



ACLU gets ‘class action’ status in ICE lawsuit against El Paso County sheriff

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A lawsuit by the American Civil Liberties Union of Colorado challenging the way the El Paso County Sheriff works with federal immigration officials and people held in his jails is moving forward — and now has class action status.

Tuesday’s ruling by District Court Judge Eric Bentley in Colorado Springs allows the ACLU to represent current and future prisoners held in El Paso County jails who are or could be subject to U.S. Immigration and Customs Enforcement (ICE) detainers or administrative warrants, including those who have already set bond.

At issue is a lawsuit filed by the ACLU of Colorado in February accusing Sheriff Bill Elder of illegally detaining prisoners at ICE’s request.

According to the ACLU’s complaint, plaintiffs Saul Cisneros and Rut Chavez were held in the El Paso jail awaiting trial for months. Cisneros made bail, set at \$2,000, shortly after his arrest, but was held on at the request of ICE. Chavez’s wife and pastor were told that Chavez would not be released on the \$1,000 bond set by the El Paso County District Court, also because of an “ICE hold.”

The ACLU argued that Elder was “unlawfully imprisoning dozens of individuals for days, weeks, and even months, without any other valid legal authority, solely on the ground that ICE suspects that they are subject to deportation for civil immigration violations.” Under this arrangement, ICE signs a contract with a local jail, agreeing to pay a daily rate in exchange for the jail housing federal detainees. When ICE is interested in a prisoner, the suit claims, officials fax or email three forms (none of which are signed by a judge) to the jail. Then, at least as Sheriff Elder saw it, the detainee becomes a federal prisoner in ICE custody.

On March 20, Judge Bentley ruled that the sheriff’s agreement with federal immigration officials holding inmates beyond their release dates violates state law.

“As Sheriff Elder acknowledged through counsel at oral argument, the ICE forms at issue constitute requests from ICE, not commands, and the Sheriff is making a choice when he decides

to honor them,” he wrote in his order. “Sheriff Elder also conceded at oral argument that a decision to keep prisoners in custody, who would otherwise be released, constitutes a new arrest.”

Elder vowed to fight the judge’s order.

The Republican sheriff is up for re-election and faces retired Air Force Colonel Mike Angley in his primary. The winner will face Democrat Grace Sweeney-Maurer in the general election.

“We do not have a sanctuary county,” Elder told a group of 1,000 Republicans at the El Paso County GOP assembly where he was nominated in late March. “I will fight this judge’s injunction to the U.S. Supreme Court.” Elder has held office for three years.

The term “sanctuary city” generally applies to immigration-friendly municipalities that, like Denver, might not honor requests by federal immigration agents to hold suspects in jail beyond their release dates or share information about a suspect’s immigration status with ICE. Denver Mayor Michael Hancock has said his is not a sanctuary city — there isn’t a legal definition of the term — but has noted that he embraces the title if it means Denver is welcoming to immigrants and refugees.

A bill by Republican lawmakers in the Colorado Senate seeks to define what makes a city a sanctuary city and to prohibit cities from harboring immigrants. But it’s likely to be a symbolic measure in a legislature where Democrats control the House and there’s just one week left in the session. Former GOP Congressman and immigration hardliner Tom Tancredo has said if lawmakers don’t pass the measure, he’ll run a statewide ballot measure about it.

Republican President Donald Trump repeatedly has ripped immigration-friendly policies of local municipalities, saying those cities “breed crime.” In this context, so-called “sanctuary cities” have emerged as major issue in the Republican primary for governor where all four candidates repeatedly oppose them on the stump or in ads on the airwaves. A Gallup survey that found nearly half of Americans believe immigrants make “the crime situation” worse. Republicans’ eagerness to campaign on the issue reflects a poll from 2017 finding that it’s a top priority for 43 percent of Republican primary voters in Colorado that candidates address enforcement of immigration laws.

But, according to a report that same year by the pro-immigration Cato Institute, a libertarian think tank, “All immigrants are less likely to be incarcerated than natives relative to their shares of the population,” and “Even illegal immigrants are less likely to be incarcerated than native-born Americans.” And, according to Factcheck.org, “U.S. Immigration and Customs Enforcement documented nearly 2,000 cases in which cities with sanctuary policies refused to honor ICE detainers, and unauthorized immigrants then went on to commit crimes. But some law enforcement officials say that in the big picture, sanctuary policies also can help to reduce crime” by building trusting relationships with immigrant communities.

The El Paso case has become a legal showdown over immigration and policing in a state where a majority of sheriffs do not honor Immigration and Customs Enforcement requests to hold anyone beyond their release date without an order signed by a federal judge. And it comes four years

after a federal judge ruled that a county jail in Oregon holding a woman past her release date had violated her 14th Amendment Constitutional right against unreasonable search and seizure.

In Judge Bentley's May 1 ruling giving the ACLU class-action status against El Paso County, he lays out the stakes:

There is no doubt this case raises issues of substantial public importance which are being intensely debated in courts and public forums around the state and the country. Resolution of these issues by the courts, and especially the higher courts of Colorado and the United States, is badly needed in order to remove the substantial uncertainty that attends these issues. To date, this Court has issued only a preliminary ruling that addressed only the rights of the two named Plaintiffs and did not reach the merits of the proposed classes' claims.

Further, the issues this case raises, while recurring and persisting at the institutional level, are short-lived at the individual level: the institutional practices, along with the broad legal and policy issues, persist, while the circumstances of individual parties are transitory and ever-changing.

"By officially certifying this case as a class action, the court has made it clear that a final ruling will apply not just to the two detainees who initiated the lawsuit, but will also impact all current prisoners in the jail as well as hundreds of future prisoners who will be housed in the jail in coming years," says Mark Silverstein, the ACLU of Colorado's legal director. "It also reflects the broad impact that local law enforcement policies have when officials choose to entangle their resources with federal immigration enforcement."

The ACLU of Colorado alleges that last year there were at least 180 prisoners named in ICE detainers in El Paso County and on any given day at least four dozen prisoners in the jail were named in them.

A spokesperson for El Paso County Sheriff Bill Elder said the office wouldn't comment on pending litigation.