



El Paso County sheriff vows to fight judge's order blocking him from holding inmates for ICE

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A sheriff in Colorado is pledging to fight a judge's recent order that stops him from holding individuals beyond their release dates for immigration officers.

Bill Elder, the sheriff in El Paso County, kicked off a fiery campaign speech to more than 1,000 Republicans during a GOP assembly on Saturday by saying, "We do not have a sanctuary county."

In an auditorium on the campus of the University of Colorado in Colorado Springs as signs bearing his name waved in the crowd, he said, "I will fight this judge's injunction to the U.S. Supreme Court."

At issue is a lawsuit by the American Civil Liberties Union of Colorado that challenges a new arrangement Elder has with Immigration and Customs Enforcement in which the federal agency 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 says, officials fax or email three forms (none of which are signed by a judge) to the jail. Then, in the eyes of the sheriff, the detainee becomes a federal prisoner in ICE custody.

But, "when individuals have posted bond or resolved their criminal case, Colorado law requires that Sheriff Elder release them," said Mark Silverstein, the ACLU of Colorado's legal director, in February.

On March 20, State District Court Judge Eric Bentley in Colorado Springs agreed, saying that to hold people past their release dates for immigration officials without an order signed by a federal judge constitutes a "warrantless arrest."

The judge issued a preliminary injunction on the sheriff.

On the day of the judge's order, a spokeswoman for the El Paso County Sheriff's Office told *The Colorado Independent* the sheriff's office was determining its next move. Four days later, on March 23, the sheriff filed an appeal to the Colorado Supreme Court.

John Krieger, spokesman for the ACLU of Colorado, said in a statement that his group believes the El Paso County Sheriff's policies exceeded his authority under Colorado law "and that using overburdened local resources for federal immigration enforcement does nothing to promote public safety."

Colorado Sheriffs, he said, "swear an oath to the Constitution, not to ICE."

Elder, who has been sheriff for the past three years, faces a June primary challenge from Mike Angley, a retired Air Force colonel. Elder's new public comments on the ACLU lawsuit and the judge's injunction came during his nomination speech at Saturday's GOP county assembly. In interviews, Republicans in the crowd said immigration and so-called sanctuary cities are a top priority they want their elected officials to deal with.

The term sanctuary cities 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 the city is *not* a sanctuary city— there isn't a legal definition of the term— but has said he embraces the title if it means Denver is welcoming to immigrants and refugees. In 2014, 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.

According to a 2017 report by the pro-immigration libertarian Cato Institute, "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." Still, a Gallup survey from the same year found nearly half of Americans believe immigrants make "the crime situation" worse.

President Donald Trump has repeatedly ripped immigration-friendly policies of local municipalities, saying those cities "breed crime."

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 topic has become a top campaign talking point for Republicans running for governor this year in Colorado.

Despite his remark about the U.S. Supreme Court in his Saturday speech, at this point, the El Paso County sheriff is only fighting the injunction at the State Supreme Court level because the lawsuit was filed in state court and deals with state law.

The sheriff is asking Colorado's highest court to weigh in on Judge Bentley's order "and clarify that sheriffs do have the authority to hold ICE detainees for the limited time period of up to 48 hours after state law authority to hold the inmate has expired, based upon receipt of an ICE Immigration Detainer and Administrative Warrant," according to a copy of his appeal. He says he worries about a loss of federal funding for his sheriff's office if he doesn't cooperate with immigration officials.

As *The Colorado Independent* reported last year, "nearly all of the state's 64 county sheriffs refuse to hold anyone beyond their release dates unless presented with a warrant by immigration agents," following the 2014 federal ruling.

El Paso County might be unique, and the sheriff wants the Colorado Supreme Court to hear his appeal because, according to language in his petition, "the law on a local sheriff's authority to hold ICE detainees is unsettled."

The judge's recent injunction, "which has been well publicized, places sheriffs across the state in a quandary: either breach their contracts with ICE or face similar lawsuits," the appeal reads.

The appeal also argues the state judge's ruling is in conflict with federal law, "which plainly and simply prohibits undocumented immigrants from being in the United States," it says.

The issues in the case, the appeal continues, "go to the heart of Colorado sheriffs' authority to cooperate with federal agencies."

The Colorado Supreme Court does not have to take up the sheriff's appeal.