what’s going to happen.”

Garay said attendance at VIDA English classes is down.

“They’re scared of going out,” he said, noting that group meetings in particular create fears of a potential raid. “It’s disheartening.”

Discussing immigration status can be a touchy topic even within the Hispanic community, said Garay, who became a U.S. citizen in May 2013.

Since Trump released the immigration order, Garay said negative comments about immigrants have surfaced in the Topeka area. In one case a Unified School District 501 middle-school student who’s a native born citizen was told to go back home.

“That’s hate that unfortunately Trump created,” Garay said. “That was very sad to see.”

A meeting last week organized by VIDA drew more than 40 people. Kansas City, Mo., immigration lawyer Jessica Piedra said it was important that people know their rights and that undocumented immigrants understand they are protected under the Constitution.

During the presentation, Piedra discussed what to do if ICE comes to a residence, if someone is stopped in a vehicle or arrested.

Families can make a plan with details about custody, finances and health issues should a parent be arrested or detained. Piedra said parents should discuss the plans with their children.

Piedra said she’s not opposed to deporting criminals and that the immigration system is in need of fixing.

“But we need to do it in a common sense way that recognizes the contributions immigrants make,” she said.

It’s not helpful for undocumented immigrants to be afraid of law enforcement, she added, because then crimes aren’t getting reported and witnesses aren’t willing to cooperate.

Garay said he was glad to see so many people turn out for the event and that it was brave for many of the participants to attend.

Crime

In 2016, 9,710 people were booked into the Shawnee County Jail, Maj. Tim Phelps said. Of those, 49 were ICE detainees, amounting to half of 1 percent.

“It’s a very small number,” Crowl said.

Up to March 17 of this year, 2,234 individuals have been booked into the jail. Ten were ICE detainees.

“There is currently no indication that there is an increase in criminal activity due to illegal immigration,” Shawnee County Sheriff’s Office Sgt. Todd Stallbaumer said.

The Cato Institute, a libertarian think tank, published in March a report that found “illegal immigrants are less likely to be incarcerated than native-born Americans.”

Both the sheriff's office and the Topeka Police Department partner with several federal agencies including ICE.

TPD has an ICE agent assigned with its organized crime and gang unit, police spokeswoman Amy McCarter said.

"The agent's primary mode of assistance to this specific unit is to aid in the federal deportation process as it relates to criminal suspects and criminal street gang members," McCarter said.

However TPD enforces state and local laws, she said.

Trump's executive order strengthens the ability of state and local law enforcement to carry out immigration duties, a move that Jackson County sheriff Tim Morse said he supports in an editorial published by The Capital-Journal.

Other agencies, such as the Kansas Highway Patrol, are more resistant to the idea. In February, a hearing convened on Kansas Secretary of State Kris Kobach's Senate Bill 157, which would compel KHP to actively engage in detention, removal and investigation of federal immigration cases. The highway patrol said it wasn't consulted in the drafting of the bill and that it's "likely to result in a reduction in the agency's ability to perform" existing public safety duties in Kansas.

Another bill sought by Kobach would block Kansas cities and counties from adopting or enforcing sanctuary policies for undocumented immigrants. Municipalities violating the proposed law would be ineligible to receive state funding.

According to the Kansas Legislative website, the Committee on Federal and State Affairs last week recommended both bills be passed to the Senate for voting.

Repeated requests for comment from ICE on the agency's involvement in Kansas weren't returned.