

Minuteman Indivisible

TALKING POINTS

Local Authority Participation in Immigration Enforcement + SCA

- **Facts:**
 - According to the United States Supreme Court, as a general rule, it is not a crime for a removable alien to remain present in the United States. In addition, undocumented aliens, like other citizens, are afforded certain rights by the United States Constitution.
 - Local law enforcement agencies ("LEAs") retain significant discretion regarding whether and how to participate in federal immigration enforcement. LEAs nonetheless must adhere to the requirements and prohibitions of US Constitution and federal and state law in serving the public. This includes holding people when there is a judicial warrant.
 - Under existing law, should a LEA choose to comply with Immigration and Customs Enforcement ("ICE") or Customs and Border Protection ("CBP") detainer request and hold an individual beyond his or her normal release date, this constitutes a new "seizure" under the 4th amendment. If that detainer doesn't meet probable cause, the LEA can be sued for illegal search and seizure. The SCA would not change this.
 - The Massachusetts High Court is currently considering just how much LEAs are legally allowed to cooperate with federal immigration agents.
 - "Sanctuary" is not a legal term and does not have any fixed or uniform legal definition but it is often used to refer to jurisdictions that limit the role of local law enforcement agencies and officers in the enforcement of federal immigration laws. Each community or state that enacts these types of laws will have potentially different provisions.
 - Immigration policy, which deals with the transit of people across the borders, remains the responsibility of the federal government and is really a separate issue. ICE will continue to operate in the state.
 - The Safe Communities Act (a MA bill) does not interfere in any way with LEA enforcement of violent crime or detention of violent criminals. The ct provides for legislative refinement of the definition of violent crime to ensure that this Act is not an impediment to enforcement of local laws.
- **Is there any historical background to something like this?**
 - Arizona v. United States 132 S. Ct. 2492, 2505 (2012)
 - The Tenth Amendment to the United States Constitution provides that "powers not delegated to the United States by the Constitution, nor

- prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const., Am. X
- The Fourth Amendment to the U.S. Constitutional prohibits unreasonable searches and seizures.
 - **Why does this matter:**
 - It is not the job of LEAs to enforce federal civil immigration laws and doing so effectively misuses local funds that are intended to support local policing. In other words, we are paying our local police force to protect us from local crimes - not to do the federal government's job. State dollars should be used for state programs. Adding this role to an already overburdened police force is unfair - especially considering the additional training costs.
 - Our communities are actually safer if people feel free to report crimes - no matter their immigration status. e.g. someone witnesses a shooting, it is to our benefit if they report the crime.
 - It is important for immigrants to know that they will not be illegally detained if they are having transactions with a town.
 - If the local police detain people waiting for ICE, beyond what is necessary for their crime, the local police can be sued for illegal search and seizure. If such a thing happens then defending the town will cost more of our tax dollars.
 - This is a state's rights issue - the tenth amendment of the U.S. Constitution limits the federal government's ability to mandate particular action by states and localities e.g. the federal government cannot "compel the States to enact or administer a federal regulatory program" or compel state employees to participate in the administration of a federally enacted regularly program. Voluntary cooperation with a federal scheme does not present 10th amendment issues.
 - We need to think about how much money is being spent in putting people in detention centers and whether that is a good use of our tax dollars.
 - **Links to articles / Information:**
 - Schneiderman Guidelines:
https://ag.ny.gov/sites/default/files/guidance_and_supplement_final3.12.17.pdf
 - **Related Legislation or lawsuits:**
 - Massachusetts Safe Communities Act S.1305 and H.3269
<https://malegislature.gov/Bills/190/SD1596>
 - Massachusetts Judicial court currently considering this issue
<http://www.wbur.org/news/2017/04/04/sjc-immigration-detainer-case>
 - H.3033 (An Act relative to enforcing federal law)
<https://malegislature.gov/Bills/190/H3033>
 - H.3034 (an act limiting use of prison labor)
<https://malegislature.gov/Bills/190/H3034>
 - S.349 Access to Counsel Act
 - **"Allies" for the issue:**
 - ACLU / People Power organization

- MIRA (Massachusetts Immigrant and Refugee Advocacy Coalition)
- CREDO
- The U.S. Constitution
- **Our response / Actions:**
 - Support the Safe Communities Act
 - Support towns and cities advocating for safe communities