

Houston – We Have a Solution!

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Since 9/11, the war on terror has taken many twists and turns. And one of the most vexing problems has been the role “Local Law Enforcement” should play in dealing with illegal immigrants who are found within our borders. The federal government, since the horrendous events of that terrible day, has been placing notices of administrative warrants for removal and civil detainer notices for deportable felons on the NCIC criminal database.

Local police officers have the established authority to enforce against criminal violations; however, these administrative warrants and detainer notices are civil in nature because they resulted from civil immigration proceedings. Local officers’ authority to make civil arrests for immigration violations, however, is less clearly established under federal law. And, their authorities to make civil arrests under State and local law also vary more widely.

Nevertheless, the federal government has requested that local law enforcement assist in arresting persons based on these civil administrative warrants and detainees. In response, the Houston Police Department, the International Association of Chiefs of Police, and the Major Cities Chiefs (MCC) organizations have requested that the federal government stop putting civil warrants into a national criminal database and instead charge the suspects criminally.

Unfortunately, the federal government has not done so.

This simple change in policy would allow local police officers to use their clear criminal enforcement authority to assist in arresting and detaining these persons. Until recently the federal government had not taken the steps necessary that would allow local police officers to exercise their criminal enforcement authority to arrest persons who have been ordered deported or considered deportable.

The road to relief

The Houston Police Department has been engaged in continuing and ongoing discussions with local representatives of the Department of Justice and Immigration and Customs Enforcement (ICE) for the last year to increase and strengthen cooperation between our respective agencies on enforcement of criminal matters of mutual concern. These discussions have taken place between the department and Ed Gallagher, Deputy Criminal Chief for the Southern District of Texas, and Robert P. Rutt, Special Agent in Charge of Immigration and Customs Enforcement in Houston. As a result of these discussions, we believe we have developed a workable framework through which we will be able to assist the federal government with the individuals who are subject to warrants and detainees noted in the NCIC.

Although the warrants and detainees in question are civil, criminal charges and sanctions against them are authorized under Article 8 Section 1253 and 1326 of the United States Code. The U. S. Attorney for the Southern District of Texas has agreed to consider for prosecution any such case that is

presented to him, and to prosecute all prosecutable cases against previously deported aggravated felons that are presented.

This sufficiently links these individuals to a crime and a potential criminal proceeding that local law enforcement believes they can legally hold these individuals until the federal authorities take custody of them. Houston ICE officials in turn, (per our “Houston solution”) have agreed to take custody of them within 24 hours based on the outstanding administrative/civil warrant or detainer.

Based on this agreement with U. S. Attorney DeGabrielle and Special Agent Rutt, Houston police officers are now authorized to arrest and detain persons who are noted on the NCIC system to have an administrative warrant of removal and/or a deportable felon detainer.

This is an unprecedented step by U. S. Attorney DeGabrielle and Special Agent Rutt. It would allow Houston to be the first major metropolitan region in the country to have their U. S. Attorney’s Office seek criminal charges and sanctions in these situations on a consistent basis.

Further progress

It should also be noted that undocumented aliens are prohibited from possessing firearms and can be charged federally with a felony pursuant to Title 18, United States Code, section 922(g)(5). A conviction for this felony carries a sentence of up to 10 years imprisonment and is considered an aggravated felony under the Immigration and Nationality Act. Upon release from prison, these aliens are subject to administrative removal and are not entitled to a

hearing before an Immigration Judge.

Should the alien return to the United States illegally, he could be prosecuted for illegal reentry after deportation and be subject to a sentence of up to twenty years. The Harris County District Attorney's Office in Texas has agreed to refer these prosecutions to the U. S. Attorney's Office for the Southern District of Texas for prosecution. This is an excellent step in local law enforcement efforts to assist in our country's ongoing war on terror.

How to get there

Officers must confirm the identity of the person who is subject to the warrant or detainer. I suggest having the dispatcher assist the officer in verifying and confirming the warrant or detainer with the appropriate federal agency. Telephone numbers are provided in the NCIC, which can be used to confirm the warrant or detainer. Officers will have direct contact with the Law Enforcement Support Center (LESC) at a toll free number and advise them of the NCIC information hit. Once the identity of the person and the warrant or detainer are confirmed, ICE will be contacted for acceptance of a **"criminal hold"** on the suspect. In Houston, LESG will fax an Immigration Detainer to our Jail Division where (with authority from ICE officials) we will stamp the Detainer **"Criminal."**

The arrested suspect will be transported to the City's jail where the suspect will be held for a maximum of 24 hours. ICE has agreed to take custody of the suspect within 2 to 12 hours in most cases. Once in custody, ICE will make a criminal case presentation to the U. S. Attorney for all those whose Immigration Detainers were placed based on an NCIC hit confirmation. If the suspect has not been picked up by ICE within the 24-hour period the suspect will either be released or processed on any other local charges, which may

have been filed simultaneously with his/her arrest.

Does this solve the problem?

Our "Houston solution" – that is, our agreement with the U. S. Attorney's Office and ICE – solves the major obstacles we have encountered as a local law enforcement agency in assisting the federal government in locating, apprehending, and charging or removing previously deported felons who reenter the country and/or suspects who illegally enter and are given a court date and do not appear for their hearings.

We believe this approach may be a model (if adopted by regional U. S. Attorney offices throughout the nation) for other jurisdictions looking for an approach that will allow them to provide this kind of assistance without taking over the federal government's responsibility for enforcing the immigration laws.

While there are several other steps the federal government must take to secure our borders and prevent illegal entry into the United States (*such as those listed in the MCC Immigration Committee Recommendation, adopted June 2006*), this is an excellent step in the right direction.

Until the time comes that our borders are secure, the best thing any local police agency can do to assist with national security and public safety is to continue arresting anyone who violates the criminal laws of their jurisdictions regardless of the immigration status of the perpetrator. Those immigrants, documented and/or undocumented, who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of the law within any city, but will instead face the full force of criminal prosecution.